

4600011250
2011-1017

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is made, entered into, and executed pursuant to the Interlocal Cooperation Act, Tex. Govt. Code Ann. §§ 791.001, et seq. (Vernon 1994), by and between the **CITY OF HOUSTON**, a home-rule city organized under the laws of the State of Texas ("City"), and **FORT BEND COUNTY**, a body politic and corporate of the State of Texas , acting by and through its Commissioners Court, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, the City, acting pursuant to an ordinance of its governing body, has entered into a Grant Agreement ("Grant Agreement") with the United States Department of Housing and Urban Development ("HUD") for federal funding of a Community Development Block Grant Program under the Housing and Community Development Act of 1974, as amended ("Act"); and

WHEREAS, the Consolidated Plan prepared pursuant to the Grant Agreement, includes public facilities and improvements as an activity eligible for funding; and

WHEREAS, construction costs are part of such public facilities and improvements activity; and

WHEREAS, the County has acquired the property neighboring 5525 Hobby, Houston, Ft. Bend County, Texas, more particularly described on Exhibit "A", on which the County desires to construct and operate a building, within the city limits of the City, to be used as a Seniors Community Center (the land and the improvements to be constructed thereon are defined as "Facility"); and

WHEREAS, upon completion County will use the Facility as a Seniors Community Center to provide a variety of activities and services, including integrated primary medical care, social and educational services which benefit senior citizens (elderly persons) who reside in the area near the Facility, over half of whom are residents of the City of Houston; and

WHEREAS, it has been determined in accordance with 24 CFR Section 570.201 that construction of a Community Center is a public facilities and improvement activity; and

WHEREAS, HUD has given County approval to proceed with the construction of the building and other improvements related to the Facility (such building and other improvements are defined as the "Project"); and

WHEREAS, the City has successfully partnered with the County in the past to provide funding for a variety of projects; and

WHEREAS, the County has agreed to design and construct the Project and provide the City with all necessary documentation to monitor and ensure compliance with applicable federal rules, order, regulations and laws particularly those set forth at 24 CFR Part 570;

WHEREAS, the projected cost of the Project is \$2,290,200.00; and

WHEREAS, the County has agreed to expend funds in the amount of at least \$1,790,000.00 toward the completion of the Project: and

WHEREAS, the County has asked and the City has agreed to contribute a \$500,000.00 grant in CDBG funds toward the completion of the Project; and

WHEREAS, the City is acting pursuant to the authority of Chapters 373 and/or 374 of the Local Government Code;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits contained herein, the City and the County agree as follows:

ARTICLE I.

TERM OF AGREEMENT

A. Effective Date.

The Effective Date of this Agreement shall be the later of: (1) the date on which this Agreement is countersigned by the City Controller of the City after approval by City Council; or (2) the date this Agreement is approved by the Commissioners' Court of Fort Bend County.

B. Termination Date.

Except as provided in Article XV below, the term of this Agreement ("Agreement Term") shall end upon the later to occur of: (1) the date on which all City Funds have been expended pursuant to this Agreement and the attached Budget, (defined below), or (2) the date which is eighteen (18) months from the Effective Date of this Agreement, plus any extensions approved in accordance with Article I, Paragraph C below; provided, however, the following provisions of this Agreement shall remain applicable to the City and the County after the expiration of the Agreement Term and during the use restriction period set out in the Memorandum of Interlocal Agreement and Use Restriction ("Program Term"): Article VII, Article VIII, Article IX, Article X1A, X1B, X1C, X1D, X1F, X1G, X1I, Article XII, Article XIII and Article XIV. The County shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration of this Agreement.

C. Extension.

The Director of the City's Housing and Community Development Department ("Director") may in his or her sole discretion extend the Agreement Term or the time of performance for any of the County's covenants or conditions set forth in this Agreement for a period not to exceed six (6) months by written notice to the County sent prior to the expiration of the initial term or applicable time period. Extensions in excess of six (6) months must be by formal amendment to this Agreement, approved by the City Council. Prior to the expiration of each further extension approved by City Council, the Director may extend this Agreement or any applicable time period for up to an additional six (6) months, in his or her sole discretion by written notice to the County.

ARTICLE II

CITY/COUNTY FUNDS

Upon the Effective Date of this Agreement, the City will make available to the County a sum not to exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) ("City Funds"), which funds will be disbursed in accordance with the terms and conditions of this Agreement. The County has or will contribute a minimum of One Million Seven Hundred Ninety Thousand Two Hundred and No/100 Dollars (\$1,790,200.00) ("County Funds") toward the completion of the Project, in accordance with the terms and conditions of this Agreement.

ARTICLE III

CONSTRUCTION CONTRACT ADMINISTRATION

The County shall be responsible for administering the contracts for the design and construction of the Project in accordance with the terms and conditions of this Agreement and

applicable federal laws and regulations described at 24 CFR Part 570, including but not limited to, Subpart K, attached hereto as **EXHIBIT “B”**. The County understands and agrees that the Project shall be completed on or before the expiration date of the Agreement Term as stated in Article I above.

ARTICLE IV

PROJECT SCOPE AND COMPLETION SCHEDULE

A description of the work to be performed by the County to complete the Project is attached hereto as **EXHIBIT “C”**. A project schedule shall be provided to the City within seven (7) business days of the County’s receipt from the architect.

ARTICLE V

CONSTRUCTION/PROJECT MANAGEMENT AGREEMENT

The County shall execute a written agreement with a construction/project manager who has been selected in accordance with the Federal Regulations and approved by the Director. Alternatively, the County may assign a qualified employee of County who serves as a construction/project manager on other County construction projects, to serve as construction/project manager for the Project. The construction/project manager will oversee all phases of design and planning, be responsible for overseeing all work done on the Project and the performance of any contractor, and will conduct on site inspections appropriate to the state of construction so as to become generally familiar with the progress and quality of the work and to determine if the work is proceeding in accordance with the plans and specifications. The County

will make sure the Project is properly bonded and insured prior to the commencement of work on the Project.

ARTICLE VI

DISBURSEMENT OF CITY FUNDS

A. City Funds Disbursement Procedures.

The City and the County have approved the preliminary budget for the design and construction of the Project, which budget is attached hereto as **EXHIBIT "D-1"** ("Preliminary Budget"), with the understanding that the amounts allocated to particular items within the Preliminary Budget are estimates. Prior to the execution of the construction contract and the commencement of construction of the Project, the County shall prepare and submit for approval by the Director, a budget for the design and construction of the Project which has been updated to reflect the price and scheduled values set forth in the design and construction agreements for the Project. The Director shall endeavor to approve the updated budget within 10 business days and shall not withhold his approval as long as the total Project Costs do not exceed \$2,290,200.00 and the Scope of Work is unchanged. Following approval by the Director, the approved, updated budget (the "Budget") shall be attached hereto as **EXHIBIT "D"** and shall supersede Preliminary Budget. The City and the County acknowledge that the amounts allocated to particular items within the Construction Cost category of the Budget are subject to change in the course of construction. With the approval of the Director (such approval not to be unreasonably withheld), the County may reallocate funds among the various line items of the Budget based upon their actual cost and changes to the Project, provided that the aggregate amount of such changes shall not exceed ten percent of the amount of the Construction Cost

category within the Budget without the execution of a written amendment of the Agreement. If the City does not respond within five (5) working days following its receipt of a request by the County (which shall set out the response deadline in bold print) for a change to the Budget which does not require execution of a written amendment of the Agreement, the City shall be deemed to have approved the request, provided that the County shall promptly notify the City that the request is deemed to have been approved. The Director shall use reasonable efforts to expedite the consideration of any amendment of the Agreement related to changes in the Budget as described above. Upon any reallocation of funds within the Budget, the County shall submit to the City a new budget reflecting such reallocation and such new Budget under this Agreement for all purposes. Any City Funds that are allocated for the Project but are not expended under this Agreement shall be returned to the City for reallocation. Any County Funds that are allocated for the Project but are not expended under this Agreement shall remain County property. When a disbursement of the City Funds is requested, the County shall deliver (but in no event more often than once a month) an application for the disbursement (in a form reasonably acceptable to the Director), together with supporting documentation reasonably required by the Director including invoices for costs incurred by the contractor or any subcontractors during the preceding calendar month. If the Director reasonably objects to an item (or portion thereof) included in any request for disbursement because of inadequate documentation or the failure of the County to comply with the terms of this Agreement, the Director shall notify the County within five (5) working days of receipt of the County's application for disbursement of the Director's objection and shall thereupon be relieved of any obligation to make a disbursement for that item (or portion thereof) until such time as the County

cures the objection(s) to the reasonable satisfaction of the Director. If the request for disbursement is otherwise complete (as reasonably determined by the Director), and provided no Default (as described in Article XI) or event that with the passage of time or giving of notice would constitute a Default has occurred, the City shall, within ten (10) working days following the receipt of the County's request, fund the requested disbursement from the City Funds at the discretion of the Director, less any amounts for items to which the Director has raised an objection as permitted above in this Section and that have not been cured, provided however, that the City shall not be required to make a disbursement (other than the last disbursement) in an amount less than \$5,000.00.

(1). Notwithstanding anything in this Agreement to the contrary, the City will have no obligation to make any disbursement of funds to the County under this Agreement with respect to the Project if the County, for any reason fails or refuses to contribute County Funds to the Project on a pro rata basis (based on the amount of the City Funds and the County Funds included in the Budget, attached hereto as "Exhibit "D").

(2). The County will give the City ten (10) days' written notice of any determination by the County to cease to use County Funds to fund the Project under this Agreement.

B. Reversion of Assets.

In accordance with 24 CFR § 570.503(b)(7), upon the expiration of the Agreement Term, the County shall transfer to the City any City Funds on hand at the expiration of this Agreement and any accounts receivable attributable to the use of City Funds.

C. Use Restriction.

Prior to the disbursement to the County by the City of any of the City Funds, the City will obtain execution of the document attached hereto as **EXHIBIT "E"** Memorandum of Interlocal Agreement and Use Restriction ("Memorandum") which provides public notice of the City's five (5) year restriction on the property described under **EXHIBIT "A"**, which restriction is enforceable should the County cease to use the property to meet the national objective set forth at 24 CFR 570.208 (a) (2) (A), including use for activities that serve elderly persons, prior to the expiration of the Program Term. After the expiration of the Program Term, the City agrees to file a release of said use restriction in the real property records and the County agrees that the Facility will remain open to the public.

ARTICLE VII

DISALLOWED EXPENDITURES

The County agrees that it will reimburse the City in a sum equivalent to the amount of disallowed expenditures in the event that HUD or other relevant federal agency, through audit exception or other action, determines that the County's expenditure of funds awarded under this Agreement for the design and construction of the Project was not made in compliance with this Agreement, applicable law, or regulations.

ARTICLE VIII

PROGRAM INCOME

The County agrees that the disposition of program income under 24 CFR §570.504(c) applies to any income generated by or derived directly or indirectly from the activities conducted pursuant to this Agreement. Such income may include, but is not limited to, service or activity fees, usage

or rental fees, or any applicable income described in 24 CFR §570.500 (a). The County further understands that “program income” includes gross income less costs incidental to the generation of such income. “Costs incidental to the generation of such income” includes the expenses involved in operating and maintaining the property. It is agreed in accordance with 24 CFR § 570.500 (a) (1) (iii) and 24 CFR §570.204 (c), that the County may deduct from the gross income those expenses necessary to maintain and operate the Facility. Allowable deductions from the gross income shall include such expenses as salaries for operating and maintenance staff, utilities, janitorial supplies, repairs, depreciation, and costs incurred in the collection of fees or charges. After such expenses as described herein above have been subtracted, the remaining funds, which represent program income as defined at 24 CFR 570.500 (a) (1) (iii) must be returned to the City on a monthly basis.

ARTICLE IX

COMPLIANCE WITH NATIONAL OBJECTIVE

In accordance with 24 CFR § 570.503 (b)(7), the County agrees that the Facility shall be used to meet a national objective as set forth under 24 CFR § 570.208(a)(2)(A), including use for activities that serve elderly persons, until five (5) years after the expiration of the Agreement Term or the Facility must be disposed of in a manner which results in the City being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to the expenditure of non-City Funds for acquisition of or improvements to the Facility. Reimbursement will not be required after the expiration of the Program Term.

ARTICLE X

CITY'S OBLIGATION

The County acknowledges and agrees that the City's sole obligation under this Agreement is to contribute funding to the extent stated in this Agreement. The City has no obligation or responsibility for the actual design or construction of the Project, performance of the work, or maintenance or operation of the Facility.

ARTICLE XI

DEFAULT

The Director may declare a default ("Default") under this Agreement upon the occurrence of any one or more of the following circumstances which remain uncured sixty (60) days after notice of same has been sent by the City to the County, unless a different time frame is set forth below:

- A. If the County fails to meet the national objective, as required under 24 CFR §570.208 and Article IX of this Agreement, for five (5) years after the expiration of the Agreement Term and such breach continues for forty-five (45) days after written notice thereof to the County from the City;
- B. If the County fails, refuses or neglects to perform fully and timely any obligation, or breaches any covenant or condition (including any condition prior to or subsequent to the issuance of the City Funds under this Agreement);
- C. If any material representation or warranty made by the County under this Agreement is false or misleading in any material respect;

D. If the Facility is demolished, destroyed or substantially damaged, and it is not restored or rebuilt;

E. If work on the Project ceases for thirty (30) or more consecutive days unless such cessation of work is caused by an event of force majeure or by a delay in the City's execution of a written amendment of this Agreement that has not been rejected by the Director or by the City;

F. If a valid and enforceable mechanics', materialmen's or similar lien or encumbrance is filed against the Facility, or the fixtures, materials, machinery and equipment to be used on the Project and the same is not discharged (by payment, bonding or otherwise) within twenty (20) working days following written notice thereof from the City. It is understood however, that County property held only for public purposes is not subject to a mechanic's or materialmen's lien or to other liens requiring involuntary sale, pursuant to Tex. Const. Art. 11, §9, and no payment or bonding will be required to discharge a purported lien upon such property;

G. If the Facility or any interest therein is transferred, sold or assigned, voluntary or involuntary, or unless the prior written approval of the Director is first obtained. The Director's consent, if any, to such a transfer shall not be effective unless or until the purchaser or transferee assumes in writing all obligations and covenants of the County in a form acceptable to the City Attorney;

H. If the County fails, except subject to an event of force majeure, to complete construction of the Project within the time required under Article I of this Agreement; or

I. If HUD makes an audit finding or exception that relates to the Project, the Facility or the City funds provided under this Agreement.

In the event of the occurrence of any one or more of the above mentioned events of Default, the Director shall have the right to terminate this Agreement on sixty (60) days written notice to the County (unless otherwise stated herein), provided, that such termination shall be ineffective if within said sixty (60) day period the County cures such Default to the satisfaction of the Director. The Director, at his or her sole discretion, may extend the period to cure any event of Default for a reasonable time if the Director determines that the County has initiated action to cure the event of Default within the sixty (60) day period. In addition to, or in lieu of, the foregoing termination procedure, the Director may, upon delivery of a notice of an event of Default, immediately (without waiting for the expiration of any cure period) withhold all or part of any sums which may be otherwise due to the County related to such event of Default and/or this Agreement, either (1) until such time as such event of Default is cured; or (2) if such event or Default is not or cannot be cured, forever. Should the Contractor fail to cure a Default within the prescribed time period, the City shall have the right and the option to exercise any or all remedies, at law or in equity, to which it is entitled.

ARTICLE XII

DEPENDENCY UPON HUD FUNDING

A. HUD Funding.

The County understands that the availability of the City Funds is dependent upon federal funding. Unless and until the City receives adequate funds from HUD, the City shall have no obligation to the County under this Agreement. In the event that the funds received by the City under the CDBG Agreement with HUD are insufficient to meet the City's commitments, the Director may reallocate all or a portion of the funds that are budgeted for this Agreement, provided the County is treated the same as any other grantee of the City in the reallocation of such funds.

B. Cessation of HUD Funding.

In the event that HUD (for whatever reason) instructs the City to cease funding of the City Funds, the City may do so without obligation to the County and without being liable to the County for any damages the County may incur as a result of such cessation in funding; provided, however, the City agrees to deliver to the County reasonably satisfactory documentation evidencing HUD's instruction to cease funding.

ARTICLE XIII

RECORDS AND REPORTS

The County shall maintain such records and make such reports as are required under applicable laws and regulations and as may be requested from time to time by the Director to document compliance with HUD regulations and with the requirements of this Agreement. Reporting forms will be specified by the Director or be those forms specified by applicable laws

and regulations. The County shall, upon the request of the Director, make available to the City at the Facility (or other location in Houston, Texas) all records, reports and other information and data, including financial records sufficient to ensure proper accounting and disbursements relating to the Facility and the Project, and shall cooperate with the City in connection with the City's review of such records and monitoring of the Facility and the Project. The County shall maintain all records and other information relating to the Project for a period of not less than four (4) years, following the expiration of the Program Term.

ARTICLE XIV

MONITORING

Facility and Project monitoring will take place at least annually and as often as necessary to ensure compliance with this Agreement.

ARTICLE XV

SUSPENSION OR TERMINATION

As required by 24 CFR §570.503(b)(6), in accordance with CFR §85.43 suspension or termination may occur if the County materially fails to comply with any term or condition of this Agreement and this Agreement may be terminated for convenience in accordance with 24 CFR §85.44.

ARTICLE XVI

AMENDMENT

This Agreement may be amended pursuant to a written instrument that has been executed by the Mayor of the City and County Judge for the County and approved by the City Attorney and the County Attorney, except increases in funding by the city and changes to the Agreement

deemed to be material by the Director, based on budget, scope, schedule and regulatory considerations, shall require a formal amendment that has been approved by City Council.

ARTICLE XVII

NOTICES

All notices and communications under this Agreement will be mailed by certified mail, return receipt requested, or delivered to the County at the following address:

Fort Bend County
301 Jackson, Suite 728
Richmond, Texas 77469
Attention: County Judge

Copy to:

Honorable Grady Prestage
303 Texas Parkway, Suite 213
Missouri City, Texas 77489

All notices and communications under this Agreement will be mailed by certified mail, return receipt requested, or delivered to the City at the following address:

City of Houston
Department of Housing and Community Development
601 Sawyer, 4th Floor
Houston, Texas 77007
Attention: Director

Either party may change its designated address for notice purposes upon ten (10) days' prior written notice to the other party.

ARTICLE XVIII
MISCELLANEOUS

A. Benefit. This Agreement shall not bestow any rights upon any third party, but rather shall bind and benefit the City and the County only.

B. Assignment. No party to this Agreement will make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other party.

C. Applicable Laws. In addition to the matters specifically set forth herein, this Agreement is subject to all laws, rules, orders and regulations of the United States of America, the State of Texas, and the City of Houston.

D. Incorporation of Exhibits. This Agreement includes the following Exhibits which are attached hereto and made a part hereof for all purposes.

EXHIBIT A	Property Description
EXHIBIT B	Other Program Requirements
EXHIBIT C	Scope of Work/Construction Schedule
EXHIBIT D	Budget
EXHIBIT E	Memorandum of Interlocal Agreement and Use Restriction
EXHIBIT F	Section 3 Plan Format
EXHIBIT G	M/WBE
EXHIBIT H	Certification Regarding Lobbying
EXHIBIT I	Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The requirements set forth in the foregoing Exhibits apply to the activities to be undertaken to this Agreement, regardless of whether they are separately referenced in the text hereof.

E. Entire Agreement. This Agreement includes the exhibits attached hereto, contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed.

F. Approvals. This Agreement is subject to approval by City Council and the Commissioners Court of Harris County.

IN WITNESS WHEREOF, the parties hereto execute this Agreement in multiple originals to be effective as of the date of the countersignature by the Controller of the City of Houston, as set forth below.

SEE NEXT PAGE FOR SIGNATURES

FORT BEND COUNTY

By: *Robert E. Hebert*
Robert E. Hebert, County Judge
Title: Date: 9-27-2011

CITY OF HOUSTON

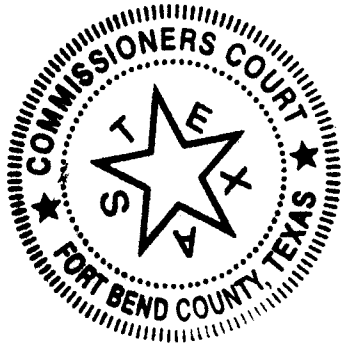
By: *Annise D. Parker*
Annise D. Parker, Mayor *Matt Williams D. Appel*

ATTEST:

Dianne Wilson
Dianne Wilson, County Clerk

ATTEST:

Anna Russell
Anna Russell, City Secretary



CONTROLLER
Ronald C. Green
Ronald C. Green *Jennell P. H.*

DATE OF COUNTERSIGNATURE:

1-3-12

APPROVED:
[Signature]
Director
Housing and Community Development
Department

APPROVED AS TO FORM:

Roy L. Cordes, Jr., County Attorney
[Signature]
By: First Assistant County Attorney

APPROVED AS TO FORM:

[Signature]
Sr. Assistant City Attorney

METES AND BOUNDS DESCRIPTION
1.673 ACRES OUT OF CALLED 5.912 ACRE RESERVE "A"
FORT BEND BOYS AND GIRLS CLUB, SEC 1
J. POINTEVENT SURVEY NO. 3, A-305
FORT BEND COUNTY, TEXAS

Being a tract or parcel of land containing 1.673 acres (72,875 square feet) out of the J. Pointevent Survey No. 3, Abstract No. 305, in Fort Bend County, Texas, and being out of that certain tract called 5.912 acre Reserve "A", Fort Bend Boys and Girls Club, Section One, as recorded in Sl. 2095/A of the Plat Records of Fort Bend County, Texas, said 1.673 acre tract being more particularly described by metes and bounds as follows (with all bearings referenced to State Plane Coordinate System, South Central Zone, NAD '83):

COMMENCING at a 5/8-inch iron rod set for the northeast corner of said 5.912 acre Reserve "A", being the northwest corner of Benchmark, Section One subdivision, as recorded in Sl. No. 466/B and 467/A, of the Plat Records of Fort Bend County, in the south right-of-way line of Hobby Road (60 feet wide) as dedicated in Vol. 990, Pg. 528, of the Deed Records of Fort Bend County, from which a 5/8-inch iron rod found for the southeast corner of said Reserve "A" bears S03°05'16"E, 705.49 feet;

THENCE South 03°05'16" East along the east line of said Reserve "A" and the west line of said Benchmark, Section One subdivision, a distance of 298.46 feet;

THENCE South 86°54'44" West, departing said east line of Reserve "A", a distance of 40.00 feet to the POINT OF BEGINNING and northeast corner of the herein described 1.673 acre tract;

THENCE South 03°05'16" East along a line parallel with and 40 feet west of the east line of said Reserve "A", a distance of 275.00 feet to the southeast corner of the herein described parcel;

THENCE South 86°54'44" West, a distance of 265.00 feet to the southwest corner of the herein described parcel;

THENCE North 03°05'16" West, a distance of 275.00 feet to the northwest corner of the herein described parcel;

THENCE North 86°54'44" East, along a line parallel with and fifteen feet south of the south face of an existing one story building, a distance of 265.00 feet to the POINT OF BEGINNING and containing 1.673 acres (72,875 square feet) of land, more or less.

TEJAS SURVEYING, INC.
Ph: (281) 240-9099
Job No. 44-0651A
September 21, 2011

EXHIBIT B
OTHER PROGRAM REQUIREMENTS

CDBG PROGRAM REQUIREMENTS

SECTION 1

Title VI of The Civil Rights Act of 1964

The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) ("Title VI") and with Title 24 Code of Federal Regulations (CFR) Part 1, which implements Title VI. In accordance with Title VI, no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives federal financial assistance. The Contractor will immediately take any measures necessary to comply with Title VI. If any real property or structure thereon is 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. [24 CFR § 570.601]

SECTION 2

Section 109 of The Housing and Community Development Act of 1974

The Contractor shall comply with Section 109 of the Housing and Community Development Act of 1974 ("Section 109") and implementing federal regulations, 24 CFR § 570.602, issued pursuant to Section 109. No person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds. Section 109 also prohibits discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to any otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). [24 CFR § 570.602]

SECTION 3

Environmental Standards

Contractor understands that it does not assume the environmental responsibilities located at 24 CFR § 58. [24 CFR § 570.604]

SECTION 4

National Flood Insurance Program

A. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.

B. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement. [24 CFR § 570.605]

SECTION 5

Displacement, Relocation, Acquisition

Contractor understands that projects funded hereunder are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655); and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA. [24 CFR § 570.606]

SECTION 6

Section 3 Of The Housing And Urban Development Act Of 1968

(a) The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u, "Section 3") applies to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award in excess of \$100,000, the Contractor shall give opportunities for training and employment to lower-income residents of the City 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 City.

(b) The Contractor will comply with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Agreement. The Contractor certifies and agrees that there is no contractual or other disability which would prevent compliance with these requirements.

(c) The Contractor shall 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 the labor organization or workers' representative of the 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.

(d) The Contractor will include or have included a Section 3 clause in every subcontract for work in connection with the project. The Contractor shall, at the direction of the City, take

appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of this Section 3 clause. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR § 135. The Contractor shall not let any subcontract unless the subcontractor has provided the Contractor with a preliminary statement of ability to comply with the requirements of this Section 3 clause.

(e) Compliance with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the project. These provisions are binding upon the City, its contractors and subcontractors, their successors and assigns. Failure to fulfill these requirements shall subject the City, its contractors and subcontractors, their successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided.

(f) The Contractor shall have completed, signed and delivered a Voluntary Compliance Form (provided by the City) to the Director prior to the execution of this Agreement.

SECTION 7

Executive Order 11246, as amended by 12086

The Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in

conspicuous places available to employees and applicants for employment.

- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor set forth at 41 CFR § 60.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of the U.S. Department of Labor, or as otherwise provided by law.
- G. The Contractor will include provisions similar to paragraph A through F in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of the U.S. Department of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon subcontractors or vendors. The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. [24 CFR § 570.607]

SECTION 8

Lead-Based Paint Poisoning Prevention Act

This contract may be subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the implementing regulations at 24 CFR § 35, together with the Federal Lead-Based Paint Regulation, effective September 15, 2000, implementing Title X of the Housing and Community Development Act of 1992. Specifically, this contract may be subject to the provisions for the elimination of lead-based paint hazards pursuant to said regulations, and the Contractor may be responsible for all required inspections and certifications. [24 CFR § 570.608]

SECTION 9

Use Of Debarred, Suspended, Or Ineligible Contractors or Subrecipients

(a) The Contractor shall not employ, award contracts to, or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status under provisions of 24 CFR § 24 or under the authority of the City.

(b) The Contractor shall not use CDBG funds for any contract for the construction, alteration or repair of the project funded under this agreement with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, that is identified by the Office of the United States Trade Representative as discriminating against U.S. firms in conducting procurement for public works projects. This restriction covers, without limitation, all architectural, engineering and construction services, and includes all products or goods, except construction equipment or vehicles used during the construction, alteration or repair which do not become part of a delivered structure, product or project. [24 CFR § 570.609]

SECTION 10

Uniform Administrative Requirements And Cost Principles

The Contractor shall comply with the policies, guidelines, and requirements of **24 CFR § 85**, "Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally-Recognized Indian Tribal Governments," and **OMB Circular numbered A-110, now codified at 24 CFR Part 84, A-87, and A-122 and A-133** as applicable, as they relate to the acceptance and use of Federal funds. **The applicable sections of 24 CFR Parts 84 and 85 are set forth at 24 CFR § 570.502. [24 CFR § 570.610]**

SECTION 11

Conflict Of Interest

A. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 24 CFR § 84 and 85 respectively, shall apply. In all cases not governed by 24 CFR § 84 and 85, the following shall apply:

In all cases not governed by 24 CFR § 84 and 85, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities pursuant to §570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455.

- (i) In accordance with **24 CFR § 570.611**, no persons described in paragraph (ii) (below) who exercise or have exercised any functions with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to CDBG assisted 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.

- (ii) The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, or subrecipient under which receives funds under the CDBG grant agreement with HUD. [24 CFR § 570.611]

SECTION 12

Executive Order 12372

Contractor understands that implementing regulations at 24 CFR § 52 are applicable to planning or construction of water or sewer facilities only, and that such regulation does not impart any responsibility upon it, rather the regulation imposes the Executive Order Review Process upon the City when funds are proposed for activities subject to review.

[24 CFR § 570.612]

SECTION 13

Eligibility for Certain Resident Aliens

Contractor understands that certain newly legalized aliens, as described in 24 CFR § 49, are not eligible to apply for benefits under activities meeting the requirements of section § 570.208 (a) that either (1) have income eligibility requirements limiting the benefits exclusively to low and moderate income persons or are targeted geographically are otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of application.

Contractor further understands that this restriction applies to covered activities funded under the Housing and Community Development Act of 1974, as amended; and that "benefits" under this section means financial assistance, public services, jobs, and access to new rehabilitated housing and other facilities made available under covered activities funded by the Community Development Block Grant Program. Benefits do not include relocation services and payments to which displaces are entitled by law. Furthermore, these restrictions apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section. Compliance can be accomplished by obtaining certification as provided in 24 CFR § 49.20. [24 CFR § 570.613]

SECTION 14

Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the Contractor for purposes of meeting program requirements are confidential and the Contractor agrees that they shall not be made available to any individual or organization, other than an agency of the United States Government, without the prior approval of the City.

SECTION 15

Court Actions

The Contractor agrees to give the City immediate notice in writing of any actions or suits filed and prompt notices of any claims made against the City, the Contractor, or any of the parties involved in the implementation and administration of this Agreement.

SECTION 16

Records For Audit Purposes

Without limitation to any other provision of this Agreement the Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires for **four years** from the expiration date of the Agreement unless a longer period is required under **24 CFR § 570.502**. The Contractor will give the City, HUD, the Comptroller General of 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 program or project. The right to access shall continue as long as the records are required to be maintained.

SECTION 17

Compliance With Clean Air And Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended (42 U.S.C. 7400 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.) and the regulations of the Environmental Protection Agency, **40 CFR § 15**. In compliance with the regulations, the Contractor agrees that:

A. No facility to be utilized in the project or program is listed on the list of Violating Facilities issued by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20.

B. The Contractor will comply with all the requirements of section 114 of the Clean Air Act, as amended, (42 U.S.C. 7414) and section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) pertaining to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308, and all regulations and guidelines issued thereunder.

C. As a condition for the award of this Agreement, the Contractor shall give prompt notice to the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized is under consideration to be listed on the EPA List of Violating Facilities.

D. The Contractor will include or cause to be included the requirements contained in paragraphs A through C of this clause in every lower-tier nonexempt contract and will take such

action as the City may direct as a means of enforcing such provisions.

In no event shall any amount of the funds provided under the Agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act.

SECTION 18

Architectural Barriers Act and The Americans with Disabilities Act

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 for residential structures, and Appendix A to 41 CFR Part 101-19, Subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 25, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable--that is, easily accomplished and able to be carried out without much difficulty or expense. [24 CFR § 570.614]

SECTION 19

Audit Requirements

a. Limited Scope Audit - Contractor understands that Non-Federal entities that expend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available to review and audit as described hereinabove at Section 16. Contractor further understands that limited scope audits can and may be required by the City for Non-Federal entities that expend less than \$500,000. If the City requires such limited scope audits, same shall be performed in accordance with Office of Management and Budget (OMB) Circular A-133 - "Audits of States, Local Governments, and Non-Profits" which rescinds Circular A-128, Audits of State and Local Governments (codified at 24 CFR Part 45) and it supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions, issued April 22, 1996 (codified at 24 CFR Part 44).

b. Single Audit - Contractor further understands that Non-Federal entities that expend \$500,000 or more a year in Federal awards shall have a single audit conducted pursuant to A-133, except when they elect to have a program-specific audit pursuant to and as described in A-133. Prior arrangements must be made to conduct such audit. Once the Contract is executed, Contractor understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.

SECTION 20

Labor Standards/Davis-Bacon Act

To the extent applicable, Contractor shall comply with the federal wage requirements for federally-assisted construction projects pursuant to the Davis-Bacon Act, as amended.
[24 CFR § 570.603]

EXHIBIT C
SCOPE OF WORK/CONSTRUCTION SCHEDULE

Statement of Scope of Work:

Construction of a new 10,000+ sq foot one story free standing building will primarily be hardy board and masonry, concrete parking lot, walking and jogging trails. Building is designed to be environmentally responsible and economical to operate. Facility will also house a 400 sq foot Police Sub-Station to provide additional security in the area and around the facility. It will also house an 1800 sq ft auditorium (120 person occupancy) with movable stage and storage area, warming kitchen with a multi-purpose dining area, administrative offices and a 900 sq ft conference room for meetings, training, arts and crafts and computer classes. This facility will also accommodate to serve meals on wheels in the dining area. The facility will also have space for a make shift clinic to provide the basic immunization and other medical related services.

EXHIBIT D

BUDGET

Final Budget to be Attached

EXHIBIT D - 1
PRELIMINARY BUDGET

Fort Bend County Senior Center Project
PRELIMINARY PROJECT BUDGET
(With Expected Cost Estimates)

Item Description	Budget Amount	Remarks
Revenue Source		
City of Houston - New Construction, Soft costs,	\$500,000.00	
Fort Bend County's contributions	1,790,200.00	
Total	\$2,290,200.00	
Expenses		
Land Acquisition	\$0	
Soft costs (estimated)	\$394,387.00	Architectural Services, Engineering / survey, LEED Consulting Services , Commissioning Services, Project Management, Geotech Services, Environmental Assessments, Misc.
Subtotal	\$394,387.00	
Construction Cost		
Site Prep /Paving/ Drainage	\$128,000.00	
Building Shell	\$811,280.00	
Interior Finish Out	\$318,250.00	
Mechanical	\$253,913.00	
Electrical	\$121,700.00	
Plumbing	\$81,130.00	
Landscaping	\$25,000.00	
Contingency @5%	\$91,540.00	
Subtotal	\$1,830,813.00	
Fixtures, Furniture, and Equipment	\$65,000.00	
Subtotal	\$65,000.00	
Total Project	\$2,290,200.00	

EXHIBIT E
MEMORANDUM OF INTERLOCAL AGREEMENT
AND USE RESTRICTION

MEMORANDUM OF INTERLOCAL AGREEMENT AND USE RESTRICTION

THE STATE OF TEXAS §

COUNTY OF FORT BEND §

Notice is hereby given that the **CITY OF HOUSTON** ("City"), a home rule city organized under the laws of the State of Texas (the "City"), has provided Community Development Block Grant Funds in the amount of \$500,000.00 ("County") to **Fort Bend County** ("County") a body politic and corporate of the State of Texas (the "County") pursuant to an Interlocal Agreement dated Jan 7, 2012 (the "Agreement") whereby the City has made available to the County, subject to all terms, provisions and conditions of the Agreement, the City Funds from the Community Development Block Grant Program under the Housing and Community Development Act of 1974, as amended, to assist with the design and construction of a Seniors Community Center neighboring 5525 Hobby, Houston, Texas 77053 ("Project"), on land more particularly described in **EXHIBIT "A-1"**, attached hereto and made a part hereof. Capitalized terms not defined herein shall have the meaning assigned to such terms in the Agreement. This Memorandum of Interlocal Agreement and Use Restriction ("Memorandum") is executed for the purpose of recordation in the Real Property Records of Fort Bend County, Texas, in order to give notice of the existence of the Interlocal Agreement and terms, provisions and conditions contained therein, including without limitation, the restrictions contained in the Agreement placed on the use, transfer and sale of the land and improvements which constitute the Project property described in **EXHIBIT "A-1"** and for all other pertinent purposes. As provided by the Agreement, the County must use the Project to meet the national objective set forth at 24 CFR 570.208 (a)(2)(A), including use for activities that serve elderly persons, until five (5) years after expiration of the Agreement or the Project must be

disposed of in a manner which results in the City being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to the expenditure of non-City Funds for acquisition of or improvements to the Facility, provided that reimbursement will not be required after five (5) years from the termination of the Agreement. In the event the restrictions described herein are not satisfied, the City shall have the right and option to exercise any or all remedies, at law or in equity, to which it is entitled. This Memorandum of Interlocal Agreement and Use Restriction in no way defines, limits or modifies the Agreement. No restriction upon the property described in **Exhibit "A-1"** shall remain in effect after five (5) years from the termination of the Agreement.

EXECUTED AND DELIVERED effective as of the 27 day of September, 2011.

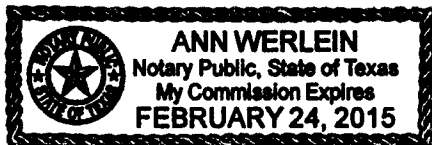
FORT BEND COUNTY

By: *Robert Hebert*
Name: Robert Hebert
Title: County Judge

THE STATE OF TEXAS §

COUNTY OF FORT BEND §

This instrument was acknowledged before me on this 27 day of September, 2011 by Robert Hebert, of Fort Bend County, ~~Court~~ Commissioners a body corporate and politic under the laws of the State of Texas.



Ann Werlein
Notary of Public in and for the State of Texas
Print or Type Name: Ann Werlein
My commission expires Feb 24, 2015

EXHIBIT F
SECTION 3 PLAN FORMAT

"SECTION 3" COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES:

A. The work to be performed under this contract is on 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 USC §1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns located in or owned in substantial part by persons residing in the area of the project.

B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135 and all applicable rules and orders of the Boynton CRA issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.

C. The Contractor will 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 workers' 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.

D. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The Contractor will not subcontract with any subcontractor unless the subcontractor has first agreed to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135 and all applicable rules and orders of ODOC issued hereunder prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successor and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors or subcontractors, its successors and assigns to those sanctions specified by the Act.

Section 3 Plan

This form must be completed by all prime contractors and subcontractors with bid amounts over \$100,000 and must be submitted with the bid.

Bid Submitted from: _____ For: _____

Name of Business	Project Being Bid	Date
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What is Section 3? Under Section 3 of the U.S. Department of Housing and Urban Development (HUD) Act of 1968; whenever financial assistance is given for housing or community development, to the greatest extent feasible, economic opportunities will be given to low income residents and businesses in that area. The project being bid has Neighborhood Stabilization Program (NSP) funding which is subject to Section 3 Requirements. **Covered prime contractors and subcontractors are required to show a good faith effort to:**

- A. Provide employment and training opportunities for Section 3 Residents.
- B. Provide opportunities for Section 3 Businesses for supplies, services, and construction contracts needed to complete the project.

Definition of a Section 3 Resident: A Section 3 Resident is any lower income individual residing in the Section 3 Project Area.

Definition of Section 3 Project Area: For cities requesting bids, the Section 3 project area would be first consideration within city limits and second consideration within the county. For counties requesting bids, the Section 3 project area would be the county.

Definition of a Section 3 Business: A business that meets at least one of the following criteria: (1) Majority ownership held by Section 3 Residents or (2) at least thirty percent (30%) of the permanent full-time employees are Section 3 Residents or were within the first three (3) years of their employment with the business or three (3) more than twenty-five percent (25%) of the business' work is subcontracted to a business that meets either of the first two conditions.

Part I. Affirmative Action Plan for hiring and training Section 3 Residents:

- A. The total number of new hires I need for this project is _____.
- B. Activities planned to meet Section 3 hiring objectives (check those applicable):
 - () Recruit through local advertising media (include phrase "equal opportunity employer" in ad).
 - () Recruit through signs placed at the project site.
 - () Recruit by contacting community service organizations serving the project site.
 - () Other.
- C. The total number of my current employees I intend to use on this project is _____. The number of these who would be considered Section 3 Residents is _____.
- D. The total number of *trainees* I intend to use on this project is _____. The number of these trainees that would be considered lower income project area residents is _____.

Part II. Affirmative Action Plan for contracting with Section 3 Businesses:

- A. I will award _____ contracts in connection with these project activities.
- B. The total estimated dollar value of these contracts is \$_____.
- C. Of these contracts _____ will be awarded to Section 3 Businesses.
- D. The total estimated dollar value of contracts awarded to Section 3 Businesses is \$_____.

I certify to the greatest extent possible I will hire and train Section 3 Residents and will obtain services, supplies and construction subcontracts from Section 3 Businesses.

Signature (Prime Contractor or Subcontractor)

Date

Examples of Efforts to Offer Training and Employment Opportunities to Section 3 Residents

1. Entering into "first Source" hiring agreements with organizations representing Section 3 residents.
2. Sponsoring a HUD-certified "Step-Up" employment and training program for Section 3 residents.
3. Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other Section 3 residents in the building trades.
4. Advertising the training and employment positions by distributing flyers (which identify the positions to be filled the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in Sect. 135.34) reside.
5. Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAS, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or development and transitional housing in the neighborhood or service area of the Section 3 covered project.
6. Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.
7. Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the Section 3 covered project.

8. Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where Category 1 or Category 2 persons reside and in the neighborhood or service area in which Section 3 project is located.
9. Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.
10. Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the Section 3 covered project.
11. Contacting agencies administering HUD Youthbuild programs and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.
12. Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.
13. Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
14. Employment a job coordinator, or contracting with a business concern that is licensed in the field of job placement that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified Section 3 residents with the training and employment positions that the HA or contractor intends to fill.
15. For an HA employing Section 3 residents directly on either a permanent or a temporary basis to perform work generated by Section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR 905.102 and Section 905.201(a)(6).)
16. Where there are more qualified Section 3 residents than there are positions to be filled, maintaining a file of eligible qualified Section 3 residents for future employment positions.
17. Undertaking job counseling, education and related programs in association with local educational institutions.
18. Undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 residents previously hired for employment opportunities.
19. After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other section 3 resident to be training or employed on the Section 3 covered assistance.
20. Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

EXHIBIT G
MWBE REQUIREMENTS

APPENDIX 9
MWBE AND SBE REQUIREMENTS

ARTICLE V. MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISES*

*Editor's note: Ord. No. 2009-280, § 5.1(Exh. B), adopted April 1, 2009, amended the title of Ch. 15, Article V to read as herein set out. Former Article V was entitled Minority and Women Business Enterprises.

Sec. 15-81. Declaration of policy.

(a) It is the policy of the city to stimulate the growth of local minority, women and small business enterprises by encouraging the full participation of these business enterprises in various phases of city contracting, as set forth in this article. The purposes and objectives of this article are:

- (1) To increase the utilization of such local firms in providing certain goods and services; and
- (2) To provide opportunities to broaden and enhance their range of capacities; and
- (3) To increase opportunities for such local firms to serve as contractors, in addition to acting as subcontractors to others, where applicable, all in order to help eliminate statistical disparities in city contracting.

(b) This article is intended to be remedial in nature and to continue only until its purposes and objectives are met as determined by regular periodic reviews.

(Ord. No. 84-1309, 8-22-84; Ord. No. 95-338, § 2, 3-29-95; Ord. No. 2009-280, § 5.1 (Exh. B), 4-1-09)

Sec. 15-82. Definitions.

The words and phrases defined in this section shall have the meanings ascribed when used in this article and in article VI of this chapter, unless the context clearly indicates another meaning. For the purpose of these definitions, the singular shall also include the plural, and the plural shall also include the singular.

- (1) *Bidder* means any person or legal entity which submits a bid or proposal to provide labor, goods or services to the city by contract for profit.
- (2) *Contractor* means any person or legal entity providing goods, labor, or services to the city by contract for profit.
- (3) *Established business enterprise* shall mean an MBE, WBE, SBE or PDBE or any business applying for certification as an MBE, WBE, SBE or PDBE that, by virtue of its size meets or exceeds the standards promulgated by the U.S. Small Business Administration for that category of business, as determined by the procedures described in section 15-87(a) of this Code.
- (4) *Goal-oriented contract* shall mean any contract, agreement or other undertaking anticipated for construction work to be in excess of \$1,000,000.00 and for the supply of goods or nonpersonal or nonprofessional services to be in excess of \$100,000.00 for which:

- a. Competitive bids are required by law to be taken;
 - b. Which is not within the scope of the disadvantaged business enterprise programs of the United States Environmental Protection Agency or the United States Department of Transportation; and
 - c. Which the initiating city department, in consultation with the director of the affirmative action division, determines has significant subcontracting potential in fields in which there are adequate numbers of known MBEs, SBEs and/or WBEs to compete for and perform the subcontract service(s).
- (5) *Minority business enterprise or MBE* shall mean a business which is:
- a. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or
 - b. A corporation in which at least 51 percent of the stock or of the assets of such corporation is owned, controlled and managed by one or more minority persons; or
 - c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more minority persons; or
 - d. A joint venture in which at least 51 percent of the interests of such joint venture is owned, controlled and managed by one or more minority persons; or
 - e. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more minority persons; or
 - f. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women and such minority person; or
 - g. A business which has been certified as an MBE by the city's affirmative action division under any other MBE program.
- (6) *Minority person* shall mean a citizen or legal resident alien of the United States who is:
- a. Black (a person having origins in any of the black racial groups in Africa);
 - b. Spanish/Hispanic (a person who is either Mexican, Puerto Rican, Cuban or "other Spanish/Hispanic" in origin or descent. "Other Spanish/Hispanic" are those whose origins are from Spain or the Spanish speaking countries of Central or South America. Persons of Spanish origin may be of any race);
 - c. Asian-Pacific American (a person having origins in the Far East, Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian Subcontinent);
 - d. Native American (a person having origins in any of the original peoples of North America, American Indian, Eskimo, Aleut, Native Hawaiian).

Origin or descent can be regarded as the ancestry, nationality group, lineage or country in which the person or persons' parents or ancestors were born before their arrival in the United States.

(7) *Owned, controlled and managed* shall mean that the one or more minority persons or women who own the requisite interests in or assets of a business applying for minority or women business enterprise certification, shall possess equivalent incidents of such ownership, including an equivalent interest in profit and loss, and shall have contributed

an equivalent percentage of capital, equipment and/or expertise to the business. Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquishes control over his or her community property interest in the subject business (but by doing so is not required to transfer to his or her spouse his or her community property ownership interest or to characterize the property as the separate property of the spouse). The one or more minority person or woman owners shall have recognized ultimate control over all day-to-day business decisions affecting the MBE or WBE and shall hold a title commensurate with such control. Such ultimate control shall be known to and at least tacitly acknowledged in day-to-day operations by employees of the business.

(8) *Regulated contract* shall mean any contract, agreement or other undertaking for which:

- a. Compellive bids are not required by law to be taken;
- b. Which is not covered by the MBE/WBE programs of the United States Environmental Protection Agency or the United States Department of Transportation; and
- c. Which the recommending city department has determined, in consultation with the director of the affirmative action division:
 1. Either has significant subcontracting potential in fields in which there are sufficient known MBEs and/or WBEs, or if a construction contract, MBEs and/or SBEs to perform the particular subcontract service(s); or
 2. Is of a type for which there are sufficient known MBEs and/or WBEs, or if a construction contract, MBEs and/or SBEs, which have represented their ability to perform the prime contract service to afford effective competition for the prime contract.

(9) *Small business enterprise* or *SBE* means a firm whose gross revenues or number of employees, averaged over the past three years, inclusive of any affiliates as defined by 13 CFR Section 121.103, does not exceed the size standards defined in Section 3 of the Federal Small Business Act and applicable Small Business Administration regulations related to the size standards found in 13 CFR Part 121. The term shall also include a certified minority/women business enterprise defined in this Code.

(10) *Subcontractor* means any business providing goods, labor or services to a contractor if such goods, labor or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City of Houston.

(11) *Woman* shall mean a person who is a citizen or legal resident alien of the United States and who is of the female gender.

(12) *Women business enterprise* or *WBE* shall mean a business which is:

- a. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or assets of such corporation is owned, controlled and managed by one or more women; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more women; or
- d. A joint venture in which at least 51 percent of the interests in such joint venture is owned, controlled and managed by one or more women; or
- e. Any other business or professional entity in which at least 51 percent of the

assets in such business or professional entity is owned, controlled and managed by one or more women; or

f. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women; or

g. A business which has been certified as a WBE by the city's affirmative action division under any program.

(Ord. No. 84-1309, B-22-84; Ord. No. 98-1213, § 2, 12-16-98; Ord. No. 2009-280, § 5.1 (Exh. B), 4-1-09)

Sec. 15-83. Program elements.

(a) Based upon a review of data submitted annually by affected city departments, the mayor's affirmative action division shall each year submit a progress report to the city council. The report shall include two percentage figures that are intended to as closely as possible represent the ratio of the prior year's measured utilization and capacities of local MBEs and WBEs to do business in:

- (1) The supply of goods and nonpersonal or nonprofessional services; and
- (2) The performance of personal or professional services.

to the prior year's total local business community utilization and capacity to do business in each of the two-named fields of city contracting.

In addition, the report shall include percentage figures that are intended to as closely as possible represent the ratio of the prior year's measured utilization and capacities of local MBEs and SBEs to do business in construction to the prior year's total local business community utilization and capacity to do business in city construction contracting.

(b) Based upon the measured utilization and capacities identified in subsection (a) above, city council shall from time to time set annual city-wide percentage goals for city contracting with MBEs and WBEs in each of the first two named categories described in subsection (a)(1) and (2) above and for contracting with MBEs and SBEs in the construction category. The adjustment, if any, in the percentage goals shall be made during the first quarter of the fiscal year.

(c) It is the responsibility of each city department to determine which contracts initiated by it are goal-oriented contracts and which are regulated contracts. If the determination is made that a contract is a goal-oriented contract or a regulated contract, the initiating department shall review the contract and shall determine, by reference to the MBE/SBE/WBE register, the number of certified MBEs and WBEs in each of the two named categories described in subsection (a)(1) and (2), above, and for construction, the number of certified MBEs and SBEs in the construction category. The initiating department director or his or her designee shall determine whether the contract is one to which MBE/SBE/WBE provisions should be applied.

(1) These provisions are not required to be applied in the following circumstances:

- a. A public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy;
- b. The service or goods requested are of such a specialized, technical or unique nature as to require the city department to be able to select its contractor without application of MBE/SBE/WBE provisions (such as contracts for expert witnesses, certain financial advisors or technical consultants); or
- c. If application of MBE/SBE/WBE provisions would impose an unwarranted

economic burden or risk on the city or unduly delay acquisition of the goods or services, or would otherwise not be in the best interest of the city; or

d. If the possible MBE/SBE/WBE participation level based on MBE, SBE and WBE availability would produce negligible MBE, SBE or WBE participation.

If one of the above-listed conditions is determined to exist, the department director shall certify that determination to the director of the affirmative action division and specify the conditions which lead to the determination. This certification is to be made prior to award of the contract.

(2) If the contract does not fall within one of the above-listed exceptions, based upon its overall review, the initiating department shall assign an appropriate MBE/SBE/WBE participation level, if any, for the contract (whether goal-oriented or regulated) considering the local availability of certified MBEs, SBEs and, except for construction contracts, WBEs in the contract field.

The intention of this article is to provide administrative flexibility in the application of MBE/SBE/WBE provisions of this Code and in the percentage participation level on a contract-by-contract basis so as not to limit access to city contracting by nonminority-owned, nonwomen-owned or established business enterprises to a greater degree than necessary to meet the city-wide annual goal and the policies and objectives of this article.

(d) The bidding documents and the contract documents for goal-oriented contracts for which an MBE/SBE/WBE participation level has been established shall contain a provision detailing the purposes and objectives of the city's MBE/SBE/WBE ordinance and shall incorporate by reference this article and the then-current motion or ordinance establishing MBE, SBE and WBE annual goals. Regulated contracts which are determined to have significant subcontracting potential for which an MBE/SBE/WBE participation level has been established shall contain contractual provisions (and proposal provisions if submitted for proposals or for bids) requiring the contractor to meet or exceed the determined MBE/SBE/WBE participation level for that contract, or to establish that it has made good-faith efforts to do so, and that notwithstanding such efforts, was unable to meet or exceed the determined participation levels. The directors of the administration and regulatory affairs, general services and public works and engineering departments will establish procedures defining good-faith efforts. These procedures will be reviewed and approved by the affirmative action division, the mayor and the city attorney.

(Ord. No. 84-1309, 8-22-84; Ord. No. 86-528, § 17, 4-22-86; Ord. No. 93-514, § 33, 5-5-93; Ord. No. 95-336, §§ 3, 4, 3-29-95; Ord. No. 99-378, § 10, 4-21-99; Ord. No. 07-840, § 13, 7-18-07; Ord. No. 08-52, § 43, 1-16-08, eff. 1-26-08; Ord. No. 2009-280, § 5.1 (Exh. B), 4-1-09)

Sec. 15-84. Affirmative action division.

The affirmative action division of the mayor's office has responsibility for:

(1) Establishing procedures for the implementation of this article, and reviewing and approving procedures established by city departments, such procedures to be narrowly designed to attain the purposes and objectives specified herein without unduly limiting nonminority-owned or nonwoman-owned or established business enterprises. Such procedures shall be reviewed and approved by the mayor and by the city attorney prior to implementation;

(2) Certifying businesses as minority, small or women business enterprises and maintaining and distributing to affected city departments a current register, updated monthly, of such business (including a separate listing of such businesses whose applications for certification are pending) specifying the categories of city contracting represented by the certified MBEs, SBEs and WBEs;

(3) Developing educational programs for and otherwise assisting (without offering favoritism in relation to the competitive bidding system) minority, small and women business enterprises to compete effectively for city contracts;

(4) Making recommendations to the mayor, city council and city departments to further the policies and objectives of this article;

(5) Reviewing documentation from potential contractors and from contractors concerning good-faith efforts made to meet or exceed the participation level for contracts. The final recommendation to city council for award or for acceptance of work shall be the city department's, although the affirmative action division may take exception;

(6) Compiling, bimonthly, a report of the progress of city departments, by department, in attaining the city-wide goals set by city council. This report shall be based upon MBE, SBE and WBE contractor and subcontractor information, to be specified by the affirmative action division, which each department is to submit to the affirmative action division monthly. The report is to be submitted bimonthly to city council members, the mayor and all affected city department directors for their information;

(7) Receiving and reviewing complaints and suggestions concerning the MBE/SBE/WBE program from contractors, MBEs, SBEs, WBEs and city departments; and

(8) Without limiting the authority of the affirmative action division to establish procedures that are consistent with the terms of this article, the division is specifically directed to promulgate and implement procedures as follows:

a. Grievance procedures for any person aggrieved by any decision of the division under this article. The procedures shall include notice and a hearing before an impartial hearing officer who shall be appointed by the mayor;

b. Arbitration/mediation procedures for the resolution of disputes between contractors or bidders and MBE/SBE/WBE participants or potential participants with respect to any aspect of compliance with this article, including, without limitation, any assertion that a contractor, subcontractor, or MBE/SBE/WBE has failed to make good faith efforts to comply with this article;

c. Procedures to implement and enforce any sanctions provided under this article;

d. Procedures to ensure performance of work by MBE/SBE/WBEs, which procedures shall include: (i) a requirement that no more than 50 percent of their work may be subcontracted, without a specific waiver from the division for cause; (ii) a requirement that the minority person, small business or woman owner of an MBE/SBE/WBE have the necessary experience, expertise, credentials and regulatory authority to conduct the type of business for which the business is certified; (iii) a requirement that bidders and contractors make good faith efforts to meet or exceed contract MBE/SBE/WBE goals; and (iv) a requirement that MBE/SBE/WBEs accurately represent all material information required for certification and truly perform the work they are represented to have performed;

e. Procedures for counting participation by MBE/SBE/WBEs as prime contractors, subcontractors, suppliers and joint venturers on city contracts, which procedures shall ensure that all work performed by MBE/SBE/WBEs as prime contractors is included in the computation of the progress made toward meeting the annual city-wide goals;

f. Procedures to ensure that this article is limited in its application to the certification of locally based MBEs, SBEs and WBEs;

g. Procedures to coordinate the operation of this article with other local MBE/SBE/WBE programs, which may include reliance upon certification procedures of other entities that are determined to be reliable and equivalent to this article; and

h. Procedures to ensure access to necessary records of prime contractors and subcontractors on city contracts.

All procedures established under this section shall be reviewed and approved by the city attorney prior to implementation. A copy of all procedures hereunder shall be maintained in the offices of the division for inspection, and copies may be purchased at the fees prescribed by law.

(Ord. No. 84-1309, 8-22-84; Ord. No. 95-336, § 5, 3-29-95; Ord. No. 2009-280, § 5.1 (Exh. B), 4-1-09)

Sec. 15-85. Filing of plan.

Before execution of any contract or issuance of any purchase order for which an MBE/SBE/WBE goal has been established, a bidder or potential contractor shall submit a plan setting forth how it intends to meet the contract MBE/SBE/WBE goal. After execution of a contract or receipt of a purchase order, the contractor shall comply with the submitted plan, unless it has received approval from the director of affirmative action for a deviation therefrom. Approval shall not be unreasonably withheld. While it is not a requirement that a contractor meet its goal, it is required that the contractor objectively demonstrate to the affirmative action division that it has made good faith efforts to meet the goal. To this end, the contractor shall maintain records as prescribed by the affirmative action division demonstrating its efforts at compliance. The contractor shall be required to submit to the affirmative action division reports of its efforts under this article in such form or manner as shall be prescribed by the division.

(Ord. No. 95-336, § 6, 3-29-95; Ord. No. 2009-280, § 5.1 (Exh. B), 4-1-09)

Sec. 15-86. Sanctions.

(a) The director of affirmative action is authorized to suspend any contractor who has failed to make good faith efforts to meet any goal established under this article from engaging in any contract with the city for a period up to, but not to exceed, five years. The director is also authorized to suspend any MBE, SBE or WBE who has failed to make good faith efforts to meet all requirements necessary for participation as an MBE, SBE or WBE from engaging in any contract affected by this article for a period up to, but not to exceed, five years.

(b) In accordance with section 15-84 of this Code, the affirmative action division shall establish procedures for the imposition of sanctions and shall ensure that no sanction is imposed without notice of the grounds being given, an opportunity for a hearing and an opportunity for appeal to city council or to an impartial hearing officer designated by the mayor. Any procedure established shall be consistent with state law.

(Ord. No. 95-336, § 6, 3-29-95; Ord. No. 2009-280, § 5.1 (Exh. B), 4-1-09)

Sec. 15-87. Determination of established business enterprise status.

(a) Based upon a review of data submitted by MBEs, SBEs, WBEs or MBE/SBE/WBE applicants and any other information available from its files or the files of any other governmental entity, the affirmative action division of the mayor's office shall determine the size of each MBE, SBE, WBE or MBE/SBE/WBE applicant by determining the average of the gross receipts for the prior three years and the average number of employees for the 12 calendar

months immediately preceding the review, as applicable. The calculation of size shall be based solely upon the size standards and methods of calculation identified by the U.S. Small Business Administration (SBA) including, without limitation those set forth in 13 C.F.R. part 121, subpart A, secs. 121.101 through 121.107, and sec. 121.201, any amendment or successor thereto, or any other document defining such size standards or the calculation thereof that has been fully and finally adopted by the SBA. The review shall be applicable to business entities applying for initial certification as an MBE, SBE or WBE or to certified MBEs, SBEs or WBEs, provided that such review may not be initiated until the applicant or certified MBE, SBE or WBE has established a business history of sufficient length to allow calculation of size based on the three year financial or 12 month employee data, as applicable.

(b) Following the review described in this section, each certified MBE, SBE, WBE or MBE/SBE/WBE applicant shall be re-evaluated under this section on an annual basis, beginning with the next annual application for re-certification of the business. Provided, however, that if any such business has been subjected to a size evaluation under any provision of this chapter within 180 days immediately preceding the date of its re-certification application, the director of affirmative action may defer a re-evaluation until the annual re-certification next following such date.

(c) All MBEs, SBEs, WBEs and MBE/SBE/WBE applicants shall, upon written request of the director of affirmative action, provide to the director copies of any and all documents, including without limitation financial statements and tax records, requested by the director in connection with the review authorized in subsection (a) of this section, not later than 20 business days following the date of mailing of the request. Failure to timely and completely comply with any such request will authorize the imposition of sanctions under section 15-86 of this Code, or denial of certification in the case of an MBE, SBE or WBE applicant.

(d) Following the review authorized by subsection (a) of this section, the affirmative action division of the mayor's office shall classify each MBE, SBE, WBE or MBE/SBE/WBE applicant whose size meets or exceeds the size standard identified by the SBA for that class of enterprise as an established business enterprise. The classification shall be effective as of the date of mailing the notice provided in section 15-88 of this Code.

(Ord. No. 98-1213, § 3, 12-16-98; Ord. No. 2009-280, § 5.1 (Exh. B), 4-1-09)

Sec. 15-88. Notice, appeal and waiver.

(a) Immediately upon classification of a certified MBE, SBE, WBE or MBE/SBE/WBE applicant, as an established business enterprise pursuant to section 15-87 of this Code, the affirmative action division of the mayor's office shall notify the business so classified of the action by United States certified mail, return receipt requested, addressed to the last known address of the business and deemed given when placed in a United States mail depository.

(b) Each notice shall inform the affected MBE, SBE, WBE or MBE/SBE/WBE applicant of the following matters:

- (1) That the MBE, SBE, WBE or MBE/SBE/WBE applicant has been classified as an established business enterprise;
- (2) That the classification is effective as of the date of mailing of the notice;
- (3) That the MBE, SBE, WBE or MBE/SBE/WBE applicant may appeal the classification or seek a waiver of the classification pursuant to the procedures established under this section;
- (4) That the provisions of section 15-89 of this chapter shall become enforceable with respect to any certified MBE, SBE or WBE one year following the notice of classification, unless the decision is reversed or a waiver is granted and the classification is withdrawn

prior to the expiration of the one-year period; and

(5) That any MBE, SBE or WBE applicant is not eligible for certification based upon the classification as an established business enterprise and will remain ineligible for certification unless and until any withdrawal of the classification as an established business enterprise pursuant to an appeal or a request for waiver conducted under this section.

(c) In order to appeal a classification as an established business enterprise, an MBE, SBE, WBE or MBE/SBE/WBE applicant must submit to the director of affirmative action a written notice of appeal no later than 60 days following the date of mailing of the notice of classification. The sole basis for an appeal shall be that the affirmative action division has incorrectly calculated the size of the business according to SBA standards based upon incorrect information or error in computation. The notice of appeal shall be accompanied by any documentation necessary to demonstrate the asserted error. If the director of the affirmative action division finds that an error or errors were made in calculating the size of the business and that any such error resulted in an incorrect classification as an established business enterprise, the classification shall be withdrawn and the business promptly notified of the withdrawal. If the director finds that no error was made, or that any error would not materially alter the classification, he shall notify the business that the classification is not altered, by certified mail, return receipt requested. The business may within 10 days of the date of mailing of the notice submit to the director of affirmative action a written request for a hearing, which hearing shall be conducted under the procedures set forth in subsections (e) through (g) of this section.

(d) In order to seek a waiver of a classification as an established business enterprise, an MBE, SBE, WBE or MBE/SBE/WBE applicant must submit to the director of affirmative action a written request for a hearing no later than 60 days following the date of mailing of the notice of classification. The written request shall include documentary evidence, including but not limited to financial statements and tax records, relevant to the following criteria:

- (1) Profitability of the enterprise;
- (2) Sales of the enterprise, including whether the enterprise has 55 percent or more of sales, within the period utilized by the division in its classification determination, that are not related to city contracts;
- (3) Ability of the MBE, SBE, WBE or MBE/SBE/WBE applicant to obtain bonding, if the enterprise acts as a prime contractor or in a category in which obtaining bonding is required; and
- (4) Positive comparison of the enterprise's business and financial profile with those of non-MBE/SBE/WBE firms in the same business category based on an objective industry standard.

(e) The director of affirmative action shall notify the affected MBE, SBE, WBE or MBE/SBE/WBE applicant of the place and time of a hearing before the director or his designee to consider an appeal requested under subsection (c) of this section, or a request for waiver of the classification under subsection (d) of this section, or both, as applicable, by United States certified mail, return receipt requested. The hearing shall be set not later than 30 days following receipt of the request, provided that the director or his designee may in his discretion extend such date by a reasonable period for good and sufficient cause shown. Hearings for businesses that have both appealed under subsection (c) of this section and requested a waiver under subsection (d) of this section may be consolidated in a single hearing at the discretion of the director or his designee.

(f) The director shall promulgate written procedures for the conduct of hearings. The director or his designee shall hear each appeal or request for waiver and shall consider only the criteria set forth under subsections (c) and (d)(1) through (d)(4) of this section, as applicable, in determining whether to withdraw the classification of the affected business as an established business

enterprise. The director shall develop objective standards for evaluating each factor set forth under subsections (d)(1) through (d)(4) based upon recognized industry or governmental practices or standards. The burden shall be on the business to demonstrate by clear, convincing and cogent evidence either that a material error in classification was made or that the granting of a waiver is justified by at least two of the criteria set forth in subsections (d)(1) through (d)(4) of this section.

(g) Notwithstanding any provision of this Code or of the rules or regulations of the affirmative action division to the contrary, including any provision for arbitration or mediation of a decision of the director of affirmative action, the decision of the director or his designee regarding appeal or waiver shall be final.

(Ord. No. 98-1213, § 3, 12-16-98; Ord. No. 2009-280, § 5.1 (Exh. B), 4-1-09)

Sec. 15-89. Effect of classification; re-application.

(a) Upon the expiration of one year following the notice of classification as an established business enterprise referenced in section 15-88(a) of this Code, and in the absence of any withdrawal of such classification by the director of affirmative action, each certified MBE, SBE or WBE so classified shall be ineligible for future participation in any city contract as an MBE, SBE or WBE and its certification shall be withdrawn. No application for re-certification shall be granted absent the prior determination of the director of the affirmative action division that the applicant does not meet or exceed the SBA size standards referenced in section 15-87(a) of this Code. Certified businesses whose evaluation results in classification as an established business enterprise shall timely file any re-certification application due prior to expiration of the one year extension of program eligibility referenced in this section, but the application shall not be granted unless and until the classification is withdrawn or waived.

(b) Notwithstanding any provision of this Code or the rules or regulations of the affirmative action division to the contrary, including any provision for arbitration or mediation of a decision of the director of affirmative action, any initial applicant for MBE/SBE/WBE certification who meets the criteria for an established business enterprise at the time of its application and is so classified shall be denied certification on that basis alone and shall have no recourse for the denial except through challenging the classification in the manner set forth in section 15-88 of this chapter. Any and all other matters pertaining to the eligibility of the applicant shall be abated and shall only be reinstated if the classification as an established business enterprise is withdrawn.

(c) The affirmative action division may continue to assist established business enterprises following ineligibility as follows:

(1) Such businesses, if formerly certified by the city, may be continued to be listed in any listing of MBE/SBE/WBE firms in a separate category of established MBE/SBE/WBE firms for the information of other private or public entities; and

(2) Such businesses, if formerly certified by the city, may receive information, counseling and referrals to other agencies supporting business enterprises from the affirmative action division after their classification as established business enterprises.

(d) No sooner than one year following the date of program ineligibility provided in subsection (a) of this section or the denial of certification provided in subsection (b) of this section, any established business enterprise may apply for reinstatement as a fully eligible, certified MBE, SBE or WBE or reinstatement of an application for certification abated under subsection (b) of this section, as applicable, upon demonstrating the existence of one or more of the following conditions:

(1) That the subsequent history from the date of initial classification as an established business enterprise demonstrates that a size calculation as of the date of application for

reinstatement would place the business below the SBA size standards for that category of business;

(2) That the established business enterprise has successfully obtained an SBA size determination from a federal agency authorized to make such a determination, or has prevailed in an SBA size protest under 13 CFR § 121.1001, et seq., as amended, including any judicial review thereof, establishing that the business does not meet or exceed the applicable SBA size standard;

(3) That the SBA size standards have been revised in such a manner that the subject business no longer meets or exceeds the size standard for its category based upon the most recent three-year average for receipts or 12 month average for employees, as applicable; or

(4) That the criteria listed in section 15-88(d) of this Code demonstrate the need to grant a waiver and withdraw the classification of the business as an established business enterprise.

(e) Applications for reinstatement shall be on a form prescribed by the director of the affirmative action division and shall be accompanied by relevant documentary evidence supporting the ground or grounds for reinstatement asserted, as requested by the director.

(f) Within 30 days following receipt of a completed application for reinstatement, the director shall grant the application or deny the application and set the matter for hearing within 30 days of the date of mailing notice of such denial.

(g) The burden on the business applying for reinstatement shall be to demonstrate the existence of one or more of the conditions set forth in subsections d(1) through d(4) of this section by clear, convincing and cogent evidence, to be evaluated by the director under hearing procedures consistent with the nature of the application and, to the extent applicable, with the provisions of subsections (c), (d), (e) and (f) of section 15-88 of this Code. In addition, a business seeking reinstatement under subsection (b)(4) of this section that has previously sought a waiver of classification as an established business enterprise pursuant to section 15-88(d) of this chapter must present evidence of a material and substantial change in circumstances not shown at the preceding hearing, and the director or his designee shall disregard evidence that is repellant or cumulative of the prior hearing on the matter.

(h) The decision of the director of affirmative action or his designee following a hearing on reinstatement shall be final, and any applicant denied reinstatement is to be notified in writing of the decision within ten days following the hearing. No business denied reinstatement may subsequently apply for reinstatement until the expiration of one year from the date of the denial.

(Ord. No. 98-1213, § 3, 12-16-98; Ord. No. 2009-280, § 5.1 (Exh. B), 4-1-09)

EXHIBIT H
CERTIFICATION REGARDING LOBBYING

CERTIFICATION REGARDING LOBBYING

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

(1) No Federally 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 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.

(2) If any funds, other than Federally 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or 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 \$10,000.00 and not more than \$100,000.00 for each such failure.

FORT BEND COUNTY, a body politic and
corporate of the State of Texas

September 27, 2011

Date

By: 

Name: Robert Hebert

Title: County Judge

EXHIBIT I

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

CERTIFICATION REGARDING

DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

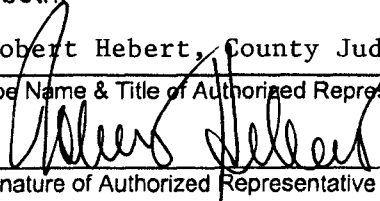
The undersigned certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- (b) Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000.00 or imprisonment for up to five (5) years, or both.

Robert Hebert, County Judge

Type Name & Title of Authorized Representative



Signature of Authorized Representative

September 27, 2011

Date

I am unable to certify to the above statements. My explanation is attached.