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ARF-1125 [redacted]

REGULAR SESSION AGENDA **Community Development**

Date: 08/10/2010

Agreement between Fort Bend County and Texana Center

Submitted For:	Marilynn Kindell	**Submitted By:**	Debra Watson, Community Development
Department:	Community Development		
Type of Item:	Discussion Item		
Renewal Agreement/ Appointment:	No		
Reviewed by County Attorney's Office:	Yes		
Multiple Originals Y/N?:			

Information

SUMMARY OF ITEM

Take all appropriate action on agreement between Fort Bend County and Texana Center to purchase a foreclosed home and redevelop into a primary residence for Texana Center Clients and authorize County Judge to sign all documents pertaining to the agreement. Part of the FY 2008 Substantial Amendment approved by C.C. 11-25-08 and the agreement with HUD approved by C.C. on April 7, 2009. Amount: $127,600.00. Fund: Neighborhood Stabilization Program (NSP)

SPECIAL HANDLING

Fiscal Impact

ACCTG UNIT or GRANT/PROJ NAME:	G643-08NSP
ACCT NAME or GRANT/PROJ ACTIVITY:	400643999
BUDGETED Y/N:	Y

FISCAL SUMMARY:

Attachments

Link: Texana Center Agreement

8-13-10 2 origs. rec't. to marilyn at Comm. Dev.

AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

This Agreement made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas (hereinafter referred to as County) and Texana Center, a non-profit corporation under the laws of the State of Texas (hereinafter referred to as Subrecipient).

WITNESSETH:

WHEREAS, the County, has entered into a Grant Agreement with the United States of America, No. B-08-UN-48-0400, acting by and through its Department of Housing and Urban Development, hereinafter referred to as HUD, for federal funding of sections 2301 – 2304 of the Housing and Economic Recovery Act of 2008 (Public Law 110-289);

WHEREAS, the program established pursuant to sections 2301-2304 is known as the Neighborhood Stabilization Program (NSP);

WHEREAS, the County wishes to engage the Subrecipient to assist the County in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I.

SCOPE OF AGREEMENT

1.01 The County and Subrecipient agree to administer the Project in accordance with the guidelines, rules, and regulations required by the U. S. Department of Housing and Urban Development (hereinafter referred to as HUD).

1.02 Activities

The Subrecipient will be responsible for administering a Program Year 2008 NSP funded program to purchase a foreclosed home and redevelop into a primary residence for a minimum of four individuals with intellectual and developmental disabilities who are low-to moderate income in a manner satisfactory to the County and consistent with any standards required as a condition of providing these funds.

1.03 Program Delivery

The Subrecipient shall utilize its grant for foreclosed home purchase. The Subrecipient will redevelop the foreclosed house into primary residence; Subrecipient shall complete a minimum of the following activities:

Activities

Property Search and Identification
Property Acquisition
Redevelopment into primary residence for a minimum of 4 individuals

1.04 Project Implementation

Property search shall begin immediately upon execution of this Agreement.

Identification of foreclosed house shall be complete within 1 month of execution of this Agreement.

Property acquisition shall be complete within 2 months of execution of this Agreement.

Redevelopment and occupancy shall be complete within 5 months.

1.05 General Administration

The Subrecipient or its Representatives shall be responsible for the administration of the acquisition and redevelopment program.

1.06 National Objectives

The Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet one or more of the CDBG's program's National Objectives - 1) benefit low/moderate income persons, 2) aid in the prevention or elimination of slums or blight, 3) meet community development needs having a particular urgency - as defined in 24 CFR Part 570.208.

II.

TIME OF PERFORMANCE

2.01 Services of the Subrecipient shall begin upon execution of this agreement and end January 31, 2011.

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 One Hundred Twenty Seven Thousand Six Hundred and No/100 Dollars ($127,600.00) as set forth in the Budget for NSP Funds, which shall be in full and total compensation for payment of all expenses allowed under this Agreement and the Grant Agreement with HUD.

Budget for NSP Funds

Acquisition	$119,500.00
Alarm System	$6,500.00
Inspections	$1,050.00
Appraisal	$550.00
TOTAL	$127,600.00

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 Grant Agreement with HUD.

3.03 The Subrecipient and the Grantee, through its Director of the Fort Bend County Community Development Department may, by prior written agreement, mutually agree to re-allocate the funds among the various line items of the budget or to new line items created in the budget.

IV.

AFFORDABILITY

4.01 Housing assisted with NSP funds must meet the affordability requirements of Sections 92.254 of the HOME Program, as applicable. Failure to meet the affordability requirements for the specified periods will require repayment of NSP funds.

4.02 The Grantee shall secure the property with a deferred and forgiveable second lien document stating the affordability requirements for the NSP funds. The Grantee shall be listed as a certificate holder on the insurance policy that the Subrecipient obtains for the property until the expiration of the affordability period.

V.

PAYMENT

5.01 It is expressly agreed and understood that the total amount to be paid by the County under this Agreement shall not exceed of One Hundred Twenty Seven Thousand Six Hundred and No/100 Dollars ($127,600.00). Subrecipient shall submit an invoice upon delivery of the Project. Such invoice 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.

VI.

SOURCE OF FUNDING

6.01 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 funds for the purpose of paying the entire obligation of the County under this Agreement from funds to be received from the U. S. Department of Housing and Urban Development, by virtue of Grant No. B-08-UN-48-0400, entitled Neighborhood Stabilization Program. Accordingly, notwithstanding anything herein to the contrary, the maximum liability of the County under the terms and provisions of this Agreement shall not exceed $127,600.00 amount actually received by the County from HUD pursuant to the Block Grant.

6.02 The Subrecipient admits knowledge of the fact that the County's obligation hereunder for payment of compensation and costs, if any, is limited to Federal funds received pursuant to the Grant Agreement in connection with the Neighborhood Stabilization Program of the U. S. Department of Housing and Urban Development, and that unless and until adequate funds have been received by the County under the Grant Agreement to pay the Subrecipient's compensation and expense reimbursement, the County shall have no obligation to the Subrecipient.

VII.

AGREEMENT DOCUMENTS

7.01 This Agreement includes the following exhibits and such exhibits are attached hereto and made a part hereof for all purposes:

Exhibit A - CDBG Program Requirements
Exhibit B - Certification for Contracts, Grants, Loans and Cooperative Agreements
Exhibit C – 24 CFR 254 Qualification as Affordable Housing: Homeownership

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

VIII.

NOTICE

8.01 Unless otherwise provided in this Agreement, any notice provided for or permitted to be given must be in writing and delivered in person or by depositing same in the United States mail, postpaid and registered or certified, addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party. Notice deposited in the mail as described above shall be conclusively deemed to be effective, unless otherwise stated in this Agreement from and after the expiration of three (3) days after it is so deposited.

8.02 For the purpose of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

County	Subrecipient
Marilynn Kindell, Director Fort Bend County Community Development Department 4520 Reading Road, Suite A Rosenberg, TX 77471	George Patterson, CEO Texana Center 4910 Airport Ave Rosenberg, TX 77471

8.03 Each party shall have the right, at any time, to change its respective address and each shall have the right to specify as its new address, provided that at least fifteen (15) days written notice is given of such new address to the other party.

IX.

RIGHTS OF TERMINATION

9.01 The Subrecipient or the County, by and through its Director of the Fort Bend County Community Development Department, or the Subrecipient, may terminate this agreement without cause prior to the Subrecipient's award of the construction contract by providing thirty (30) days notice. The County may terminate this agreement after the Subrecipient's award of the construction contract only for cause, by providing thirty (30) days written notice to the Subrecipient.

X.

EXECUTION

This Agreement shall become effective upon execution by County.

FORT BEND COUNTY:

Robert E. Hebert, County Judge — Date: 8-10-2010

ATTEST:

Dianne Wilson, County Clerk

APPROVED AS TO FORM:

Roy L. Cordes, Jr.
County Attorney — Date: 7/22/2010

APPROVED: COUNTY PROJECT MANAGER

Marilynn Kindell, Director
Fort Bend County Community Development Department

TEXANA CENTER

By _____ — Date: 7/28/10
Board President DIANNE WILSON

ATTEST:

Board Secretary Carolyn Bilski

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of $127,600.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

Robert E. Sturdivant, County Auditor

ORDER AUTHORIZING AGREEMENT BETWEEN

FORT BEND COUNTY AND
TEXANA CENTER

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

On this the 10 day of August, 2010, at a regular meeting of Commissioners Court sitting as the governing body of Fort Bend County, Texas, upon motion of Commissioner Morrison, seconded by Commissioner Prestage, duly put and carried,

IT IS ORDERED that the Fort Bend County Judge execute the Agreement between Fort Bend County and Texana Center for federal funding of a Neighborhood Stabilization Program (NSP) , said Agreement being incorporated herein by reference for all purposes as though fully set forth herein word for word.

EXHIBIT A

NEIGHBORHOOD STABILIZATION PROGRAM REQUIREMENTS

I.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Subrecipient shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Title 24 Code of Federal Regulations Part 1. 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 Subrecipient receives Federal financial assistance. The Subrecipient 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 Subrecipient, 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 Subrecipient will further comply with federal regulations, 24 CFR Part 1, which implement the act.

II.

FAIR HOUSING REQUIREMENTS

The Subrecipient 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 NSP funds.

III.

EXECUTIVE ORDER 11063

The Subrecipient shall comply with Executive Order 11063 as amended by Executive Order 12259 and as contained in 24 CFR Part 107. Subrecipient 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.

SECTION 109 OF THE COMMUNITY DEVELOPMENT ACT OF 1974

The Subrecipient 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 NSP funds.

V.

EXECUTIVE ORDER 11246

The Subrecipient 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.

Subrecipient agrees that Cities 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.

RELOCATION, ACQUISITION & DISPLACEMENT

The Subrecipient agrees to comply with 24 CFR 570.606 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 Subrecipient agrees to comply with applicable County Ordinances, Resolutions, and Policies concerning displacement of individuals from their residences.

VII.

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

The Subrecipient shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

A. The Subrecipient shall, to the greatest extent feasible, give opportunities for training and employment to lower-income residents of the County and shall award contracts for work

in connection with the Project to business concerns which are located in or owned in substantial part by persons residing in the County.

B. The Subrecipient shall include the phrase in paragraph A in all contracts for work in connection with this project.

VIII.

LEAD-BASED PAINT

The Subrecipient 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, and in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or 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.

IX.

USE OF DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS

The Subrecipient 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.

X.

UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPALS

The Subrecipient and its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR Part 84), A-122, A-133 (implemented at 24 CFR Part 45), and A-128[2](implemented at 24 CFR Part 44) as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR Parts 84 and 85 are set forth at 570.502.

XI.

CONFLICT OF INTEREST

A. No member of or delegate to the Congress of the United States, and no resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit direct or indirect which arises from the Agreement.

B. No persons described in paragraph C who exercise or have exercised any functions with respect to NSP activities or who are in a position to participate in a decision making process or gain inside information with regard to NSP activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

C. The requirements of paragraph B apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the County, Subrecipient, and of any designated public agency, or subrecipient which receives funds under the NSP grant agreement with HUD.

XII.

ELIGIBILITY RESTRICTIONS FOR CERTAIN RESIDENT ALIENS

The Subrecipient 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 Subrecipient with any guidelines necessary for compliance with that portion of the regulation.

XIII.

ARCHITECTURAL BARRIERS ACT AND AMERICANS WITH DISABILITIES ACT

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

XIV.

MINORITY AND WOMEN'S BUSINESS ENTERPRISES

The Subrecipient shall comply with Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the Subrecipient must make efforts to

encourage the use of minority and women's business enterprises in connection with funded activities.

XV.

DISCRIMINATION ON THE BASIS OF AGE OR HANDICAP

The Subrecipient 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 Subrecipient 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.

XVI.

RECORDS FOR AUDIT PURPOSES

Without limitation to any other provision of this Agreement, the Subrecipient shall maintain all records concerning the Project that will facilitate an effective audit to determine compliance with program requirements. Records shall be kept for three (3) years from the expiration date of the Agreement. The Subrecipient will give the County, HUD, and the Comptroller General of the United States, the General Accounting Office or any of their authorized representatives access to and the right to examine, copy or reproduce all records pertaining to the acquisition and construction of the Project and the operation of the Project. The right to access shall continue as long as the records are required to be maintained.

XVII.

DRUG FREE WORKPLACE ACT OF 1988

The Subrecipient 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.

XVIII.

REVERSION OF ASSETS

The Subrecipient shall maintain real property inventory records, which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR 570.503(b)(8).

EXHIBIT B

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 28 date of July, 2010.

By George Patterson
(Signature)

GEORGE PATTERSON
(Typed or Printed Name)

CEO, TEXANA CENTER
(Title, if any)

Covered Action: NEIGHBORHOOD STABILIZATION PROGRAM
(Type and Identity of Program, Project or Activity)

EHXIBIT C

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 92_HOME INVESTMENT PARTNERSHIPS PROGRAM--Table of Contents

Subpart F_Project Requirements

Sec. 92.254 Qualification as affordable housing: Homeownership.

(a) Acquisition with or without rehabilitation. Housing that is for acquisition by a family must meet the affordability requirements of this paragraph (a).

(1) The housing must be single family housing.

(2) The housing must be modest housing as follows:

(i) In the case of acquisition of newly constructed housing or standard housing, the housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area, as described in paragraph (a)(2)(iii) of this section.

(ii) In the case of acquisition with rehabilitation, the housing has an estimated value after rehabilitation that does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section.

(iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single-family properties, the participating jurisdiction may use the Single Family Mortgage Limits under Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) (which may be obtained from the HUD Field Office) or it may determine 95 percent of the median area purchase price for single family housing in the jurisdiction, as follows. The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. The 95 percent of median area purchase price must be established in accordance with a market analysis which ensured that a sufficient number of recent housing sales are included in the survey. Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a two-month reporting period; for less than 250 sales per month, at least a three-month reporting period. The data must be listed in ascending order of sales price. The address of the listed properties must include the location within the participating jurisdiction. Lot, square and subdivision data may be substituted for the street address. The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire participating jurisdiction. To determine the median, take the middle sale on the list if an odd number of sales and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by .95 to determine the 95 percent of the median area purchase price. This information must be submitted to the HUD Field Office for review.

(3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section.

(4) Periods of affordability. The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The per unit amount of HOME funds and the affordability period that they trigger are described more fully in paragraphs (a)(5)(i) (resale) and (ii) (recapture) of this section.

Homeownership assistance HOME amount per-unit	Minimum period of affordability in years
Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15

(5) Resale and recapture. To ensure affordability, the participating jurisdiction must impose either resale or recapture requirements, at its option. The participating jurisdiction must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate.

(i) Resale. Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as its principal residence. The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers. The period of affordability is based on the total amount of HOME funds invested in the housing.

(A) Except as provided in paragraph (a)(5)(i)(B) of this section, deed restrictions, covenants running with the land, or other similar mechanisms must be used as the mechanism to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event,obtains an ownership interest in the housing.

(B) Certain housing may be presumed to meet the resale restrictions (i.e., the housing will be available and affordable to a reasonable range of low-income homebuyers; a low-income homebuyer will occupy the housing as the family's principal residence; and the original owner will be afforded a fair return on investment) during the period of affordability without the imposition of enforcement mechanisms by the

participating jurisdiction. The presumption must be based upon a market analysis of the neighborhood in which the housing is located. The market analysis must include an evaluation of the location and characteristics of the housing and residents in the neighborhood (e.g., sale prices, age and amenities of the housing stock, incomes of residents, percentage of owner-occupants) in relation to housing and incomes in the housing market area. An analysis of the current and projected incomes of neighborhood residents for an average period of affordability for homebuyers in the neighborhood must support the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing. For example, an analysis shows that the housing is modestly priced within the housing market area and that families with incomes of 65% to 80% of area median can afford monthly payments under average FHA terms without other government assistance and housing will remain affordable at least during the next five to seven years compared to other housing in the market area; the size and amenities of the housing are modest and substantial rehabilitation will not significantly increase the market value; the neighborhood has housing that is not currently owned by the occupants, but the participating jurisdiction is encouraging homeownership in the neighborhood by providing homeownership assistance and by making improvements to the streets, sidewalks, and other public facilities and services. If a participating jurisdiction in preparing a neighborhood revitalization strategy under Sec. 91.215(e)(2) of its consolidated plan or Empowerment Zone or Enterprise Community application under 24 CFR part 597 has incorporated the type of market data described above, that submission may serve as the required analysis under this section. If the participating jurisdiction continues to provide homeownership assistance for housing in the neighborhood, it must periodically update the market analysis to verify the original presumption of continued affordability.

(ii) Recapture. Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. The period of affordability is based upon the total amount of HOME funds subject to recapture described in paragraph (a)(5)(ii)(A)(5) of this section.

(A) The following options for recapture requirements are acceptable to HUD. The participating jurisdiction may adopt, modify or develop its own recapture requirements for HUD approval. In establishing its recapture requirements, the participating jurisdiction is subject to the limitation that when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan

repayment (other than HOME funds) and any closing costs.

(1) Recapture entire amount. The participating jurisdiction may recapture the entire amount of the HOME investment from the homeowner.

(2) Reduction during affordability period. The participating jurisdiction may reduce the HOME investment amount to be recaptured on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.

(3) Shared net proceeds. If the net proceeds are not sufficient to recapture the full HOME investment (or a reduced amount as provided for in paragraph (a)(5)(ii)(A)(2) of this section) plus enable the homeowner to recoverthe amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the participating jurisdiction may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

(4) Owner investment returned first. The participating jurisdiction may permit the homebuyer to recover the homebuyer's entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HOME investment.

(5) Amount subject to recapture. The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The recaptured funds must be used to carry out HOME-eligible activities in accordance with the requirements of this part. If the HOME assistance is only used for the development subsidy and therefore not subject to recapture, the resale option must be used.

(6) Special considerations for single-family properties with more than one unit. If the HOME funds are only used to assist a low-income homebuyer to acquire one unit in single-family housing containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit. If HOME funds are also used to assist the low-income homebuyer to acquire one or more of the rental units in the single-family housing, the affordability requirements of Sec. 92.252 apply to assisted rental units, except that the participating jurisdiction may impose resale or recapture restrictions on all assisted units (owner-occupied and rental units) in the single

family housing. If resale restrictions are used, the affordability requirements on all assisted units continue for the period of affordability. If recapture restrictions are used, the affordability requirements on the assisted rental units may be terminated, at the discretion of the participating jurisdiction, upon recapture of the HOME investment. (If HOME funds are used to assist only the rental units in such a property then the requirements of Sec. 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of Sec. 92.254.)

(7) Lease-purchase. HOME funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. The housing must be purchased by a homebuyer within 36 months of signing the lease'purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed. If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in Sec. 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.

(8) Contract to purchase. If HOME funds are used to assist a homebuyer who has entered into a contract to purchase housing to be constructed, thehomebuyer must qualify as a low-income family at the time the contract is signed.

(9) Preserving affordability of housing that was previously assisted with HOME funds.

(i) To preserve the affordability of HOME-assisted housing a participating jurisdiction may use additional HOME funds for the following costs:

(A) The cost to acquire the housing through a purchase option, right of first refusal, or other preemptive right before foreclosure, or at the foreclosure sale. (The foreclosure costs to acquire housing with a HOME loan in default are eligible. However, HOME funds may not be used to repay a loan made with HOME funds.)

(B) The cost to undertake any necessary rehabilitation for the housing acquired.

(C) The cost of owning/holding the housing pending resale to another homebuyer.

(D) The cost to assist another homebuyer in purchasing the housing.

(ii) When a participating jurisdiction uses HOME funds to preserve the affordability of such housing, the additional investment must be treated as an amendment to the original project. The housing must be sold

to a new eligible homebuyer in accordance with the requirements of Sec. 92.254(a) within a reasonable period of time.

(iii) The total amount of the original and additional HOME assistance may not exceed the maximum per unit subsidy amount established under Sec. 92.250. Alternatively to charging the cost to the HOME program under Sec. 92.206, the participating jurisdiction may charge the cost to the HOME program under Sec. 92.207 as a reasonable administrative cost of its HOME program, so that the additional HOME funds for the housing are not subject to the maximum per-unit subsidy amount. To the extent administrative funds are used, they may be reimbursed, in whole or in part, when the housing is sold to a new eligible homebuyer.

(b) Rehabilitation not involving acquisition. Housing that is currently owned by a family qualifies as affordable housing only if:

(1) The estimated value of the property, after rehabilitation, does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section; and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

(c) Ownership interest. The ownership in the housing assisted under this section must meet the definition of ``homeownership'' in Sec. 92.2.

(d) New construction without acquisition. Newly constructed housing that is built on property currently owned by a family which will occupy the housing upon completion, qualifies as affordable housing if it meets the requirements under paragraph (a) of this section.