



City of Palo Alto City Council Staff Report

(ID # 5166)

Report Type: Consent Calendar

Meeting Date: 11/17/2014

Summary Title: Low Income Home Energy Assistance Program

Title: Adoption of a Resolution Approving and Authorizing the Execution of the State of California Department of Community Services and Development October 2014 - April 2017 Direct Payment Program Agreement No. 14Y-1419 Governing the City of Palo Alto Utilities Department's Administration of Home Energy Assistance Program Funds

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager or his designee to execute Direct Payment Agreement No. 14Y-1419 between the California Department of Community Service and Development (State CSD) and the City of Palo Alto for the purpose of making direct payment from State CSD to the utilities accounts of qualifying low-income residents.

Executive Summary

The United States Department of Health and Human Services annually distributes authorized funds under the Low-Income Home Energy Assistance Program (LIHEAP) to states to assist eligible low-income households with payments for heating and/or cooling energy expenses. The State CSD then distributes these funds, under its Home Energy Assistance Program, to energy providers under the LIHEAP terms and conditions. LIHEAP eligibility is based on the combined household income of the residence and provides financial assistance of up to \$290 annually per qualifying utilities account.

Background

LIHEAP financial assistance is based upon the poverty guidelines used by the United States Department of Housing and Urban Development and other federal and state agencies. These guidelines are published annually in the *Federal Register* by the United States Department of Health and Human Services under the authority of Title 24, United States Code, 9902(2). The current LIHEAP administrator for Santa Clara County is Sacred Heart Community Service, headquartered in San Jose. The county's LIHEAP allocation, in combination with a small-scale utility payment assistance program offered by the Society of Saint Vincent de Paul, the

ratepayer-supported City of Palo Alto Utilities (CPAU) Rate Assistance Program, and the utility customer-supported voluntary contribution PROJECT PLEDGE program, are the currently available sources of financial assistance for Palo Alto residents with qualifying accounts. Since October 2003, State CSD has required that the City of Palo Alto's executed LIHEAP Agreement be accompanied by a resolution or ordinance authorizing CPAU participation and execution of the provisions of the Agreement.

Discussion

LIHEAP payments are restricted to the electric and/or natural gas portion of the CPAU customer bill, and the Agreement with State CSD provides for one energy payment per funding year to qualifying low-income families. State CSD, through its county administrator, provides the applying utility customer with program intake services, including verification of eligibility and determination of allowable LIHEAP payment. CPAU is provided with the names of applicants determined to be eligible for LIHEAP assistance, and maximum payment to be applied to the Utilities account. The elapsed time from CPAU customer initial LIHEAP application to Sacred Heart Community Service, verification of program eligibility, determination of funding amount, and direct payment by State CSD to CPAU, averages eight weeks.

In Fiscal Year 2013-2014, there were 104 Palo Alto Utility residential accounts receiving \$25,898 in LIHEAP direct payments (averaging \$249.02 per customer).

The Direct Payment Agreement is a no-cost contract, but participation by the City in LIHEAP results in a minor workload impact for CPAU Customer Service and Credit and Collection staffs for local program administration (including coordination with other local financial assistance programs), customer contact and referral, and Utilities payment tracking, investigation and reconciliation.

Resource Impact

The estimated impact of LIHEAP administration on the Utilities Department staff is less than 50 hours per fiscal year.

Policy Implications

The recommendation is consistent with the Council approved Utilities Strategic Plan Strategic Plan Strategy BP6. "Offer programs to meet the needs of customers and the community."

Environmental Review

The adoption of this resolution does not meet the definition a project under Public Resources Code Section 21080 or Section 15378 of the CEQA Guidelines, and therefore no California Environmental Quality Act assessment is required.

Attachments:

- Attachment A: Resolution State Contract Direct Pmt Prog 2014-2017 (PDF)
- Attachment B: City of Palo Alto Direct Payment Agreement No.14Y-1419 (PDF)

NOT YET APPROVED

Resolution No. _____

Resolution of the Council of the City of Palo Alto Approving and
Authorizing the Execution of the State of California Department of
Community Services and Development 2014-2017 Direct Payment
Program Agreement No. 14Y-1419 Governing the City of Palo Alto
Utilities Department's Administration of Home Energy Assistance
Program Funds

R E C I T A L S

A. The City of Palo Alto ("City"), a California charter city, has offered energy assistance to families of low-income since 1981 as a part of the City's Low Income Home Energy Assistance Program.

B. The United States Department of Health and Human Services annually distributes authorized funds under the Low-Income Home Energy Assistance Program ("LIHEAP") to states to assist eligible low-income households with payments for heating and/or cooling energy expenses. The State of California Department of Community Services and Development ("State CSD") then distributes these funds, under its Home Energy Assistance Program, to energy providers under the LIHEAP terms and conditions.

C. The City has a contract (the "Direct Payment Program Agreement") with the State of California to provide direct credit to the accounts of Palo Alto residents who have been identified by the State CSD as recipients of payments to be made under and in accordance with LIHEAP, which includes the Home Energy Assistance Program.

D. The Direct Payment Agreement No. 14Y-1419 is for the term October 1, 2014 through April 30, 2017.

The Council of the City of Palo Alto RESOLVES, as follows:

SECTION 1. The Council hereby authorizes the City of Palo Alto to enter into and execute with the State of California Department of Community Services and Development the 2014-2017 Direct Payment Program Agreement.

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SECTION 2. The Council finds that the adoption of this resolution does not meet the definition of a project under Public Resources Code Section 21080 or Section 15378 of the CEQA Guidelines and, therefore, no California Environmental Quality Act environmental assessment is required.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

APPROVED:

City Clerk

Mayor

APPROVED AS TO FORM:

City Manager

Sr. Deputy City Attorney

Director of Utilities

Director of Administrative
Services

**STATE OF CALIFORNIA
AGREEMENT**

This Agreement consists of this signature page, Parts I and II, and Attachments 1 and 2, which are attached hereto and incorporated herein by this reference. It is entered into between the State of California, **Department of Community Services and Development (CSD)**, and the Utility Company, **City of Palo Alto Utilities(Contractor)**:

Utility Company: **City of Palo Alto Utilities**
The term of this Agreement is: October 1, 2014 through April 30, 2017
The maximum amount of this Agreement is: \$-0-
Agreed to and approved:

CONTRACTOR **City of Palo Alto Utilities**

By:

Authorized Signature

Date Signed

Printed Name and Title of Person Signing

Address: _____

Telephone: _____

Email: _____

STATE OF CALIFORNIA
Department of Community Services and Development

By:

Authorized Signature

Date Signed

Cindy Halverstadt, Deputy Director of Administrative Services
Printed Name and Title of Person Signing

Address: 2389 Gateway Oaks Drive, Suite 100
Sacramento, California 95833

Telephone: (916) 576-7109

Email: Cindy.Halverstadt@csd.ca.gov

**DIRECT PAYMENT AGREEMENT
PARTS I & II**

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PART I

ARTICLE 1 – SCOPE OF WORK

1.1 Purpose

The purpose of this Agreement between the Department of Community Services and Development, hereinafter referred to as CSD or the Department, and the **City of Palo Alto Utilities**, hereinafter referred to as Contractor, is for the purpose of making direct credit to the accounts of low-income energy customers of the Contractor that are identified by CSD as payment recipients under CSD's Low-Income Home Energy Assistance Program (LIHEAP), which includes the Home Energy Assistance Program (HEAP) and Energy Crisis Intervention Program – Fast Track (ECIP-FT).

1.2 Location of Services

Unless otherwise specified by advanced written notice to Contractor, all services performed by CSD under this Agreement shall be located at:

Department of Community Services and Development
Energy and Environmental Services Division - Consumer Provider Assistance Unit
2389 Gateway Oaks Way, Suite 100
Sacramento, California 95833

1.3 Contract Amount

Contractor will not receive any direct financial consideration under this Agreement.

1.4 Term

The term of this Agreement shall be October 1, 2014 through April 30, 2017.

1.5 Applicable Laws and Requirements

All services and activities undertaken by the parties in connection with this Agreement shall be performed in accordance with all applicable federal, state, and local laws and regulations, as may be amended from time to time, including any relevant memoranda of understanding and/or other cooperative agreements established between CSD, utility providers, and/or the Public Utilities Commission.

1.6 Notices and Project Coordinators

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All written notices to the parties pertaining to this Agreement shall be addressed to the Project Coordinators identified below. The parties may, at any time, designate a substitute Project Coordinator. Notice of any substitution in the Project Coordinators shall be made in writing to the other party and will not require an amendment to this Agreement.

CONTRACTOR'S PROJECT COORDINATOR

Name and Title: _____

Company Name: _____

Address: _____

City, State, and ZIP Code: _____

Email: _____

Phone: () _____ - _____

CSD'S PROJECT COORDINATOR

Debra Brown, Staff Services Manager
Energy & Environmental Services Division
Department of Community Services and Development
2389 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833
Email: Debra.Brown@csd.ca.gov
Phone: (916) 576-7109

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**ARTICLE 2 -- CONTRACT CONSTRUCTION, ADMINISTRATION AND
PROCEDURE**

2.1 Base Contract and Whole Agreement

- A. This Agreement consists of two parts, which together constitute the whole agreement between CSD and Contractor.
- B. Part I is the "Base Contract" which consists of the following:
 - 1. The face sheet which specifies:
 - i. the parties to the Agreement;
 - ii. the term of the Agreement;
 - iii. the maximum dollar amount of the Agreement; and
 - iv. the authorized signatures and dates of execution.
 - 2. Article 1, Scope of Work, and Article 2, Contract Construction and Procedure.
- C. Part II consists of the "Administrative and Programmatic Provisions" which are comprised of Subparts A through D, including specified requirements, obligations, provisions, procedures, guidance, forms, and technical materials necessary for program implementation.

2.2 Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, CSD shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the State of California Budget Act for purposes of this program, CSD shall have the option to either cancel this Agreement with no liability occurring to CSD, or offer an agreement amendment to Contractor to reflect the reduced amount.
- C. Notwithstanding the language in Sections 2.2 A. or B. above, if CSD believes that funds will be insufficient to allow the State to make LIHEAP payments to Contractor i.e., for the reasons described in Section A. or B. above, then CSD

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shall promptly notify Contractor's Project Coordinator. CSD and the Contractor's Project Coordinator shall attempt to amend this Agreement so the LIHEAP payments can continue to the extent possible given the nature of the shortage or unavailability of funding for LIHEAP. The parties agree that it is undesirable to terminate this Agreement for any short-term unavailability of LIHEAP funds and that it would be preferable, if Federal funds are not available for LIHEAP, to suspend LIHEAP until CSD is able to obtain sufficient funding to resume credits to qualified low-income energy customers, as provided for, under LIHEAP.

2.3 Provisions for Federally Funded Contracts

- A. It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This contract is valid and enforceable only if sufficient funds are made available to CSD by the United States Government for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by Congress or to any statute enacted by Congress that may affect the provisions, terms, or funding of this Agreement in any manner.
- C. The parties mutually agree that if Congress does not appropriate sufficient funds for LIHEAP, this Agreement shall be amended to reflect any reduction in funds.
- D. CSD has the option to void the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction for funds.
- E. CSD will notify Contractor's Project Coordinator if federal funds are insufficient for LIHEAP to continue as expected during the next fiscal year or if restrictions, limitations or conditions have been imposed by Congress on the LIHEAP or funding for it as soon as the Federal grant award letter has been issued with some constraint. CSD further agrees that Contractor's willingness to suspend the LIHEAP, as described herein and in Section 5.C. above, does not constitute an agreement by Contractor that: (i) funding for LIHEAP is unimportant or (ii) a delay in crediting a customer with LIHEAP funds is acceptable, to either Contractor or its customers.
- F. Federal Equal Opportunity Laws

During the performance of this Agreement, and to the extent they may be applicable to this Agreement, Contractor agrees to comply with the following:

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1. Federal Executive Order 11246, as amended by Executive Order 11375 relating to equal employment opportunity;
2. Title VI and Title VII of the Civil Rights Act of 1964; as amended;
3. Rehabilitation Act of 1973, as amended;
4. Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended;
5. Title 41, Code of Federal Regulations (CFR), Chapter 60, Office of Federal Contract Compliance Program, Equal Employment Opportunity, Department of Labor, as amended; and
6. Public Law 101-336, Americans with Disability Act of 1990, as amended.

2.4 General Terms and Conditions – “GTC 610”

In accordance with State contracting requirements, specified contracting terms and conditions are made a part of this agreement. The provisions in their entirety, previously located in Exhibit C of the Standard LIHEAP contract, are now found in Part II, Subpart C of this Agreement and are fully binding on the parties in accordance with state law.

2.5 Additional Provisions

- A. Amendment. Changes to this Agreement shall be made by formal amendment with exceptions specified in Section H, below.
- B. Assignment. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any party without the prior written consent of the other parties, except in the case where responsibility for program implementation and oversight may be transferred by the State to another State agency. In the event of such transfer, this Agreement is binding on the agency to which the program is assigned.
- C. Cancellation/Termination. Either party may terminate this Agreement by giving thirty (30) days' prior written notice to the other party.
- D. Captions. The captions of the various sections, paragraphs, and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretations.
- E. Dispute Resolution. Unless otherwise mutually agreed to, any disputes between CSD and Contractor regarding the construction or application of this Agreement and claims arising out of this Agreement or its breach shall be submitted to mediation within thirty (30) calendar days of the written request of one party after

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the service of that request on the other party, in accordance with the following procedures:

1. The parties shall make best efforts to settle all disputes arising under this Agreement as a matter of normal business and without recourse to either mediation or litigation. If the parties are unable to resolve a dispute with respect to this Agreement, either party may send a notice to the other requesting a meeting at which senior officers or officials of the parties will attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the meeting notice is received by the party to whom it is directed, or such longer period as the parties may agree, then either party may initiate mediation as set forth herein.
 2. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation that arises out of any dispute related to this Agreement, the parties shall each pay their respective attorney's fees, expert witness costs, and cost of suit, regardless of the outcome the litigation.
- F. Incidental and Consequential Damages. CSD shall not be liable for incidental or consequential damages including, but not limited to, loss of profits, commitments to subcontractors, rental or lease agreement(s), and personal services contracts, unless expressly authorized in writing by CSD.
- G. Merger/Entire Agreement. This Agreement (including the attachments, documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.
- H. Minor Modifications. Contractor and/or CSD may request modifications to make minor adjustments during the contract term to implement process improvements and program efficiencies as appropriate.
- I. Nonwaiver. The waiver by either party of any breach of any term, covenant, or condition contained in this Agreement, or any default in the performance of any obligations under this Agreement, shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or obligation; nor shall any waiver of any incident of breach or default constitute a continuing waiver of the same. All waivers shall be in writing.

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- J. Other Agreements. This Agreement shall not prevent either party from entering into similar agreements with others.
- K. Severability. If any provision of this Agreement be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired and shall remain in full force and effect.
- L. Subcontracts. No subcontracts shall be permitted under this Agreement; therefore, references to subcontractors or subcontracts as part of standard provisions that have been included herein shall have no applicability.
- M. Venue. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusive vested in the State Courts of the County of Sacramento, or where otherwise appropriate, exclusively in the United States District Court for the Eastern District of California in Sacramento, California.

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PART II

SUBPART A – ADMINISTRATIVE REQUIREMENTS

ARTICLE 3 – ADMINISTRATIVE POLICIES, TERMS AND CONDITIONS

3.1 Confidentiality

- A. In the course of performing the services under this Agreement, CSD may have access to confidential, commercial, or personal information concerning, but not limited to, technology, rate making, legislative, and personnel matters and practices of the Contractor, its subsidiaries, affiliates, or members of the public. CSD agrees not to disclose any such information without the prior written approval of Contractor.
- B. Contractor hereby agrees to provide required security to insure the confidential, physical security and safekeeping of all data, information, files, and documents while in its possession. Through the observance of the same or more effective procedural requirements as used by CSD, Contractor will protect from unauthorized use and disclosure all sensitive data, documentation, or other information that are designated confidential by CSD and made available to Contractor in order to carry out this Agreement. CSD shall provide to Contractor, in writing, the identification of all such confidential data and information, as well as CSD procedural requirements for protection of such data and information from unauthorized use and disclosure.
- C. Any representation herein made by CSD relating to confidentiality or the operations, limitations, and requirements for the furnishing of personnel records, as set forth below in Section 3.4, CSD's Use of Contractor's Property, shall be subject to the Information Practices Act of 1977, Section 1798 et seq. of the California Civil Code, and the California Public Records Act, Section 6250 et seq. of the California Government Code.

3.2 Compliance with Laws and Tax Withholding

- A. Contractor shall comply with all applicable Federal, State, and local laws, rules, and regulations and shall obtain all permits required to conduct its business and perform the work called for in this Agreement, if applicable.
- B. Contractor represents and warrants that it will withhold all taxes, if any, which are required to be withheld under applicable laws with respect to Contractor's

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personnel who perform services for the Contractor. Contractor shall indemnify and hold CSD harmless, on an after-tax basis, for any liability incurred as a result of Contractor's failure to institute any such required withholding.

3.3 Conflict of Interest

Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with CSD's interest. During the term of this Agreement, Contractor shall not accept any employment or engage in any consulting work that creates a conflict of interest with CSD or in any way compromises the services to be performed under this Agreement. All financial statements, reports, billings, and other documents rendered shall properly reflect the facts about all activities and transactions handled for the account of CSD.

3.4 Contractor's Use of CSD's Property

All records, reports, computer programs, written procedures, and similar materials, documents, or data, in whatever form provided by CSD for Contractor's use in performance of services under this Agreement shall remain the confidential property of CSD and shall be returned immediately upon completion of Contractor's use or upon written request of CSD.

3.5 Independent Contractor

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of CSD.

3.6 Insurance

Contractor is a self-insured entity. If said coverage no longer prevails, Contractor will notify CSD within thirty (30) days of said coverage expiration.

3.7 Labor Code/Workers Compensation

Both parties affirm that they are aware of the provisions requiring every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms that it is or shall be in compliance with such provisions before commencing the performance of the work of this Agreement (Labor Code Section 3700).

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3.8 Resolution of Governing Entity (Public Utilities)

If Contractor is municipal entity or otherwise established by a county, city, district, or other local public body, it must provide a copy of a resolution, order, motion, or ordinance of the public entity authorizing execution of this Agreement.

3.9 Warranty

Contractor warrants to CSD that the work under this Agreement shall be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices and in conformance with generally accepted professional standards prevailing at the time the work is performed, so as to ensure that the services performed are correct and appropriate for the purposes contemplated in this Agreement and related specifications.

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SUBPART B – PROGRAMMATIC AND REPORTING REQUIREMENTS

ARTICLE 4 – PROGRAMMATIC PROVISIONS

4.1 Applicant Eligibility

CSD's LIHEAP service provider agencies, and/or CSD personnel in some instances, will process applications and make a determination of applicant's eligibility for utility assistance based upon pre-established criteria in accordance with federal and state LIHEAP requirements.

4.2 Payment Issuance and Processing

- A. Utility Direct Pay Web Service. CSD will host a Utility Direct Pay Web Service (Web Service). Contractor will use the Web Service in order to receive Direct Pay data records from CSD, and to transmit status and "return credit" results back to CSD. The Web Service will replace all current modes of data communication of direct pay data between CSD and Contractor:
1. Contractor must use Web Service operations to retrieve their Direct Pay records and to post resulting statuses for *all* Direct Pay records received from CSD, (full payments, full credit returns, partial credit returns, and any other pertinent statuses).
 2. CSD will no longer accept return statuses via fax, email, or paper transmissions.
 3. CSD will provide Contractor with specifications, documentation, sample code, and test client software, as necessary, to enable Contractor's use of the Web Service.
- B. Funds provided under this Agreement shall be disbursed and applicant accounts credited in accordance with the provisions of the LIHEAP Direct Payment Instructions (Attachment 1). Payments shall issue in the form of a State of California warrant, along with a Direct Payment Summary (See Subpart D, Attachment 2) via Web Service/FTP transmission. The warrant shall represent the sum total of payments identified in the Direct Payment Summary transmission.
- C. Upon receipt of the warrant, Contractor shall review the associated FTP transmission "batch run" to identify the customers' accounts to be credited.

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- D. Timeliness and Customer Notification of Credit. Contractor shall attempt to credit the accounts of qualified low-income customers by the subsequent billing cycle following the receipt of the transmittal and State of California warrant. Contractor will provide notification of LIHEAP payment to each customer for whom a credit is made. The wording of said notification must contain the words "LIHEAP credit."

4.3 Payment Verification

- A. Completion of Direct Payment Summary. Within ten (10) working days of processing a batch run of LIHEAP customer credits, Contractor is responsible for completing and returning the Direct Payment Summary to CSD. The Direct Payment Summary must include the following information:
1. Total number of customer accounts where the Contractor was successful in crediting full amount of eligible LIHEAP benefit;
 2. Customer accounts where the Contractor was only able to credit a partial amount of the eligible LIHEAP benefit, also referred to as Partial Payment Return; and
 3. Customer accounts where the Contractor was unable to credit any of the eligible LIHEAP assistance amount, also referred to as Full Payment Return.
- B. Undeliverable Benefits. In the event that a credit cannot be posted to a customer's account, Contractor shall make reasonable attempts to identify the account and complete delivery. Contractor shall return any undeliverable LIHEAP benefits to CSD within 60 days of receipt of the warrant.

4.4 Telephone Pledges Under Energy Crisis Intervention Program/Fast Track

Customers applying for LIHEAP assistance who have received a shutoff or disconnection notice may qualify for the Energy Crisis Intervention Program or Fast Track (ECIP/Fast Track) as determined by the agency or CSD staff processing the application. In order to carry out the purposes of the program and prevent interruption or loss of energy services, an expedited telephone pledge process may be utilized.

- A. Only authorized agency or CSD staff may make pledges on behalf of customers determined eligible for ECIP/Fast Track.

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B. Fraud Prevention

If Contractor's personnel responsible for receiving pledges have any concerns or questions about the legitimacy of a pledge, or the caller's authority to make pledges, Contractor should notify the agency's contact person or CSD's Project Coordinator (identified in Article 1.4 of this Agreement) immediately to verify the pledge.

C. Contractor shall post the pledge amount as a credit pending on the customer's account and shall ensure that any scheduled disconnection or termination process is canceled.

D. The agency is responsible for prompt submittal of pledge data to CSD to ensure that Contractor receives the payment as quickly as possible. To ensure prompt payment on pledges, Contractor shall run a quarterly pledge report as provided below in Article 5.1.

4.5 Assurances

A. Contractor shall charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the payment amount made by the Department. The actual costs of the home energy shall be consistent with appropriate utility company tariffs as approved by the CPUC, if applicable.

B. No customer receiving LIHEAP assistance pursuant to this Agreement will be subjected to disparate or adverse treatment by Contractor due to receipt of such assistance, in accordance with applicable state laws.

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ARTICLE 5 – REPORTING AND RECONCILIATION REQUIREMENTS

5.1 Quarterly Pledge Reports

On at least a quarterly basis, Contractor shall provide CSD with a summary pledge report including the following information:

- A. Number of pledges received during the quarter;
- B. Average value of pledges;
- C. Number of pledges during the quarter that expired before receipt of payment; and
- D. Average number of days between initial receipt of pledges and delivery of benefit to customers' accounts.

5.2 Specific Requests for Additional Pledge Information

To allow CSD to investigate and rectify instances of delayed benefit issuance and/or incidents of potential fraud or abuse in the pledge process, Contractor shall, on an as-requested basis, provide CSD with specific information on expired pledges, including (but not limited to) name of agency/agency representative making the pledge, name and address of customer, and frequency of pledges.

5.3 Account Reconciliation

On no less than an annual basis, Contractor shall review and reconcile Direct Payment Summaries as necessary to ensure that any/all undeliverable LIHEAP benefits have been returned to CSD in accordance with Article 4.3 of this Agreement.

5.4 Additional Reporting Requirements

Any further reports necessary to carry out the purposes of this Agreement are detailed in the LIHEAP Direct Payment Instructions and the attachments thereto in Subpart D.

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SUBPART C – GENERAL TERMS & CONDITIONS

ARTICLE 6 -- GENERAL TERMS AND CONDITIONS – GTC 610

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such

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termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. TIMELINESS: Time is of the essence in this Agreement.

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13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below:
 - a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
 - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
 - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

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- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:
- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

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- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
20. LOSS LEADER: If this Contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

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SUBPART D – FORMS AND ATTACHMENTS

Direct Payment

LIHEAP Direct Payment Instructions and Samples

- **Attachment 1 – Direct Payment Instructions**
- **Attachment 2 – HEAP Direct Payment Summary**

ATTACHMENT 1

LIHEAP DIRECT PAYMENT INSTRUCTIONS

HOW TO MAKE A MATCH

OPEN ACCOUNTS: If an applicant's utility account is open at the time a LIHEAP payment is received, the full amount of the payment can be applied even if it creates a credit to the account.

It is incumbent upon your company to match payments to the correct account and customer of record to which the LIHEAP applicant has directed the benefit. For this purpose, both the "Customer of Record" and last name of the LIHEAP applicant, "Applicant Last Name" has been provided, as well as an account number and service address.

CLOSED ACCOUNTS: If, at the time the LIHEAP benefit is to be applied, and the applicant's reported utility account is closed, you must select and complete one of the three options below:

- 1.) A match can be made with an applicant's new account within the same utility company.
- 2.) If the account is CLOSED with an outstanding balance owed, a partial payment can be made and the difference refunded to CSD with a notation on your printout.
- 3.) If the account is CLOSED with no outstanding balance, the total amount of LIHEAP benefit should be returned to CSD with a notation on your printout.

HOW TO NOTIFY CSD OF PARTIALS AND/OR NON-MATCHES

- 1.) **PRINTOUTS:**
 - Provide the name of the customer of record to whose account the partial payment was applied.
 - Note beside the LIHEAP payment the amount that is being returned to CSD (the difference between the CSD payment and the returned amount is the amount which was credited to the customer of record). If there is a 100% refund to CSD, note the total LIHEAP payment amount.
 - Return the LIHEAP DIRECT PAYMENT SUMMARY SHEET, which accompanies each run of selected payment records, with the number of partials and/or non-matches (See Attachment 2).

**(October 1, 2014 – April 30, 2017
Direct Pay Agreement)**

- Attach a check made payable to CSD and return your printout/customer information (with partials/non-matches information) and summary page to:

The Department of Community Services and Development
Energy and Environmental Services
2389 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

WHAT IF ALL RECORDS ARE MATCHES

If you find that all records on a specific run are matches to your client database, you need to notify CSD on the LIHEAP Direct Payment Summary. In the case of a 100% match, the figure in the "Run \$ Total" column would be the same amount as the amount in the "Total \$ Match" column (Attachment 2).



LINNÉ K. STOUT
DIRECTOR

State of California-Health and Human Services Agency
DEPARTMENT OF COMMUNITY SERVICES AND DEVELOPMENT
2389 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833
Telephone: (916) 576-7109 | Fax: (916) 263-1406
www.csd.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

ATTACHMENT 2

2014 LIHEAP DIRECT PAYMENT SUMMARY

PLEASE COMPLETE FOR EACH DIRECT PAYMENT BATCH

CSD RUN DATE (THIS DATE IS ON THE TOP LEFT HAND CORNER OF THE PRINT- OUTS)	(A) TOTAL DOLLAR AMOUNT FROM CSD (THIS IS THE CHECK AMOUNT THAT WAS SENT WITH THIS RUN DATE NOTE: THIS AMOUNT SHOULD MATCH THE PRINT- OUT)	(B) TOTAL DOLLAR AMOUNT BEING RETURNED CSD (ENTER THE AMOUNT OF THE CHECK THAT WILL BE RETURNED TO CSD WITH THIS FORM)	(C) TOTAL NUMBER OF RECORDS BEING RETURNED TO CSD (ENTER THE NUMBER OF RECORDS THAT WILL BE RETURNED TO CSD WITH THIS FORM)	(D) TOTAL DOLLARS THAT MATCHED (THIS IS THE AMOUNT THAT YOU STARTED WITH, MINUS ANY RETURN DOLLARS, EQUALS TOTAL DOLLARS MATCHED A- B=D)
07/01/2014				

COMPLETED BY: _____ PHONE: _____

UTILITY COMPANY: _____ DATE: _____

**PLEASE RETURN THIS SUMMARY SHEET WITH PRINT-OUTS AND CHECK (FOR NON-MATCHES)
NO LATER THAN 10 DAYS FOLLOWING RECEIPT FROM CSD**

PLEASE RETURN SUMMARY SHEET TO: ALBERT COBIAN, ENERGY SERVICES
HOME ENERGY ASSISTANCE PROGRAM
2389 GATEWAY OAKS DRIVE, SUITE 100
SACRAMENTO, CA 95833

IF YOU HAVE ANY QUESTION PLEASE CONTACT
ALBERT COBIAN (916) 576-7180

CSD USE ONLY

CHECK NUMBER		DATE RECEIVED SUMMARY		DATE SENT TO ITS	
\$ AMOUNT RETURNED					