

**AGREEMENT BETWEEN FORT BEND COUNTY
AND
FORT BEND HABITAT FOR HUMANITY**

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

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

WITNESSETH:

WHEREAS, the Grantee, has entered into Grant Agreements with the United States of America, M-10-UC-48-0216 and M-11-UC-48-0216, acting by and through its Department of Housing and Urban Development, hereinafter referred to as HUD; and

WHEREAS, the Grantee desires to promote activities that expand the supply of affordable housing and the development of partnerships among the Grantee, local governments, local lenders, private industry and neighborhood-based housing nonprofit organizations; and

WHEREAS, the program established pursuant to the National Affordable Housing Act of 1990 (NAHA) is known as the HOME Investment Partnerships (HOME) Program; and

WHEREAS, the Developer meets the definition of "developer" under the HOME Program which includes provisions that the developer must acquire site control of the property in order to (1) either owns a property and develops a project, or has a contractual obligation to a property owner to develop a project; and (2) performs all the functions typically expected of for-profit developers, and assumes all the risks and rewards associated with being the project developer; and

WHEREAS, the Grantee wishes to engage the Developer to assist the Grantee in utilizing such funds;

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

I.

SCOPE OF AGREEMENT

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

1.02 Use of Funds

The Developer will use HOME funds to construct three (3) new single-family housing units for low-to moderate income individuals or families in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. If the construction of three (3) single-family housing units is complete and there are unspent HOME fund remaining under this contract, the Developer may use the remaining funds to construct an additional single-family housing unit. All regulations governing the HOME program shall apply to any additional units constructed under this Agreement.

1.03 Program Delivery

The Developer shall utilize its grant for new home construction. The Developer shall hold title to three (3) vacant residential properties for use in this project. Property acquisition is not a part of this project. If needed, the Developer will clear suitable vacant land to prepare for development. Developer shall complete a minimum of the following activities:

Activities

Developer will identify vacant properties owned by the developer and available for construction of activities covered under this Agreement. Property identification shall be complete within five (5) months of execution of this Agreement.

If property acquisition is involved, the Developer must consult the Grantee prior to purchasing the property and follow all applicable federal guidelines. The costs associated with any property acquisition are not a part of this project's budget.

The Developer shall submit addresses of property to the Grantee for review and approval. Included in this review shall be a review of the environmental impact of this project.

The Developer shall provide a detailed set of plans, specifications and construction cost estimates and other items for Grantee's approval prior to work commencement.

The Developer shall provide a list of sub-contractors, including addresses, Tax ID Numbers and other requested information, to the Grantee for review and approval prior to work commencement.

The Developer shall construct a minimum of three new single-family housing units.

The Developer shall submit a plan describing how the HOME-assisted units will be marketed and sold.

The Developer will approve the applicants for program eligibility and submit applicants' eligibility documentation to the Grantee for review and approval. If at any time it is determined that the applicants are not eligible to receive services under the HOME Investment Partnerships Program, the Grantee may withhold funding, or request a reimbursement from the Developer, of all or a portion of funds provided under this Agreement.

The Developer shall submit a detailed budget for each house that includes all anticipated costs of the houses including the construction costs, soft costs such as surveys, architectural fees, appraisals, closing costs, construction management, etc.

The Developer will submit to the Grantee timesheets signed by volunteers and a site supervisor to satisfy match requirements.

The Developer will submit to the Grantee documentation of donated goods and services to satisfy match requirements.

The Developer shall submit a project schedule showing timeline for constructing and selling the houses.

The Developer will submit plans and specifications to the Grantee for review and approval.

The Developer will inspect the construction of the house at its own expense and allow the Grantee or the Grantee's representative to inspect the house during construction with or without a scheduled appointment.

1.04 Project Implementation

The Developer shall utilize its grant for project implementation. Project implementation shall include but not be limited to the following activities:

Construction of a minimum of three (3) houses which shall begin within three (3) months of property identification and shall be complete within fifteen 15 months of execution of this Agreement.

1.05 General Administration

The Developer or its Representatives shall be responsible for the administration of the construction program.

1.06 HOME Program Objectives

The Developer certifies that the activities carried out with funds provided under this Agreement will meet all of the HOME Program's Objectives - 1) provide decent affordable housing to low-income households, 2) expand the capacity of non-profit housing providers, 3) Strengthen the ability of state and local governments to provide housing, and 4) Leverage private-sector participation.

II.

TIME OF PERFORMANCE

2.01 Services of the Developer shall begin upon execution of this agreement and end fifteen (15) months after the contract is executed.

III.

PROJECT COSTS

3.01 For and in consideration of the Project as herein set forth, the Grantee agrees to fund project costs not to exceed the total sum of One Hundred Seventy Two Thousand One Hundred Ninety Eight and No/100 Dollars (\$172,198.00) as set forth in the Budget for HOME Funds, which shall be in full and total compensation for payment of all expenses allowed under this Agreement and the Grant Agreement with HUD. Construction costs include but are not limited to demolition, clean-up, soil leveling, soil testing, engineering costs, permits and fees, third-party inspections and contractor costs. Developer shall verify eligibility of construction costs not listed above with Grantee prior to expenditure of funds.

Budget for HOME Funds **\$172,198.00**

Budget Line Item

Project Related Soft Costs:	\$23,000.00
Construction Inspections and Oversight	
Energy Star Inspections	
Permits and Fees	
Surveys	
On-Site Rentals (storage, waste and trash receptacles)	
 Project Related Hard Costs	 \$149,198.00
Construction Materials	
Contract Services	
Site work and Landscaping	

Match Provided by Developer

Budget Line Item	Match
Volunteer Labor	\$30,000.00
Donated Construction Materials	\$15,000.00

3.02 The Grantee shall not be liable for the payment of expenses or costs, which are not allowable under the terms of this Agreement and the Grant Agreement with HUD.

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

3.04 The Developer must provide match that totals not less than twenty five percent (25%) of the HOME funds drawn over the life of the project. Match contributions must follow HOME regulations at 24 CFR 92.218, 24 CFR 92.219, 24 CFR 92.220 and 24 CFR 92.221.

IV.

AFFORDABILITY

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

V.

PAYMENT

5.01 It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed One Hundred Seventy Two Thousand One Hundred Ninety Eight and No/100 Dollars (\$172,198.00). Developer shall submit invoices monthly upon delivery of the Project. Such invoices shall include any other documentation requested by the Grantee. All invoices shall be approved by the Fort Bend County Community Development Department prior to payment.

5.01 The Developer must submit final invoice within fifteen (15) days of the end of this Agreement. Back-up documentation must be dated on or before April 30, 2013.

VI.

SOURCE OF FUNDING

6.01 The Grantee has no County funds for the costs of goods and services to be rendered under this Agreement. It is expressly agreed and understood that this Agreement is predicated upon and conditioned on the Grantee receiving funds for the purpose of paying the entire obligation of the Grantee under this Agreement from funds to be received from the U. S. Department of Housing and Urban Development, by virtue of Grant No. M-10-UC-48-0216 and M-11-UC-48-0216, entitled HOME Investment Partnerships Program. Accordingly, notwithstanding anything herein to the contrary, the maximum liability of the Grantee under the terms and provisions of this Agreement shall not exceed \$172,198.00 amount actually received by the Grantee from HUD pursuant to the Block Grant.

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

VII.

AGREEMENT DOCUMENTS

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

Exhibit A – HOME Program Requirements

Exhibit B – Certification for Contracts, Grants, Loans and Cooperative Agreements

Exhibit C – 24 CFR 92.254 Qualification as Affordable Housing: Homeownership

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

VIII.

NOTICE

8.01 Unless otherwise provided in this Agreement, any notice provided for or permitted to be given must be in writing and delivered in person or by depositing same in the United States mail, postpaid and registered or certified, addressed to the party to be notified, with return receipt

requested, or by delivering the same to an officer of such party. Notice deposited in the mail as described above shall be conclusively deemed to be effective, unless otherwise stated in this Agreement from and after the expiration of three (3) days after it is so deposited.

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

<u>Grantee</u>	<u>Developer</u>
Marilynn Kindell, Director Fort Bend County Community Development Department 301 Jackson Richmond, TX 77469	Executive Director Fort Bend Habitat for Humanity 13570 Murphy Road Stafford, TX 77477

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

IX.

RIGHTS OF TERMINATION

9.01 Grantee may terminate this Agreement whenever such termination is determined to be in the best interest of Grantee, in event of Developer's default, inability, or failure to perform or to comply with any of the terms herein, or for other good cause. Developer agrees and will require any and all subcontractors to agree that in all documents created or produced by whatsoever entity as part of the performance of this Agreement or any subagreement hereunder, language will be inserted that will provide that any HOME funds, program income or assets purchased with same, will revert to Grantee in the event of Developer's or any subDeveloper's default, inability or failure to perform under this Agreement.

9.02 Termination will be effected by written notice to Developer, specifying the portions of the agreement affected and the effective date of termination. Upon Developer's receipt of such termination notice, Developer will:

1. Stop work under the agreement on the date and to the extent specified by the Grantee;
2. Cease expenditures of HOME funds, except as necessary for completion of the portions of the agreement not terminated; and

3. Terminate all orders and agreements to the extent that they relate to terminated portions of the agreement.

9.03 Developer will return to Grantee any unused monies previously distributed under this Agreement within thirty (30) days of the effective date of agreement termination.

9.04 Grantee will have no responsibility or liability for Developer's expenditures or actions occurring after the effective date of agreement termination.

9.05 HOME funds provided hereunder may not be used as collateral for loans to Developer to defray program operation expenses, and any attempted use of HOME funds for this purpose will result in termination of this Agreement by Grantee.

X.

REVERSION OF ASSETS AND PROGRAM INCOME

10.01 Reversion of assets is not applicable to this project.

10.02 There is no program income, as defined in 24 CFR 88.25, anticipated for this program.

XI.

CONSTRUCTION PROCESS

11.01 The Developer will select the contractors that will perform the work. Prior to entering into contracts with the selected contractors, the Developer must submit the name of the contractors and any other information needed by the Grantee to determine if the contractor has been barred from participating in any federal program. The Developer must demonstrate that the amounts being paid to the selected contractors are reasonable.

11.02 The Developer will execute all construction contracts and sign a notice to proceed for the HOME-funded houses. All requests for payment from the contractor must be initially submitted to the Developer for payment. The Developer will inspect the construction work, make decisions on the quality of work and recommend the approval of all construction payments. The Grantee may also inspect the property and approve all payments. If the Grantee does not authorize a payment, it will notify the Developer. Prior to making any final payments, lien releases must be received from the contractor, all subcontractors and any business that has provided materials and who has filed a Notice to Owner and all building permits must have been closed out by the local jurisdiction.

XII.

EVALUATION/REPORTING

12.01 The Developer shall provide the Grantee, in a form prescribed by Grantee, quarterly reports summarizing progress and monthly financial information for monitoring and evaluating all aspects of project activities. The format prescribed shall be in conformance with HUD reporting requirements and Grantee reporting procedures. The monthly financial information may be provided as part of the financial reimbursement process. The Grantee shall have access to and be able to make copies and transcriptions of such records as may be necessary in the determination of the Grantee or HUD to accomplish this obligation.

12.02 Developer shall submit client data reports to Grantee on a monthly basis. The client data reports will contain eligibility information about the households involved in the program. This information will include family size, income, address, and census tract.

12.03 Such reports and statements will be signed by a duly-authorized agent of Developer and will be submitted by the 10th of the month following the month, which is reported.

12.04 The Developer must submit to the Grantee semi-annually a report on participant identification, minority- and women-owned businesses and relocation and real property acquisition in a format supplied to the Developer by the Grantee.

XIII.

AFFIRMATIVE MARKETING

13.01 The affirmative marketing procedures and requirements must be followed for HOME-assisted housing containing 5 or more housing units as outlined in Exhibit B. The affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing. The Grantee will annually assess the affirmative marketing program to determine the success of affirmative marketing actions and any necessary corrective actions.

XIV.

FAITH-BASED ORGANIZATIONS

14.01 Within the framework of constitutional church-state guidelines, faith-based organizations are able to compete on an equal footing with other organizations for HOME funds. Organizations that are faith-based are eligible, on the same basis as any other organization to participate in HOME-funded programs and activities. A faith-based organization that receives HOME funds may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOME funds to support any inherently

religious activities, such as worship, religious instruction, or proseelytization. Faith-based organizations, like all organizations implementing HOME-funded programs, must serve all eligible beneficiaries without regard to religion. Faith-based organizations may receive HOME funds to acquire, construct, or rehabilitate buildings and other real property as long as the funds only pay the costs attributable to HOME activities

XV.

REQUESTS FOR DISBURSEMENTS OF FUNDS

15.01 The Developer may not request disbursement of funds under this Agreement until funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

XVI.

PROJECT REQUIREMENTS

16.01 Maximum Per-Unit Subsidy Amount. The total amount of HOME funds that may be invested on a per-unit basis in affordable housing may not exceed the per-unit dollar limitations established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C 17151(d)(3)(ii).

16.02 Subsidy Layering. The Grantee shall evaluate the project in accordance with the Grantee's subsidy layering guidelines. The Grantee will not invest any more HOME funds, in combination with other governmental assistance, than is necessary to provide affordable housing.

16.03 Property Standards. Developer must construct housing to meet all applicable local codes, standards, ordinances, and zoning ordinances at the time of project completion. In absence of a local code for new construction, Developer must construct the houses according to the most recent International Building Code.

XVII.

ENFORCEMENT OF AGREEMENT

17.01 According to 24 CFR 85.43, suspension or termination may occur if the Developer materially fails to comply with any term of this Agreement. Also, according to 24 CFR 85.44, the Grantee may terminate this Agreement for convenience.

XVIII.

MONITORING

18.01 Not less than annually, Grantee will review the performance of the Developer assisted with HOME. For multi-family housing, each review will include on-site inspection to determine compliance with housing codes. For rental projects containing 25 HOME-assisted units or less, an on-site review will be made once within each two-year period. The results of each review will be included in the Grantee's performance report and will be made available to the public.

XIX.

RECORDKEEPING

19.01 Developer will cooperate fully with Grantee in monitoring the Program. In this regard, Developer agrees to keep records sufficient to document its compliance with all applicable laws, regulations, and agreement terms. In addition, Developer agrees to keep records to fully document all expenditures charged to the HOME Program. The documentation must support the amounts charged to the Program and demonstrate that the expenditures were appropriate to the stated goals of the Program and allowable under applicable federal, state and Grantee guidelines. All records pertaining to this Agreement shall be retained for fifteen (15) years following the date of termination of this Agreement. Developer may destroy Program records at the end of this fifteen (15) year period if no outstanding audit finding exists. Grantee, HUD, and the United States Comptroller General, or their representatives, shall have access to any books, documents, records and papers relating to the operations of Developer under this Agreement for the purpose of audit, examination, exception and transcription at all reasonable hours at all offices of Developer. The Grantee reserves the right to perform an audit of the funds received under this Agreement in order to ensure Developer's compliance with applicable federal regulations.

XX.

AUDITS

20.01 If the Developer expends \$500,000 or more in a year in Federal Funds, the Developer shall have a single audit or program-specific audit in accordance with A-133, as appropriate. The audit may cover either Developer's fiscal year during which this Agreement is in force or cover the period of this Agreement. This audit must be prepared by an independent certified public accountant, be completed within twelve (12) months following the end of the period being audited and be submitted to Grantee within thirty (30) days of its completion.

20.02 Grantee reserves the right to perform an audit of Developer's program operations and finances at any time during the term of this Agreement and within twelve (12) months following the completion of this project. Developer agrees to allow access to all pertinent materials as described above. If such audit reveals a questioned practice or expenditure, such questions must be resolved within fifteen (15) days after notice to Developer of such questioned practice or

expenditure. If questions are not resolved within this period, Grantee reserves the right to withhold further funding under this and/or future agreement(s).

20..03 If, as a result of any audit, it is determined that Developer has misused, misapplied, or misappropriated all or any part of the grant funds described herein, Developer agrees to reimburse the Grantee the amount of such monies so misused, misapplied or misappropriated, plus the amount of any sanction, penalty or other charge levied against Grantee because of such misuse, misapplication or misappropriation.

XXI.

CLOSEOUTS

21.01 HOME funds from each individual Federal fiscal year (i.e., the allocation and any reallocated funds from the particular federal fiscal year appropriation) will be closed out when all the following criteria have been met:

- (1) All funds to be closed out have been drawn and expended for completed project cost, or funds not drawn down and expended have been de-obligated by HUD;
- (2) The matching requirements in 92.218 have been met;
- (3) Project Completion Reports for all projects using funds to be closed out have been submitted and entered into the C/MI System;
- (4) The Grantee has been reviewed and audited and HUD has determined that all requirements, except for affordability, have been met or all monitoring and audit findings have been resolved.
 - (i) The Grantee's most recent audit report must be received by HUD. If the audit does not cover all funds to be closed out, the closeout may proceed, provided the Grantee agrees in the Closeout Report that any costs paid with the funds that were not audited must be subject to the Grantee's next single audit and that the Grantee may be required to repay to HUD any disallowed costs based on the results of the audit.
 - (ii) The on-site monitoring of the Grantee by the HUD Field Office must include verification of C/MI System data reflected in the Closeout Report and reconciliation of any discrepancies which may exist between C/MI System data and Grantee records.

XXII.

APPLICABLE LAWS

22.01 Federal Laws and Regulations

Developer agrees to comply with the following laws and the regulations issued thereunder as they are currently written or are hereafter amended during the performance of this Agreement:

Title VI of Civil Rights Act of 1964 (42 USC 20000d et seq.)

Title VIII of Civil Rights Act of 1968 (42 USC 3601 et seq.)

Executive Orders 11063, 11246, as amended by 11375 and as supplemented by

Department of Labor regulations (41 CFR Part 60)
Age Discrimination Act of 1975 (42 USC 6101 et seq.)
Section 504 of the Rehabilitation Act of 1973 (29 USC 794)
Immigration Reform and Control Act of 1986, specifically including the provisions
requiring employer verifications of legal worker status of its employees
Housing and Community Development Act of 1987 (Pub. L. 100-242, 101 Stat. 1815,
as amended)
The Americans with Disabilities Act of 1990 (42 USC 12101 et seq.)
National Affordable Housing Act (NAHA) of 1990
OMB Circulars A-110 and A-122

Developer, in the operation of its program, will also comply with Office of Management and budget Circular A-122 and attachments and revisions thereto, regarding principles for determining costs for HOME-funded programs. Developer further agrees to comply with all applicable laws and regulations concerning lead-based paint, including, but not limited to 24 CFR Sec. 35, as prescribed in Section 92.355, and will require any subcontractors or subsidiaries to likewise comply.

22.02 Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701

As the work performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701, Developer covenants to abide by the requirements of the said Section 3. It requires as follows:``

1. That, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area; and
2. That, to the greatest extent feasible, agreements for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

Developer 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 Department issued thereunder prior to the execution of this Agreement. Developer certifies and agrees that it is under no contractual or other disability that would prevent it from complying with these requirements.

Developer agrees that it will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, if any, a notice advising the said labor organization or worker's representatives 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.

Developer agrees that it will include the said Section 3 clause in every subagreement for work in connection with the project, and will, at the direction of the Grantee, take appropriate action pursuant to the subagreement upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. Developer agrees that it will not subagreement with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subagreement unless the subcontractor has first provided Developer with a preliminary statement of ability to comply with the requirements of these regulations.

Grantee and Developer understand and agree that compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement shall be a condition of the Federal financial assistance provided to the project, binding upon the Grantee and the Developer, and their respective successors, assignees and subcontractors. Failure to fulfill these requirements shall subject Developer and its subcontractors, its successors and assignees, to those sanctions specified by the Grant Agreement through which Federal assistance is provided and to such sanctions as are specified by 24 CFR 135.

22.03 Clean Air Act; Clean Water Act; Environmental Protection Agency Acts and Regulations

This Agreement is subject to the requirements of Section 306 of the Clean Air Act, as amended (42 USC 1857(h) et seq.), Section 508 of the Clean Water Act (33 USC 1368), Water Pollution Control Act, as amended (33 USC 1251 et seq.), and the regulations of the Environmental Protection Agency with respect thereto at 40 CFR, Part 15, as amended from time to time, and Executive Order 11738 (41 USC 7606 nt.). In compliance with said regulations, Developer agrees, and with respect to any nonexempt transaction, shall require each subcontractor to agree to the following requirements:

1. A stipulation that no facility to be utilized in the performance of nonexempt agreement or subagreement work is included on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20;
2. Compliance with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857c-8), and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318), relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 380 and all regulations and guidelines issued hereunder;
3. A stipulation that, as a condition for the award of the agreement, prompt notice will be given of any notification received from the Director, Office of Federal Activities, or EPA indicating that a facility utilized or to be utilized for the agreement is under consideration to be listed on the EPA List of Violating Facilities;
4. Agreement by Developer that it will include, or cause to be included, the criteria and requirements in Paragraphs (a) through (d) of this Section in every nonexempt

subagreement, requiring that Developer will take such action as the Grantee may direct as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility that has given rise to a conviction under the Clean Air Act or the Clean Water Act.

22.04 Other Laws

Developer covenants and agrees that its officers, members, agents, employees, program participants, and subcontractors shall abide by and comply with all other laws, federal, state, and local, relevant to the performance of this Agreement, including all ordinances, rules, and regulations of Fort Bend County and the National Affordable Housing Act of 1990 and all regulations pertaining thereto. Developer further promises and agrees that it has read, and is familiar with, terms and conditions of the HOME Program under which funds are granted and that it will fully comply with same. It is agreed and understood that, if Grantee calls the attention of Developer of any such violations on the part of Developer or any of its officers, members, agents, employees, program participants or subcontractors, then Developer shall immediately desist from and correct such violation.

XXIII.

PROHIBITION AGAINST DISCRIMINATION

23.01 Generally

Developer, in the execution, performance, or attempted performance of this Agreement and agreement, will not discriminate against any person or persons because of sex, race, religion, color or national origin, nor will Developer permit its officers, members, agents, employees, subcontractors or program participants to engage in such discrimination.

23.02 Employment

During the performance of this Agreement, Developer agrees, and will require all of its subcontractors to agree, as follows:

1. Developer will not unlawfully discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Developer will take affirmative action to ensure that applicants are employed and that 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. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. Developer, will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

23.03 Age

In accordance with the policy of the Executive Branch of the federal government, Developer covenants that neither it, nor any of its officers, members, agents, employees, program participants or subcontractors, while engaged in performing this Agreement, shall, in connection with the employment, advancement or discharge of employees or in connection with the terms, conditions or privileges of their employment, discriminate against persons because of their age or because of any handicap, except on the basis of a bona fide occupational qualification, retirement plan or statutory requirement.

Developer further covenants that neither it, nor its officers, members, agents, employees, subcontractors, program participants or persons acting on their behalf, shall specify, in solicitations or advertisements for employees to work on this Agreement, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

23.04 Disability

In accordance with the provisions of the Americans With Disabilities Act of 1990 ("ADA"), Developer warrants that it and any and all of its subcontractors will not unlawfully discriminate on the basis of disability in the provision of services to the general public, nor in the availability, terms and/or conditions of employment for applicants for employment with, or employees of Developer or any of its subcontractors. Developer warrants it will fully comply with ADA's provisions and any other applicable federal, state and local laws concerning disability and will defend, indemnify and hold Grantee harmless against any claims or allegations asserted by third parties or subcontractors against Grantee arising out of Developer's and/or its subcontractors' alleged failure to comply with above-referenced laws concerning disability discrimination in the performance of this Agreement.

XXIV.

PROHIBITION AGAINST INTEREST

24.01 No member, officer or employee of Grantee or its designees, or agents; no member of the governing body of the locality in which the program is situated; and no other public official of such locality or localities, who exercises any functions or responsibilities with respect to the program funded hereunder during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or subagreement, or the proceeds thereof, for work to be performed hereunder. Developer shall incorporate, or cause to be incorporated, like language prohibiting such interest in all agreements and subagreements hereunder.

24.02 No officer, employee, member, or program participant of Developer or its subcontractors shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder or be financially interested, directly or indirectly, in the sale to Developer of any land, materials, supplies, or services purchased with any funds transferred hereunder, except on behalf of Developer, as an officer, employee, member, or program participant. Any willful violation of this paragraph with the knowledge, expressed or implied, of Developer or its subcontractors shall render this Agreement voidable by Fort Bend County.

XXV.

NON-ASSIGNMENT

Developer will not assign any or all of its rights or responsibilities under this Agreement without the prior written approval of Grantee. Any purported assignment without such approval will be a breach of this Agreement and void in all respects.

XXVI.

INDEPENDENT DEVELOPER

26.01 Developer shall operate hereunder as an independent Developer and not as an officer, agent, servant or employee of Grantee. Developer shall have exclusive control of, and the exclusive right to control, the details of the work and services performed hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, licenses or invitees. The doctrine of respondent superior shall not apply as between Grantee and Developer, its officers, members, agent, servants, employees, subcontractors, program participants, licenses or invitees, and nothing herein shall be construed as creating a partnership or joint enterprise between Grantee and Developer. It is expressly understood and agreed that no officer, member, agent, employee, license or invitee of the Developer, nor any program participant hereunder, is in the paid service of Grantee and that Grantee does not have the legal right to control the details of the tasks performed hereunder by Developer, its officers, members, agents, employees, subcontractors, program participants, licenses or invitees.

26.02 Grantee shall in no way, nor under any circumstances, be responsible for any property belonging to Developer, its officers, members, agents, employees, subcontractors, program participants, licenses or invitees, which may be lost, stolen, destroyed or in any way damaged; and Developer hereby indemnifies and holds harmless Grantee and its officers, agents, and employees from and against any and all claims or suits.

XXVII.

INDEMNITY; INSURANCE; BOND

Developer covenants and agrees to indemnify, hold harmless and defend, at its own expense, Grantee and its officers, agents, servants, and employees from and against any and all claims or suits for property loss of damage and/or personal injury, including death, to any and all persons of whatsoever kind of character, whether real or asserted, arising out of or in connection with the execution, performance, attempted performance or nonperformance of this Agreement and agreement and/or the operations activities and services of the Program described herein, whether or not caused, in whole or in part, by alleged negligence of officers, agents, servants, employees, Developers, or subcontractors of Grantee; and Developer hereby assumes all liability and responsibility of Grantee and its officers, agents, servants, and employees for any and all claims or suits for property loss or damage and/or personal injury, including death, to any and all persons, of whatsoever kind or character, whether real or asserted, arising out of or in connection with the execution, performance, attempted performance, or nonperformance of this Agreement and/or the operations, activities and services of the programs described herein, whether or not caused in whole or in part, by alleged negligence of officers, agents, servants, employees, Developers or subcontractors of Grantee. Developer likewise covenants and agrees to and does hereby indemnify and hold harmless Grantee from and against any and all injury, damage or destruction of property of Grantee, rising out of or in connection with all acts or omissions of Developer, its officers, members, agents, employees, subcontractors, invitees, licensees, or program participants, or caused, in whole or in part, by alleged negligence of officers, agents, servants, employees, Developers, or subcontractors of Grantee.

Prior to commencement of service, the Developer shall furnish the Grantee with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to Grantee. The Developer shall provide certified copies of insurance endorsements and/or policies if requested by the Grantee. The Developer shall maintain such insurance coverage from the time services commence until services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of service.

Commercial General Liability Insurance

Developer shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Limit amount will increase according to amount of contract or risk to the Grantee. Policy shall cover the liability for bodily injury, personal injury and property damage and products/completed operations arising out of the business operations of the policyholder.

Business Automobile Liability Insurance

Developer shall maintain Auto Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

Workers' Compensation Insurance

Developer shall maintain workers' compensation insurance with statutory limits. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

Employers' Liability Insurance

Developer shall maintain employers' liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

All Liability insurance policies shall name the Grantee as an additional insured. Furthermore, the Workers Compensation and Liability Insurance carriers shall grant a waiver of subrogation in the Grantee's favor.

If required coverage is written on a claims-made basis, Developer warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the contract is completed.

XXVIII.

WAIVER OF IMMUNITY

If Developer, as a charitable or nonprofit organization, has or claims an immunity or exemption (statutory or otherwise) from and against liability for damages or injury, including death, to persons or property, Developer hereby expressly waives its rights to plead defensively such immunity or exemption as against Grantee. This section shall not be construed to affect a governmental entity's immunities under constitutional, statutory, or common law.

XXIX.

MISCELLANEOUS PROVISIONS

It is expressly understood and agreed by and between the parties hereto that this Agreement is wholly conditioned upon the actual receipt by Grantee of federal HOME and ADDI funds; that all monies distributed to Developer hereunder shall be exclusively from federal monies received under said grant, not from any monies of Grantee; and that if such funds under said grant are not timely forthcoming, in whole or in part, Grantee may, at its sole discretion, terminate this Agreement and Grantee shall not be liable for payment for any work or service performed by Developer under or in connection with this Agreement.

All terms of this Agreement shall apply to any and all subcontractors of Developer which are in any way paid with HOME or CDBG funds or who perform any work in connection with Developer's program.

The provisions of this Agreement are severable, and, if for any reason a clause, sentence, paragraph, or other part of this Agreement shall be determined to be invalid by a court or federal or state agency, board, or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions which can be given effect without the invalid provisions.

The failure of the Grantee to insist upon the performance of any term or provision of this Agreement or to exercise any right herein conferred shall not be construed as a waiver of relinquishment to any extent of the Grantee's right to asset or rely upon any such term or right on any future occasion.

Should any action, whether real or asserted, at law or in equity, arise out of the execution, performance, attempted performance or nonperformance of this Agreement, venue for said action shall lie in Fort Bend County, Texas.

This written instrument and the exhibits attached hereto, which are incorporated by reference and made a part of this Agreement for all purposes, constitute the entire agreement between the parties hereto concerning the work and services to be performed hereunder, and any prior or contemporaneous, oral, or written agreement which purports to vary from the terms hereof shall be void. Any amendments to the terms of this Agreement must be in writing and must be approved by each party to this Agreement.

XXX.

AMENDMENTS

Grantee or Developer may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grant governing body. Such amendments shall not invalidate this Agreement, nor relieve or release Grantee or Developer from its obligations under this Agreement.

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

XXXI.

EXECUTION

This Agreement shall become effective upon execution by County.

FORT BEND COUNTY:

Robert E. Hebert

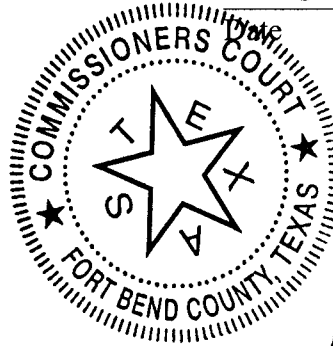
Robert E. Hebert, County Judge

3-13-2012

ATTEST:

Dianne Wilson

Dianne Wilson, County Clerk



APPROVED AS TO FORM:

May B. Reardon

Assistant County Attorney

2/8/2012

Date

APPROVED: COUNTY PROJECT MANAGER

Marilynn Kindell

Marilynn Kindell, Director
Fort Bend County Community Development Department

FORT BEND HABITAT FOR HUMANITY:

Jerry A...

Board President

3/1/2012

Date

ATTEST:

Mary Ellen Walheim

Board Secretary

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$172,198.00 to accomplish and pay the obligation of Fort Bend County under this contract.

Robert E. Sturdivant

Robert E. Sturdivant, County Auditor

EXHIBIT A

PROGRAM REQUIREMENTS

Equal opportunity and fair housing.

- (a) Equal opportunity. No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds. In addition, HOME funds must be made available in accordance with the following:
 - (1) The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;
 - (2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;
 - (3) The requirements of Executive Order 11246 (3 CFR 1964-65, Comp., p.339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR chapter 60;
 - (4) The requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) the purpose of which is to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very-low-income persons, particularly those who are recipients of government assistance for housing.
 - (5) The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Consistent with HUD's responsibilities under these Orders, each Grantee and Developer must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. Developer must prescribe procedures acceptable to Grantee and HUD to establish and oversee a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all agreements entered into by the Developer with such persons or entities, public and private, in order to facilitate the activities of the Developer to provide

affordable housing authorized under this Act of any other federal housing law applicable to such Grantee and Developer. Section 85.36(e) of this title describes actions to be taken by a Grantee and Developer to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

- (b) Fair housing. In accordance with the certification made with its consolidated plan, each Grantee and Developer must affirmatively further fair housing. Actions described in 570.904(c) of this title will satisfy this requirement.

Environmental review.

- (a) General. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58.
- (b) Responsibility for review.
 - (1) The Grantee or insular area must assume responsibility for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. In accordance with 24 CFR part 58, the Grantee or insular area must carry out the environmental review of an activity and obtain approval of its request for release of funds before HOME funds are committed for the activity.

Displacement, relocation, and acquisition.

- (a) Minimizing displacement. Consistent with the other goals and objectives of this part, the Grantee and Developer must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project. (HOME monies are used by a first-time homebuyer to purchase and occupy a property, which has been used as rental housing. The tenant must leave to allow occupancy by the new owner. The tenant is considered displaced.).
- (b) Temporary relocation. The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:
 - (1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.
 - (2) Appropriate advisory services, including reasonable advance written notice of
 - (i) The date and approximate duration of the temporary relocation;
 - (ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

- (iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and
 - (iv) The provisions of paragraph (b)(1) of this section.
- (c) Relocation assistance for displaced person.
- (1) General. A displaced person must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR part 24.
 - (2) Displaced Person.
 - (i) For purpose of paragraph (c) of this section, the term displaced person means a person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:
 - (A) After notice by the owner to move permanently from the property, if the move occurs on or after:
 - (1) The date of the submission of an application to the Grantee or HUD, if the applicant has site control and the application is later approved; or
 - (2) The date the Grantee approves the applicable site, if the applicant does not have site control at the time of the application; or
 - (B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the Grantee or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or
 - (C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
 - (1) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of

- (i) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or
 - (ii) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or
- (2) The tenant is required to relocate temporarily, does not return to the building/complex, and either
 - (i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
 - (ii) Other conditions of the temporary relocation are not reasonable; or
- (3) The tenant is required to move to another dwelling unit in the same/building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.
- (ii) Notwithstanding paragraph (c)(2)(i) of this section, a persons does not qualify as a displaced person if:
 - (A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, state or local law, or other good cause, and the Grantee determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.
 - (B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;
 - (C) The person is ineligible under 49 CFR 24.2(g)(2); or

- (D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.
 - (iii) The Grantee may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.
- (3) Initiation of negotiations. For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term initiation of negotiations means the execution of the agreement covering the acquisition, rehabilitation, or demolition.
- (d) Optional relocation assistance. The Grantee and Developer may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section. The Grantee and Developer may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by the State or local law, the Grantee must adopt a written policy available to the public that describes the optional relocation assistance that is has elected to furnish and provides for equal relocation assistance within each class of displaced persons.
- (e) Residential antidisplacement and relocation assistance plan. Each Grantee shall comply with the Residential Antidisplacement and Relocation Assistance Plan requirements described at 24 CFR 570.606(c), or, in the case of a State-administered HOME Program, the requirements at 24 CFR 570.488(c). These policies require one-for-one replacement of low/moderate-income housing demolished or converted to another use and the provisions of relocation assistance to lower income persons displaced by such conversion or by demolition.
- (f) Real property acquisition requirements. The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.
- (g) Appeals. A person who disagrees with the Grantee's determination concerning whether the person qualifies as a displaced person, or the amount of the relocation assistance for which the person may be eligible, may file a written appeal of that determination with the Grantee. A low-income person who is dissatisfied with the Grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.
- (h) Responsibility of Grantee.
 - (1) The Grantee must certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the Grantee to comply.
 - (2) The cost of required relocation assistance is an eligible project cost. This cost also may be paid from State or local funds, or funds available from other sources.

Lead-based paint. Housing assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, Grantee and Developer are responsible for testing and abatement activities.

Conflict of Interest.

No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principle residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

Upon written request of a housing owner or developer, the Grantee may grant an exception to this provision.

Debarment and suspension. As required by 24 CFR, each Grantee must require participants in lower tier covered transactions to include the certification in appendix B of 24 CFR part 24 (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from covered transaction) in any proposal submitted in connection with the lower tier transactions. A Grantee may rely on the certification, unless it knows the certification is erroneous. (See Exhibit A.)

Flood Insurance.

- (a) Under the Flood Disaster Protection Act of 1973, HOME funds may not be used with respect to the acquisition, new construction, or rehabilitation of project located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:
 - (1) The community in which the area is situated is participating in the National Flood Insurance Program, or less than a year has passed since FEMA notification regarding such hazards; and
 - (2) Flood insurance is obtained as a condition of approval of the commitment.
- (b) Grantees located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

Executive Order 12372.

- (a) General. Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and the Department's implementing regulations at 24 CFR Part 52, allow each state to establish its own process for review and comment on proposed Federal financial assistance programs;

- (b) **Applicability.** Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

EXHIBIT B

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

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

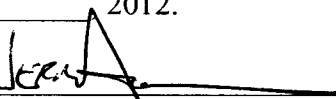
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection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

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

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

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

Executed this 1st date of March 2012.

By 
(Signature)
JEFF ANDERSON
(Typed or Printed Name)
President
(Title, if any)

Covered Action: HOME INVESTMENT PARTNERSHIPS PROGRAM
(Type and Identity of Program, Project or Activity)

EXHIBIT C

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 92_HOME INVESTMENT PARTNERSHIPS PROGRAM--Table of Contents

Subpart F_Project Requirements

Sec. 92.254 Qualification as affordable housing: Homeownership.

- (a) Acquisition with or without rehabilitation. Housing that is for acquisition by a family must meet the affordability requirements of this paragraph (a).
 - (1) The housing must be single family housing.
 - (2) The housing must be modest housing as follows:
 - (i) In the case of acquisition of newly constructed housing or standard housing, the housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area, as described in paragraph (a)(2)(iii) of this section.
 - (ii) In the case of acquisition with rehabilitation, the housing has an estimated value after rehabilitation that does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section.
 - (iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single-family properties, the participating jurisdiction may use the Single Family Mortgage Limits under Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) (which may be obtained from the HUD Field Office) or it may determine 95 percent of the median area purchase price for single family housing in the jurisdiction, as follows. The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. The 95 percent of median area purchase price must be established in accordance with a market analysis which ensured that a sufficient number of recent housing sales are included in the survey. Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a two-month reporting period; for less than 250 sales per month, at least a three-month reporting period. The data must be listed in ascending order of sales price. The address of the listed properties must include the location within the participating jurisdiction. Lot, square and subdivision data may be substituted for the street address. The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire participating jurisdiction. To determine the median, take the middle sale on the list if an odd number of sales and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by .95 to determine the 95 percent of the median area purchase price. This information must be submitted to the HUD Field Office for review.
- (3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section.

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

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

- (5) Resale and recapture. To ensure affordability, the participating jurisdiction must impose either resale or recapture requirements, at its option. The participating jurisdiction must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate.
- (i) Resale. Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as its principal residence. The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers. The period of affordability is based on the total amount of HOME funds invested in the housing.
- (A) Except as provided in paragraph (a)(5)(i)(B) of this section, deed restrictions, covenants running with the land, or other similar mechanisms must be used as the mechanism to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.
- (B) Certain housing may be presumed to meet the resale restrictions (i.e., the housing will be available and affordable to a reasonable range of low-income homebuyers; a low-income homebuyer will occupy the housing as the family's principal residence; and the original owner will be afforded a fair return on investment) during the period of affordability without the imposition of enforcement mechanisms by the

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