

DRAFT - SUBJECT TO FINAL APPROVAL

ARCOLA GRANT AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

This Agreement is by and between the City of Arcola, a body corporate and politic under the laws of the State of Texas (the "City") and Fort Bend County, a body corporate and politic under the laws of the State of Texas (the "County").

WITNESSETH:

WHEREAS, the County will enter a Contract for Loan Guarantee Assistance (the "Contract") with the Secretary of Housing and Urban Development (the "Secretary"), as guarantor for the Guarantee made pursuant to Section 108 of Title I of the Housing and Community Development Act of 1974, as amended and 24 CFR 570, Subpart M, of the promissory note executed contemporaneously therewith and numbered B-19-UC-0004 [City of Arcola Water Treatment Plant Project], in the maximum commitment amount of \$3,384,000, and any amended note or note issued in substitution for such note and have the same note number, attached hereto as Exhibit A (the "Note"); and

WHEREAS, the Contract is the first contract under the funding approval (the "Commitment") in the amount of \$3,384,000, and the funds paid or credited to the account of the County pursuant to the Note are referred to herein as the "Guaranteed Loan Funds"; and

WHEREAS, the County may grant the Guaranteed Loan Funds to the City to carry out the construction of a public facility activity eligible under 24 CFR 570.201(c), pursuant to 570.703(1) (the "Arcola Grant"), in connection with the City of Arcola Water Treatment Plant Project (the "Project"); and

WHEREAS, any transfer of Guaranteed Loan Funds by the County must be subject to an agreement that includes any provisions necessary or appropriate to ensure compliance with all requirements associated with the use of the Guaranteed Loan Funds contained in the Contract and 24 CFR Part 570, and to ensure that in the event that HUD's requirements conflict with any other agreement governing the use of the funds, HUD's requirements on the use of the Guaranteed Loan Funds shall control; and

WHEREAS, the County and the City mutually agree to enter into this Agreement to ensure compliance with all requirements as described above; and

NOW, THEREFORE, the County and City do mutually agree as follows:

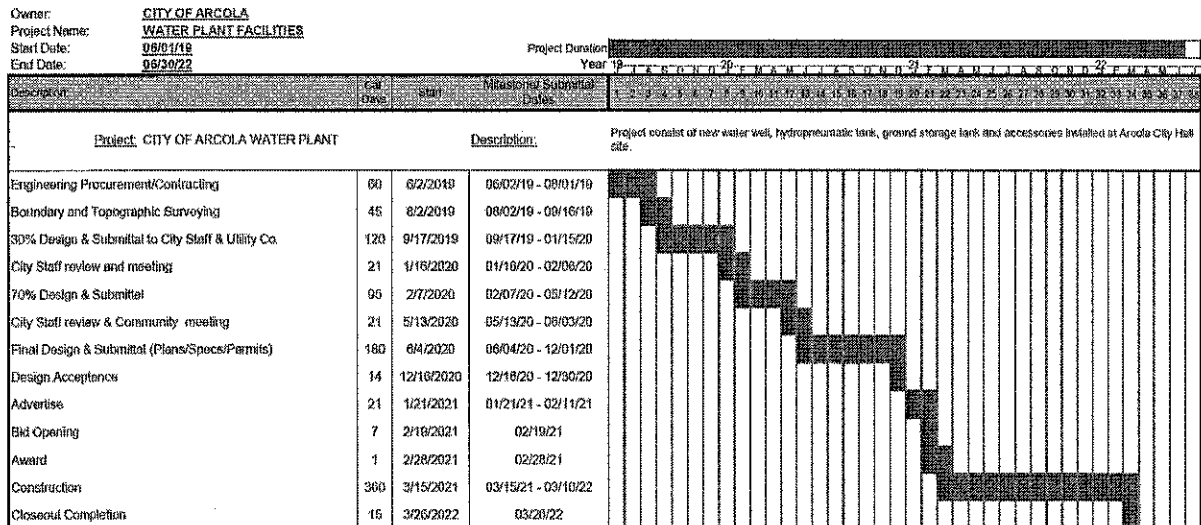
I.

STATEMENT OF WORK

1.01 Principal Activity. The principal activity is the construction of a City of Arcola Water Treatment Plant inside the City's municipal boundaries. The provision of a water treatment plant for this small city is consistent with the County's Consolidated Plan's overall goal. City will be responsible for constructing the Project in a manner satisfactory to the County and in accordance with the guidelines, rules, and regulations required by the United States Department of Housing and Urban Development (hereinafter referred to as HUD) as a condition of providing these funds.

1.02 National Objectives. All activities funded with Community Development Block Grant ("CDGB") funds must meet one of the CDGB program's National Objectives. The City certifies the Project is eligible and will meet the CDBG Program National Objective of benefitting low- and moderate-income persons as a low- and moderate-income area benefit activity. According to HUD, the City of Arcola is 59.85 percent low- and moderate-income. The Project is eligible for CDBG assistance under the regulations at 24 CFR 570.201(c) Public Facilities and Improvements. The CDBG Program regulations at 24 CFR 570.700 Subpart M Loan Guarantees allow public entities to borrow CDBG Program funds for eligible Section 108 projects and to pledge the use of future CDBG Program grant allocations to make the interest and principal loan payments on the loan. The construction of a public facility is eligible under 24 CFR 570.703(l).

1.03 Project Schedule. The Project will be constructed over a period of 25 months. An estimated timeline is shown below:



compliance with the Agreement. The County shall periodically inspect the Project during construction. The County shall fund the Project as set forth in this Agreement.

- B. Upon execution of this Agreement, the City will submit final plans and specifications to the County to ensure compliance with HUD/County technical requirements.
- C. Upon receipt and tabulation of the bids for the Project, the City will determine the lowest and best bid for the construction of the Project. In the event the lowest and best bid for the construction of the Project is an amount that would result in the cost of the Project being equal to or less than the sum of \$0,000,000.00, the City will notify County of the amount of the lowest and best bid for the Project. Upon such notification to the County, the County will transmit to the City written notice to proceed.
- D. In the event the lowest and best bid for the construction of the Project is an amount in excess of the sum of \$0,000,000.00, the the City will pay the difference between \$0,000,000.00 and the lowest and best bid up to a maximum of ten percent (10%) of such lowest and best bid. If the amount of then available funds, the \$0,000,000.00 plus the City's portions, is not sufficient to construct the Project then the parties agrees to reduce the Project scope as necessary to allow the construction of the Project with the available funds. Upon receipt of written notification of the lowest and best bid, the County will notify the City to proceed to let the contract and continue with the construction of the Project.
- E. The City shall be responsible for the administration of the construction contracts, with the County approving the award of the bid. The City shall, at its own expense, furnish the necessary inspection personnel to assure itself of compliance with the Agreement. The County shall periodically inspect the Project during construction. The County shall fund the Project as set forth in this Agreement.
- F. The City shall not use assistance to directly or indirectly employ, award contracts to, or otherwise engage the services of, or fund any contractor or subcontractor during any period of debarment, suspension or placement in ineligibility status under provisions of 24 CFR Part 24.

II.

TERM OF AGREEMENT

This Agreement shall become effective on the date signed by the last party hereto and the provisions herein shall remain in effect until the City makes the final payment of all amounts due to Holders under the Note, including any payment made by the Secretary pursuant to the Guarantee, to the Secretary and the Secretary's cancellation and return of the Note to the County in discharge of the County's obligations under the Note.

III.

PROJECT COSTS

3.01 For and in consideration of the Project as herein set forth, the County agrees to fund project costs not to exceed the total sum of Three Million Three Hundred Eighty-Four Thousand and No/100 Dollars (\$3,384,000.00) as set forth in the Budget for Loan Guarantee Funds, which shall be in full and total compensation for payment of all expenses allowed under this Agreement and the Contract.

ACTIVITY	UNIT	#	AMOUNT PRICE	TOTAL COST
1. Mobilization	LS	1	\$ 25,000.00	\$ 25,000.00
2. 1200 GPM Water Well, Complete in Place (2000 con.)	LS	1	2,000,000.00	2,000,000.00
3. 280,000 Gallon Ground Storage Tank, Including Foundation, Complete in Place (1400 con.)	EA	1	280,000.00	280,000.00
4. 15,000 Gallon Hydroneumatic Tank, Complete in Place	EA	1	105,000.00	105,000.00
5. Booster Pump Station, Complete in Place				
855 GPM, 165' TDH, 10 HP Booster Pump	EA	3	25,000.00	75,000.00
Reinforced Concrete Pad, 22' x 38' x 8"	CY	25	400.00	10,000.00
Pump Can and Foundation	LS	1	20,000.00	20,000.00
Paint	LS	1	6,000.00	6,000.00
6. Emergency Power Generator, Including Sound Attenuating Enclosure, Complete in Place	LS	1	180,000.00	180,000.00
7. Work/Electrical				
Yard piping				
Ductile iron pipe & fittings	LS	1	50,000.00	50,000.00
Other piping & fittings	LS	1	20,000.00	20,000.00
GST	LS	1	15,000.00	15,000.00
Valves	LS	1	20,000.00	20,000.00
8. Miscellaneous Electrical)				
Motor Control Center (MCC)	EA	1	75,000.00	75,000.00
Transformer	EA	1	20,000.00	20,000.00
9. Control Building (Electrical & Chlorine Rooms) -- CMU Block Building (14'-8" x 34") with A/C & Htr. Complete in Place	LS	1		65,000.00
10. Hypochlorite Feed System	LS			50,000.00
SUB-TOTAL: CONSTRUCTION				\$3,016,000.00
SUB-TOTAL: CONSTRUCTION CONTINGENCIES @10%				301,600.00
TOTAL : CONSTRUCTION & CONTINGENCIES				3,317,600.00
Section 108 financing fee @2% of principal				66,352.00
GRAND TOTAL (NOT ROUNDED)				\$3,383,952.00

3.02 The County shall not be liable for the payment of expenses or costs which are not allowable under the terms of this Agreement and the Contract.

IV. PAYMENT OF FUNDS FROM CITY TO COUNTY

4.01 It is expressly agreed and understood that the total amount to be paid by the County under this Agreement shall not exceed (\$3,384,000.00). Drawdowns for the payment of eligible expenses shall be made against the budget items specified in Paragraph III herein and in accordance with performance, as reflected in invoices submitted by the City. Such invoices shall include any other documentation requested by the County. All invoices shall be approved by the Fort Bend County Community Development Department prior to payment. Payments may be contingent upon certification of the City's financial management system in accordance with the standards specified in 24 CFR 84.21.

4.02 The County has no County funds for the costs of goods and services to be rendered under this Agreement. It is expressly agreed and understood that this Agreement is predicated upon and conditioned on the County receiving the Guaranteed Loan Funds for the purpose of paying the entire obligation of the County under this Agreement. Accordingly, notwithstanding anything herein to the contrary, the maximum liability of the County under the terms and provisions of this Agreement shall not exceed the \$3,384,000.00 amount actually received by the County from HUD pursuant to the Note.

4.03 The City admits knowledge of the fact that the County's obligation hereunder for payment of compensation and costs, if any, is limited to the Guaranteed Loan Funds.

4.04 The City agrees and acknowledges that, as a subrecipient of the Guaranteed Loan Funds granted to the County, the City is subject to the same terms and conditions binding the County regarding the use of the Guaranteed Loan Funds.

V.

CITY'S REPAYMENT OF GUARANTEED LOAN FUNDS

CDBG allocations to the City over a ten-year period will be applied to Section 108 loan repayments. The City's FY 2019 allocation of \$606,500 will comprise the first payment. Thereafter, succeeding City CDBG allocations will be applied pursuant to the following ten-year repayment schedule:

Principal Due Date	Source	Amount
August 1, 2021	FY 2019 County Allocation for the City	\$607,000
August 1, 2022	FY 2020 County Allocation for the City	\$309,000
August 1, 2023	FY 2021 County Allocation for the City	\$309,000
August 1, 2024	FY 2022 County Allocation for the City	\$309,000
August 1, 2025	FY 2023 County Allocation for the City	\$309,000
August 1, 2026	FY 2024 County Allocation for the City	\$309,000
August 1, 2027	FY 2025 County Allocation for the City	\$308,000

August 1, 2028	FY 2026 County Allocation for the City	\$308,000
August 1, 2029	FY 2027 County Allocation for the City	\$308,000
August 1, 2030	FY 2028 County Allocation for the City	\$308,000

VI. SECURITY

6.01 The City hereby pledges as security for the repayment of the Note, and any such charges as may be authorized in the Contract, the following:

- A. A sole first-priority lien in the name of the Secretary on the real property described in Exhibit B, including all air rights, water rights, and other real property interests (the "Property");
- B. A collateral assignment to the Secretary of all rights, titles, and interests in and to any leases covering the Property and any rents derived from the Property;
- C. A collateral assignment to the Secretary of all rights, titles, and interests, whether now owned or hereafter acquired, in and to any fixtures located on the Property and any personal property affixed to, installed in, or attached to the Property; and
- D. A collateral assignment to the Secretary of all rights, titles, and interests in and to permits, licenses, agreements, and other intangible personal property rights converging the Property, including but not limited to utility connection rights, or insurance policies held by the City with respect to the Property, whether now owned or hereafter acquired, and which are used in connection with the maintenance, use, occupancy or enjoyment of the Property. The pledges and assignments required by (A) - (D) and related Security Agreements required by 6.02 may be made in the instruments identified therein, or in a single instrument (individually or collectively, the "Arcola Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing"), which shall be signed by the City, be in a form acceptable to the Secretary, and contain any provisions the Secretary deems necessary.

6.02 Collectively, the collateral described or identified in 6.01 (A) - (D) shall be referred to as the "Collateral". The City shall take all steps necessary to ensure the attachment, perfection and priority of the security interests granted to the Secretary in the Collateral described in 6.01 (A) - (D). Real Property interests must be properly recorded. Personal property and fixtures pledged as Collateral shall be included in valid agreements necessary for attachment and perfection, for example, a security agreement that reasonably identified the Property, or in the case of a deposit account, a deposit account control agreement (together, the "Security Agreement or Other Security Documents"). As needed for attachment and perfection, the Security Agreement or Other Security Documents shall be referenced in appropriate Uniform Commercial Code ("UCC") Financing Statements filed in accordance with applicable law and the UCC. The Security Agreement and Other Security Documents and related UCC Financing Statements shall

contain such provisions as the Secretary deems necessary. The City shall also ensure that UCC Financing Statements shall be refiled as necessary to remain current and effective.

6.03 The City shall select a financial institution acceptable to the Secretary (the "Custodian") to act as custodian for the documents specified in 6.04 below (the "Security Documents"). The City and the Custodian shall enter into a written agreement containing such provisions as the Secretary deems necessary. A fully signed original agreement shall be delivered to the Secretary contemporaneously with the delivery of this Agreement and the Note. At the request of the Secretary, the City shall deliver electronic copies of all Security Documents to the office identified in Section 7.05, or upon the request of the Secretary, electronic copies to an address to be identified by the Secretary.

6.04 Not later than five business days after receipt by the County of the Guaranteed Loan Funds, or at such other time as may be required by the Secretary, the City shall deliver to the Custodian the following:

- A. An original of this Agreement and a collateral assignment thereof to the Secretary, which assignment shall be in a form acceptable to the Secretary.
- B. The original recorded Arcola Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing (which may consist of one or more instruments that contain the mortgage and assignments from the Arcola Subrecipient to the Secretary required by 6.01(A), (B) (C), and (D), and the related Security Agreement or Other Security Documents required by 6.02.

The Arcola Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing shall be accompanied by copies of all UCC Financing Statement filings and re-filings made pursuant to 6.02.

The Arcola Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing may be delivered to the Custodian within five (5) business days after receipt from the local recordation office, but not longer than 45 days after disbursement of Guaranteed Loan Funds.

- C. A mortgagee title policy covering the Property, issued by a company and in a form acceptable to the Secretary, naming the Secretary as the insured party.
- D. An appraisal of the ownership interest in the Property specifying an estimate of the "as completed" fair market value of not less than 125 percent (125%) of the principal balance of the Note plus 125 percent (125%) of any outstanding balance on other indebtedness secured by a mortgage lien of senior or equal priority on the Property, if agreed to by the Secretary. The appraisal shall be completed by an appraiser who is certified by the state and has a professional designation (such as "SRA" or "MAI"), and it shall conform to the standards of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA").

- E. A certified survey of the Property with a legal description conforming to the title policy and the Arcola Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing.
- F. An opinion of the City's counsel on its letterhead, addressed and satisfactory to the Secretary, that:
 - (i). The City is duly organized and validly existing as a municipality under the laws of the State of Texas is *[existing, qualified to do business, in good standing, as applicable]* in and under the laws of the State of Texas;
 - (ii). The Arcola Grant Agreement has been duly executed and delivered by a party authorized by the City to take such action and is a valid and binding obligation of the City, enforceable in accordance with its terms, except as limited by bankruptcy and similar laws affecting creditors generally; and
 - (iii). The security instruments specified in (i) and (ii) above are valid and legally binding obligations, enforceable in accordance with their respective terms.
- G. Any instruments, documents, agreements, and legal opinions required pursuant to Section 6.02, including an opinion of the City's counsel that the instruments, documents, and agreements are valid and legally binding obligations, enforceable in accordance with their respective terms. These instruments shall include any Security Agreement or Other Security Documents required by Section 5.02, and an assignment thereof to the Secretary, which shall be in a form acceptable to the Secretary. The Security Agreement or Other Security Documents shall be accompanied by copies of all UCC Financing Statement filings and re-filings required by Section 6.02.

6.05 The City shall deliver to the Custodian all recorded refilings of financing statements or filings of continuation statements filed to continue the effectiveness of the financing statements securing repayment of the Note within five business days of such filings.

6.06 The County and the City shall not enter or amend an intercreditor agreement, subordination agreement, or similar agreement that affects the County's or HUD's rights under the Security Documents as defined in Section 6.04 of this Agreement, including HUD's rights under the lien described in Section 6.01(A) (each individually, an "Intercreditor Agreement"). Intercreditor Agreements approved by the Secretary, including amendments, must be in a form acceptable to the Secretary.

VII. DEFAULT

- 7.01 A Default under this Agreement shall occur upon failure by the City to:
- A. Pay when due an installment of principal or interest on the Note; or

B. Punctually and properly perform, observe, and comply with any covenant, agreement, or condition contained in:

- (i). This Agreement,
- (ii). Any security agreement, deed of trust, mortgage, assignment, guarantee, or other contract securing payment of indebtedness evidenced by the Note, or
- (iii). Any future amendments, modifications, restatements, renewals, or extensions of any such documents.

~~7.02 The City waives notice of Default and opportunity for hearing with respect to a Default under Section 7.01.~~

~~7.03~~7.02 Remedial Actions. Upon a Default or declaration of Default under this Agreement or the Contract, the Secretary may exercise or enforce any and all other rights or remedies available by law or agreement, including any and all rights and remedies available to a secured party under the Uniform Commercial Code or in any of the Security Documents (as defined in Section 6.04), against the Collateral, against the County, against the City, or against any other person or property (including the Property).

~~7.04~~7.03 Additional Grounds for Default. Notice of Default. Restriction of Pledged Grants. Availability of Other Remedial Actions.

- A. The City acknowledges and agrees that the Secretary's guarantee of the Note is made in reliance upon the availability of grants pledged made or for which the City may become eligible under Section 106 of the Act, as well as any grants which are or may become available to the City pursuant to Section 108(q) (individually, a "Pledged Grant" and, collectively, the "Pledged Grants") in any Federal fiscal year subsequent to the Federal fiscal year ending September 30, 2018 to: (A) pay when due the payments to become due on the Note, or (B) defease (or, if permitted, prepay) the full amount outstanding on the Note. The City further acknowledges and agrees that if the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are unlikely to be available for either of such purposes, such determination shall be a permissible basis for any of the actions specified in paragraphs (B) and (C) below ~~(without notice or hearing, which the City expressly waives).~~
- B. Upon written notice from the Secretary to the County that the Secretary (in the Secretary's sole discretion) has determined that Pledged Grants are unlikely to be available to either (A) pay when due the payments to become due on the Note, or (B) defease (or, if permitted, prepay) the full amount outstanding on the Note (such notice being hereinafter referred to as the "Notice of Impaired Security"), the Secretary may limit the availability of Pledged Grants by withholding amounts at the time a Pledged Grant is approved or by disapproving payment requests (drawdowns) submitted with respect to Pledged Grants.

- C. If after 60 days from the Notice of Impaired Security the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are still unlikely to be available for either (A) pay when due the payments to become due on the Note, or (B) defease (or, if permitted, prepay) the full amount outstanding on the Note, the Secretary may declare the Note in Default and exercise any and all remedies available under Section 7.03. This paragraph (C) shall not affect the right of the Secretary to declare the Note and/or this Agreement in Default pursuant to Section 7.01 and to exercise in connection therewith any and all remedies available under Section 7.03.
- D. All notices and submissions provided for hereunder above shall be submitted as directed in Article XIII.
- E. The City is prohibited from selling, conveying, transferring or further encumbering the Property (as defined in Section 6.01 (A)) or any part thereof of any interest therein (whether legal, equitable, or beneficial), whether voluntary, by gift, bequest, operation of law, merger, or in any other manner, after granting the lien described in Section 6.01(A).
- F. The City shall not incur any obligations to be paid with Guaranteed Loan Funds which will be subject to the alternative collateral or security arrangements.

~~7.057.04~~ To the extent that a pledge of ad valorem tax is securing payment of all or a portion of the principal of and interest on the Note, acceleration of the maturity date of that portion of the Note shall not be available as a remedy in the event of a default by the City under the Agreement.

VIII. GENERAL CONDITIONS

8.01 General Compliance. The City agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning CDBG funds) including subpart K of these regulations, except that (1) the City does not assume the County's environmental responsibilities described in 24 CFR 570.604 and (2) the City does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The City also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. The City further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

8.02 "Independent Contractor". Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The City shall at ensure that its contractors shall at all times remain an "independent contractor" with respect to the services to be performed under any contract funded by this Agreement. The City shall be exempt from

payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as its contractors shall remain as independent contractors.

8.03 Hold harmless. The City shall ensure its contractors hold harmless, defend and indemnify the County from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the contractors's performance or nonperformance of the services or subject matter called for in this Agreement.

8.04 Workers' Compensation. The City shall ensure it contractors provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

8.05 Insurance and Bonding. The City shall ensure its contractors comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance to carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the County.

8.06 Grantee Recognition. The City shall ensure recognition of the role of the County in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the City will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

8.07 Amendments. The County may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, ~~or for other reasons.~~ If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the County and the City.

8.08 Suspension or Termination. In accordance with 24 CFR 85.43, the County may suspend or terminate this Agreement if the City materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

- A. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- B. Failure, for any reason, of the City to fulfill in a timely manner and proper manner its obligations under this Agreement;
- C. Ineffective or improper use of funds provided under this Agreement; or

- D. Submission by the City to the County reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the County or the City, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the County determines that the remaining portions of the award will not accomplish the purpose for which the award was made, the County may terminate the award in its entirety.

IX.

ADMINISTRATIVE REQUIREMENTS

9.01 Financial Management. The City and its agencies or instrumentalities, and subcontractors shall comply with policies, guidelines, and requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR Part 200, as applicable, as they relate to the acceptance and use of Federal funds under this part.

- A. Accounting Standards. The City agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- B. Cost Principles. The City shall administer its program in conformance with OMB Circular A-87, "Cost Principles for State and Local Governments.". These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.
- C. The City will comply with 24 CFR 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," as modified by 24 CFR 570.502(a).

9.02 Documentation and Record Keeping.

- A. Records to be Maintained. Without limitation to any other provision of this Agreement, the City shall maintain all records concerning the Project required by the Federal regulations specified in 24 CFR 570.506, that that will facilitate an effective audit to determine compliance with program requirements. Such records shall include but not be limited to:
 - (i). Records providing a full description of each activity undertaken;
 - (ii). Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
 - (iii). Records required to determine the eligibility of activities;

- (iv). Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - (v). Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - (vi). Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28; and
 - (vii). Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- B. Retention. The City shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the County's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.
- C. Client Data. The City shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to County monitors or their designees for review upon request.
- D. Disclosure. The City understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the County's or City's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
- E. Close-outs. The City's obligation to the County shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the County), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the City has control over CDBG funds, including program income.
- F. Audits and Inspections. All City records with respect to any matters covered by this Agreement shall be made available to the County, grantor agency, and the Comptroller General of the United States or any of their authorized

representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the City within 30 days after receipt by the City. Failure of the City to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The City hereby agrees to have an annual agency audit conducted in accordance with current County policy concerning subrecipient audits and OMB Circular A-133, "Audits of State and Local Governments and Non-Profit Organizations."

9.03 Reporting and Payment Procedures

- A. Program Income. The City shall report monthly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the City shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the City may use such income during the contract period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the County at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the County.
- B. Indirect Costs. If indirect costs are charged, the City will develop an indirect cost allocation plan for determining the appropriate City's share of administrative costs and shall submit such plan to the County for approval, in a form specified by the County.
- C. Payment Procedures. The County will pay to the City funds available under this Agreement based upon information submitted by the City and consistent with any approved budget and County policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the City, and not to exceed actual cash requirements. Payments will be adjusted by the County in accordance with advance fund and program income balances available in City accounts. In addition, the County reserves the right to liquidate funds available under this Agreement for costs incurred by the County on behalf of the City.
- D. Progress Reports. The City shall submit regular Progress Reports to the County in the form, content, and frequency as required by the County.

9.04 Procurement

- A. Compliance. The City shall comply with current County policy concerning the purchase of equipment and shall maintain inventory records of all non-

expendable personal property as defined by such policy as may be procured with funds provided herein.

- B. OMB Standards. Unless specified otherwise within this agreement, the City shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48.
- C. Travel. The City shall ensure its contractors obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

9.05 Use and Reversion of Assets. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

- A. The City shall transfer to the County any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
- B. Real property under the City's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until ten (10) years after expiration of this Agreement. If the City fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the City shall pay the County an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the County. The City may retain real property acquired or improved under this Agreement after the expiration of the ten-year period.
- C. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the City for activities under this Agreement shall be (a) transferred to the County for the CDBG program or (b) retained after compensating the County [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

X.

RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The City agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing

regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies relating to the acquisition and disposition of all real property utilizing grant funds, and to the displacement of persons, businesses, nonprofit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds. The City shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The City also agrees to comply with applicable County ordinances, resolutions and policies concerning the displacement of persons from their residences.

XI.

PERSONNEL AND PARTICIPANT CONDITIONS

11.01 Civil Rights

A. Compliance. The City shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b), Title 24 CFR Part 1, and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

- (i). In accordance with the Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the City receives Federal financial assistance. The City will immediately take any measures necessary to comply with Title VI. If any real property or structure is thereon provided or improved with the aid of Federal financial assistance, this clause shall obligate the owner, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. The City will further comply with federal regulations, 24 CFR Part 1, which implement the act.
- (ii). The City shall comply with the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100, Part 109, and Part 110. No person in the United States shall, on the basis of race, color, religion, sex, national origin, handicap or familial status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with federal funds.

- (iii). The Contractor shall comply with Executive Order 11063 as amended by Executive Order 12259 and as contained in 24 CFR Part 107. Contractor will take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities area, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government.
- (iv). The Contractor shall comply with Section 109 of the Community Development Act of 1974, in that no person in the United States shall on the ground of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Loan Guarantee Assistance funds.
- (v). The Contractor shall comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (451 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally-assisted construction contracts.

Contractor agrees that contractors and subcontractors on Federal or federally-assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

- (vi). The Contractor shall not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 61-1-07) and implementing regulations at 24 CFR part 146. The Contractor shall not discriminate against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

- B. Nondiscrimination. The City agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
- C. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the City shall cause or require a

covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the County and the United States are beneficiaries of and entitled to enforce such covenants. The City, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

- D. Section 504. The City agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The County shall provide the City with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

11.02 Affirmative Action

- A. Approved Plan. The City agrees that it shall be committed to carry out pursuant to the County's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The County shall provide Affirmative Action guidelines to the City to assist in the formulation of such program. The City shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.
- B. Women- and Minority-Owned Businesses (W/MBE). The City shall comply with Executive Orders 11625, 12432, and 12138. Consistent the HUD's responsibilities under these Orders, the City will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are AfroAmericans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, AsianAmericans, and American Indians. The City may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.
- C. Access to Records. The City shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the County, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

- D. Notifications. The City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the City's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement. The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that it is an Equal Opportunity or Affirmative Action employer.
- F. Subcontract Provisions. The City will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

11.03 Employment Restrictions

- A. Prohibited Activity. The City is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.
- B. Labor Standards. The City agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The City agrees to comply with the Copeland AntiKick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The City shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the County for review upon request,

The City agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the County pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the City of its obligation, if any, to require payment of the higher wage. The City shall cause or require to be

inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

C. "Section 3" Clause.

- (i). Compliance - The City shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement. Failure to fulfill these requirements shall subject the County, the City and any of the City's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The City certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The City further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The City further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is

located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The City certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

- (ii). Notifications - The City agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- (iii). Subcontracts - The City will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The City will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- D. Eligibility Restrictions for Certain Resident Aliens. The City agrees to abide by the provisions of 24 CFR 570.613 with respect to the eligibility restrictions for certain resident aliens. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in this part of the regulation. The County shall provide the City with any guidelines necessary for compliance with that portion of the regulation.

11.04 Conduct

- A. Assignability. Except for the assignment of Collateral provided herein, the City shall not assign or transfer any interest in this Agreement without the prior written consent of the County.
- B. Subcontracts.
 - (i). Approvals - The City shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the County prior to the execution of such agreement.
 - (ii). Monitoring - The City will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

- (iii). Content - The City shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
 - (iv). Selection Process - The City shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the County along with documentation concerning the selection process.
- C. Hatch Act. The City agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
- D. Conflict of Interest. The City agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:
- (i). The City shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
 - (ii). No employee, officer or agent of the City shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
 - (iii). No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the County, the City, or any designated public agency.
- E. Lobbying. The City hereby certifies that:
- (i). No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,

amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

- (ii). If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
 - (iii). It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly:
 - (iv). Lobbying Certification - This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- F. Copyright. If this Agreement results in any copyrightable material or inventions, the County and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.
- G. Religious Activities. The City agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.
- H. Architectural Barriers Act and American with Disabilities Act. The City agrees to comply with any federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) which requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with the standards that insure accessibility to, and use by, physically handicapped people. The City also agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities Act (42 U.S.C. 12131 U.S.C. 155, 201, 218 and 225) which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. The County shall provide the City with any guidelines

necessary for compliance with that portion of the regulation in force during the term of this Agreement.

- I. Drug Free Workplace Act of 1988. The City shall comply with the Drug Free Workplace Act of 1988 and certify that it will maintain a drug-free workplace in accordance with the requirements of 24 CFR Part 24, subpart F.

XII.

ENVIRONMENTAL CONDITIONS

12.01 The City will carry out its activities in compliance with the requirements of Subpart K of 24 CFR 570, except, however, that the City does not assume the County's environmental responsibilities or the responsibility for initiating the environmental review process under 24 CFR Part 52.

12.02 Air and Water. The City agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, et seq.;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

12.03 Flood Disaster Protection. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the City shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

12.04 Lead-Based Paint. The City agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal

funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

12.05 Historic Preservation. The City agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list

XIII. NOTICES

All notices and submissions provided for hereunder shall be in writing (including by telex, telecopier or any other form of facsimile communication) and mailed or sent or delivered, as to each party hereto, at its address set forth below or at such other address as shall be designated by such party in a written notice to the other party hereto. All such notices and other communications shall be effective when received as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or five Business Days after deposit in the mail, postage prepaid; (iii) if sent by telex, upon receipt by the sender of an answer back; and (iv) if sent by telecopier, upon receipt.

If to the County, then to:

Fort Bend County
Attention: County Judge
301 Jackson Street
Richmond, Texas 77469

If to the City, then to:

City of Arcola
Attention: Mayor
13222 Highway 6
Arcola, Texas 77583

XIV. SEVERABILITY

If any one or more of the covenants, agreements, provisions, or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

XV.
SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XVI.
WAIVER

The County's failure to act with respect to a breach by the City does not waive its right to act with respect to the City or similar breaches. The failure of the County to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XVII.
ENTIRE AGREEMENT

This Agreement and the attached exhibits represent the entire Agreement between the County and the City, and there are no other effective agreements, representations or warranties between the County and the City that are not contained in the Agreement Documents.

XVIII.
EXECUTION

IN WITNESS WHEREOF, the Parties have executed this Agreement shall become effective upon execution by County.

FORT BEND COUNTY:

KP George, County Judge

Date

ATTEST:

County Clerk

APPROVED AS TO FORM:


Assistant County Attorney

Date

APPROVED: COUNTY PROJECT MANAGER

Carol Borrego, Director
Fort Bend County Community Development Department

CITY OF ARCOLA: _____

By 
Mayor

3-3-2021
Date

ATTEST:


City Secretary



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$3,384,000.00 to accomplish and pay the obligation of the Fort Bend County under this Agreement.

Robert Ed Sturdivant, County Auditor

EXHIBIT A

[THE NOTE]

EXHIBIT B
[COLLATERAL]

EXHIBIT []

**Certification for Contracts, Grants, Loans
and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making for entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil mupenalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ date of _____, 20____

By _____
(signature)

(typed or printed name)

(title, if any)

Covered Action: LOAN GUARANTEE ASSISTANCE
(type and identity of program, project or activity)

EXHIBIT

GUIDELINES FOR ENTITY DESIGN, BIDDING AND ADMINISTRATION OF CONSTRUCTION PROJECTS

These guidelines are intended to assist those public entities receiving Fort Bend County Loan Guarantee Assistance Funds. The guidelines will facilitate the entity's understanding and compliance with applicable federal and county regulations, policies and processes where the entity is responsible for the design, bidding, and construction administration phases of a project. If clarification is needed, call Karen Bringol, Project Coordinator, Fort Bend County Community Development Department (CDD), at (281) 341-4410.

1. The entity must submit the proposed consultant's SF 254 and 255 or SF 330 qualification statements and professional liability insurance certification for approval prior to commissioning the consultant.
2. Upon approval by CDD the entity may retain consultant services.
3. The schematic design must be within the previously approved project scope.
4. Preliminary plans and outline specifications shall be submitted to CDD to review for compliance with project scope, estimated cost and constructibility. Comments will be returned to the consultant for incorporation into the final plans. Final plans will be submitted to the County and will be reviewed to ensure compliance with HUD/County technical requirements and to insert County-related documents. Corrections and comments will be returned to the consultant for revisions. Final documents must be approved by CDD.
5. Prior to award of contract, CDD and the County Engineer's Office will review the bid documents, the bidder's qualification statements, minority business plan and financial statements to ensure that the District has a good contracting record, adequate capitalization and/or equipment, etc., to successfully complete the project, meets minority participation goals and that the bidder has not been debarred by HUD from working on federal contracts.

6. The Entity shall conduct a prebid meeting (if necessary) and a preconstruction conference with the District(s), consultant, and CDD representatives in attendance.
7. Inspection will be the responsibility of the Entity. The County Engineer will periodically inspect construction.
8. The Entity will be responsible for preparing monthly pay estimates. Preparation will consist of a site meeting with the Entity and/or consultant and the District's representative to accurately determine the percentage completion of various components of the work and time used. The monthly estimate is based on a previously submitted and approved schedule of values. Upon completion of the final draft of each monthly estimate, the consultant will be required to sign same. The estimates will then be reviewed by the County Engineer and processed through CDD, County Auditor and the County Treasurer.
9. All requests for changes in contract will be processed by the Entity. All change requests must be within the original scope of work and be approved by CDD prior to processing. No person will have authority to verbally alter, modify, expand or reduce the requirements of the drawings or specifications. All modifications affecting cost, scope, quality or time shall be made part of the contract by a "Change-In-Contract" approved by the Entity. All change orders required due to errors and/or omissions by the consultant will be paid for by the Entity. Total aggregate Changes In Contract will not exceed twenty-five percent (25%) of the original contract amount.
10. CDD will review all payrolls and conduct working interviews and will hold the general District responsible for compliance with labor, EEO and minority business requirements.

APPENDIX 1

I. PROCEDURES FOR SUBMITTING ENGINEERING PROPOSALS

Fort Bend County's Community Development Department requires that engineering firms submitting qualification statements do so in the manner prescribed below. This information should substantiate the capacity and ability of the firm and its staff to perform this type of engineering work. It is also important to list projects completed of a similar nature that demonstrate this capability. Any proposal submitted without all of the information requested below will be considered as non-responsive.

- A. Submit one (1) copy of information on the firm in the form of a corporate resume, including SF 254 and SF 255 or SF 330 Forms.
- *B. Submit one (1) copy of current project activities of a similar nature being undertaken by your firm (including dollar amount and contact persons).
- *C. Submit any other pertinent information on the firm's ability to carry out the contractual responsibilities; including such things as equipment, use of sub-contracts, special knowledge of the project area or activity being considered.
- *D. Provide a list of persons, and their classification, who will be assigned to this job.
- *E. Provide a resume of all employees who will be assigned to this project, including a listing of projects having similar work.
- F. Provide a detailed scope of work on how you propose to handle this type of construction. The scope of work should contain categories for initial site investigation, submission of preliminary plans (construction drawings) for review, correction of revisions which result from said review, technical specifications, easement drawings/legal descriptions, and meetings as may be required.
- G. Provide a list of subDistricts to be employed (if known) and whether these firms are minority or female owned.
- H. Submit one (1) copy of the Certification for Contracts, Grants, Loans and Cooperative Agreements (Appendix 3).

*NOTE: It is not necessary to re-list data already included on the SF 254 and SF 255 or SF 330 Forms.

II. SELECTION CRITERIA

The award of the contract for engineering services required by this Request for Proposal shall be determined by analysis of, but not necessarily limited to, the following factors:

- A. Documented evidence of qualifications, resources and experience of the proposing firm to perform the required services;
- B. Commitment by the proposing firm to complete the construction plans, documents, design surveys and easement descriptions within the required time.
- C. Other factors as deemed appropriate, including a review of the items submitted under Section I. PROCEDURES FOR SUBMITTING ENGINEERING PROPOSALS.

III. MBE/WBE PARTICIPATION

Where possible, engineering firms are encouraged to utilize the skills and services of minority businesses in the fulfillment of the contractual responsibilities pertaining to this project.

IV. ENGINEERING SERVICES

The District shall enter into a contract for engineering services as listed below:

1. The Engineer will be responsible for ascertaining the scope of improvements outlined in this report (scope of work) and developing a Layout and Cost Estimate. The Engineer should recommend alternative layouts if field investigations identify additional problems not covered in the original scope of work.
2. Upon direction of the District, the Engineer will prepare construction plans and documents as required so as to install the scope of work identified in this report.
3. The Engineer will identify and prepare easement/right-of-way descriptions if necessary.

APPENDIX 2

PROPOSAL SUMMARY

(Include with proposal after selection of engineer)

1. Engineer (Firm Name) _____
- *2. P.E. Hours _____
- *3. Minority/Female Hours _____
- *4. Total Hours _____

*These are total estimated hours for the entire project. The data requested here is in addition to the breakdowns called for in Section I (D & F), PROCEDURES FOR SUBMITTING PROPOSALS.

APPENDIX 3

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making for entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ date of _____, 20____.

By _____
(signature)

(typed or printed name)

(title, if any)

Covered Action: LOAN GUARANTEE ASSISTANCE
(type and identity of program, project or activity)