

**FIRST MODIFICATION OF AGREEMENT**

This Modification 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 the "Grantee" and Fort Bend Community Revitalization Projects, a nonprofit corporation under the laws of the State of Texas, hereinafter referred to as the "Subrecipient".

**RECITALS**

A. Grantee and Subrecipient entered into a written agreement on September 6, 2011 to demolish blighted structures and redevelop demolished or vacant properties which is eligible under the rules and regulations regarding Home Investment Partnerships (HOME) funds by and through the U.S. Department of Housing and Urban Development. A copy of the Agreement is attached as Attachment A and is incorporated herein by reference for all purposes.

B. Grantee and Subrecipient desire to modify the Agreement as follows:

1. Part I, SCOPE OF SERVICES is hereby deleted and replaced as follows:

1.08 Time of Performance

Services of the Subrecipient shall start on September 15, 2011 and end August 29, 2012

C. Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.

D. If there is a conflict between this Modification and the Agreement, the provisions of this Modification shall prevail.

E. This modification shall become effective when executed in duplicate originals by the Grantee.

GRANTED: FORT BEND COUNTY

*Robert E. Hebert*

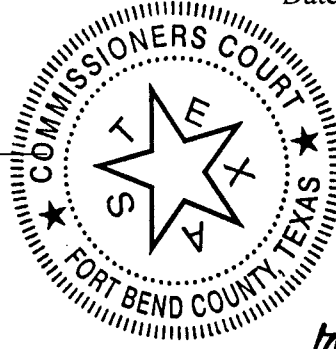
Robert E. Hebert, County Judge

Date July 3, 2012

ATTEST:

*Dianne Wilson*

Dianne Wilson, County Clerk



APPROVED AS TO FORM:

*May E. Rouse*

Assistant County Attorney

Date 6-6-2012

APPROVED: COUNTY PROJECT MANAGER

*Marilynn Kindell*

Marilynn Kindell, Director  
Fort Bend County Community Development Department

SUBRECIPIENT: FORT BEND CORPS

*[Signature]*

By \_\_\_\_\_  
Board President

Date 6-15-2012

ATTEST:

*Janella M. Robinson*

Board Secretary

**AGREEMENT BETWEEN FORT BEND COUNTY  
AND  
FORT BEND COUNTY COMMUNITY REVITALIZATION PROJECTS**

This Agreement is made and entered into by and between FORT BEND COUNTY, a body politic and corporate under the laws of the State of Texas (hereinafter referred to as the Grantee, and FORT BEND COUNTY COMMUNITY REVITALIZATION PROJECTS, a public body corporate under the laws of the State of Texas (hereinafter referred to as the Subrecipient).

**WHEREAS**, the Grantee has received grant monies from the United States Department of Housing and Urban Development (“HUD”) through the HOME Investment Partnerships (“HOME”) Program (M-10-UC-48-0216) with which 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 Subrecipient, a nonprofit corporation managed by a volunteer Board of Directors, is working to revitalize neighborhoods throughout Fort Bend County and increase the number of suitable, affordable housing units available to low-income families and individuals; and

**WHEREAS**, the Grantee and the Subrecipient desire to enter into an agreement whereby the Grantee will grant funds to the Subrecipient for the purpose of providing housing reconstruction for the benefit of a qualified, low-income owner-occupant of Fort Bend County, who is eligible under the rules and regulations regarding HOME funds; in accordance with the terms and conditions described herein; and

**WHEREAS**, the Grantee has determined that housing reconstruction is needed for low-income residents of Fort Bend County.

**NOW, THEREFORE, THIS AGREEMENT FURTHER WITNESSETH:**

That the parties covenant and agree as follows:

**I.**

**SCOPE OF SERVICES**

1.01 The Subrecipient will document that funds for housing reconstruction are provided to qualified, low-income individuals or families with an annual (gross) income that does not exceed thirty (30) percent of median income for the area and who own and occupy the property as their principal residence. The median income is determined annually by HUD and will apply to the homeowner at the time of approval for services by the Subrecipient. Reconstruction means the

rebuilding on the same lot, of housing standing on a site at the time of project commitment. The number of housing units on the lot may not be decreased or increased as part of the reconstruction project, but the number of rooms per unit may be increased or decreased depending on family size and make-up. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard stick-built unit. Reconstruction is rehabilitation for purposes of this agreement.

1.02 The Subrecipient will reconstruct one (1) housing unit for a qualified low-income homeowner-occupant in Fort Bend County. The housing unit will replace an existing housing unit that, due to current conditions, has been determined to be unsuitable for human habitation. Upon completion of the reconstruction, the low-income homeowner-occupant will move back into the home.

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

1.04 The Subrecipient will establish and follow a written procurement policy in accordance with 24 CFR Part 84 for purchasing supplies, materials, services and other expendable property, equipment, real property and other services with Federal funds.

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

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

1.07 The Subrecipient will be responsible for requiring that the homeowner obtains hazard and/or flood insurance, if applicable. The Grantee will be responsible for monitoring the homeowner's annual maintenance of such insurance during the affordability period.

#### Performance Monitoring

1.07 The Grantee will monitor the performance of the Subrecipient against the scope of work established herein. Substandard performance as determined by the Grantee will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within ten (10) days after being notified by the Grantee, Grantee may temporarily withhold reimbursement, disallow all or part of the cost of the activity or action not in compliance, wholly or partly suspend the current award for the Subrecipient's program, withhold further awards for the program, or take other remedies that may be legally available.

Time Of Performance

1.08 Services of the Subrecipient shall start on September 15, 2011 and end June 30, 2012.

Budget and Allocation Of Costs

Category	HOME Funds	Total
Construction	\$75,000.00	\$75,000.00
Total	\$75,000.00	\$75,000.00

1.09 Construction costs include, but are not limited to, demolition, clean-up, soil leveling, soil testing, engineering costs, permits and fees, third-party inspections, building materials and contractor costs. Subrecipient shall verify eligibility of construction costs not listed above with Grantee prior to expenditure.

1.10 Grantee will provide Subrecipient with HOME funds reimbursement in an amount not to exceed Seventy Five Thousand and No/100 (\$75,000.00). The Subrecipient will facilitate the deposit of \$15,000.00 in eligible cash match to the Grantee. A portion or all of the HOME funds may be substituted for eligible cash match and will be used by Subrecipient to reconstruct one (1) housing unit. Grantee may replace HOME funds with Grantee matching funds as necessary to fulfill HOME Program match requirements.

1.11 Subrecipient and Grantee, through its Community Development Department Director, 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. Grantee shall not be liable for the payment of expenses or costs that are not allowable under the terms of this Agreement.

**II.**

**AFFORDABILITY**

Housing assisted with HOME funds must meet the eligibility and affordability requirements of 92.254 of the HOME Program. The affordability requirement for this project is fifteen (15) years. Failure to meet the affordability requirements for the specified period will require repayment of HOME funds to Grantee by the Subrecipient. The affordability period will be designated in a promissory note executed between the homeowner and the Grantee.

### **III.**

#### **REPAYMENTS AND PROGRAM INCOME**

3.01 Any HOME funds invested by the Subrecipient in housing that do not meet the eligibility and affordability requirements for the period specified in 24 CFR 92.254 must be repaid to the Grantee.

3.02 Any HOME funds invested by the Subrecipient in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the Subrecipient to the Grantee.

3.03 Program income means any gross income received by the Subrecipient directly generated from the use of HOME funds or matching contributions. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used.

3.04 Program income includes, but is not limited to, all receipts as outlined in 24 CFR 92.2.

3.05 The Subrecipient will be allowed to retain all program income for use in additional HOME-eligible affordable housing activities. Before the Subrecipient commits to using the funds, the activities must be submitted and approved by the Grantee.

3.06 Upon invoice approval by the Grantee, the Subrecipient will be reimbursed in accordance with Grantee's reimbursement policies and procedures.

### **IV.**

#### **UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES**

Subrecipient shall comply with Office of Management and Budget Circulars A-110, A-133, and A-122, as applicable. The allowability of costs incurred for performances rendered hereunder by Subrecipient shall be determined in accordance with OMB Circular A-122. Recipients, subrecipients, contractors and/or subcontractors who are governmental entities shall comply with the requirements and standards of OMB Circulars A-87 and with 24 CFR Part 85 and 24 CFR Part 84 as applicable.

### **V.**

#### **OTHER PROGRAM REQUIREMENTS**

5.01 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 Subrecipient must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. Subrecipient 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 Subrecipient with such persons or entities, public and private, in order to facilitate the activities of the Subrecipient to provide affordable housing authorized under this Act of any other federal housing law applicable to such Grantee and Subrecipient. Section 85.36(e) of this title describes actions to be taken by a Grantee and Subrecipient 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 Subrecipient must affirmatively further fair housing. Actions described in 570.904(c) of this title will satisfy this requirement.

#### 5.02 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.

#### 5.03 Displacement, relocation, and acquisition.

- (a) Minimizing displacement. Consistent with the other goals and objectives of this part, the Grantee and Subrecipient must ensure that it has taken all reasonable steps to minimize the involuntary 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 funds 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. An involuntarily 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 Subrecipient 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 Subrecipient 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 it 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.

5.04 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 Subrecipient are responsible for testing and abatement activities.

5.05 Conflict of Interest.

(a) Applicability.

(1) In the procurement of property and services by Grantees, state recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply.

(2) In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply. These cases include the acquisition and disposition of real property and the provision of assistance by the Grantee, by the state recipient, by subrecipients, or to individuals, housing developers, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation of housing).

(b) Conflicts prohibited. No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, or have an interest in any contract, subcontract or contract with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, state recipient, or subrecipient, which are receiving HOME funds.

(d) Exceptions: Threshold requirements. Upon the written request of the Grantee, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the Grantee's program or project. An exception may be considered only after the Grantee has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the Grantee's attorney that the interest for which the exception is sought would not violate state or local law.

(e) Factors to be considered for exceptions. In determining whether to grant a requested exception after the Grantee has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- (2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
- (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
- (5) Whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (6) Any other relevant considerations.

5.06 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.)

5.07 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.

5.08 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.

## **VI.**

### **AFFIRMATIVE MARKETING**

6.01 The Subrecipient must follow the affirmative marketing procedures and requirements for HOME-assisted housing containing five (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.

## **VII.**

### **FAITH-BASED ORGANIZATIONS**

7.01 Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME program. Neither the Federal government nor a State or local government receiving funds under HOME programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

7.02 Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.

7.03 A religious organization that participates in the HOME program will retain its independence from Federal, State, and local governments, and 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 proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOME-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

7.04 An organization that participates in the HOME program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

7.05 HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOME funds in this part. Sanctuaries, chapels, or other rooms that a HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for HOME-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

7.06 If a state or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

## **VIII.**

### **REQUESTS FOR DISBURSEMENTS OF FUNDS**

The Subrecipient may not request disbursement of funds under this Agreement until funds are needed for reimbursement of eligible costs related to the HOME-funded activity. The amount of each request must be limited to the amount spent. Drawdowns for the payment of eligible expenses shall be made on a monthly basis against the budget specified herein and in accordance with performance. Subrecipient shall submit a reimbursement request at a minimum of once a month but may submit a reimbursement request as often as weekly until the construction is complete. Such invoices shall include receipts, inspection reports, surveys, permits and other documents supporting and/or related to the invoice. The Fort Bend County Community Development Department shall approve all invoices prior to payment. Fort Bend County will not reimburse Subrecipient for any costs that violate Federal, State and local regulations and statutes.

## **IX.**

### **REVERSION OF ASSETS**

Subrecipient agrees to return to the Grantee any HOME funds remaining on hand at the end of the Agreement. Program income, as defined in 24 CFR 88.25, shall be subject to all terms,

conditions and requirements of this Agreement so long as program income continues to be generated by activities financed under the terms of this Agreement.

## **X.**

### **RECORDS AND REPORTS**

10.01 Subrecipient will submit to Grantee monthly reports of the activities and services undertaken by Subrecipient in performance of this Agreement and monthly statements of Subrecipient's expenditures and fees, where applicable, regardless of the source of such funds, which relate to the Program in any way.

10.02 Subrecipient 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.

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

## **XI.**

### **ENFORCEMENT OF AGREEMENT**

According to 24 CFR 85.43, suspension or termination may occur if the Subrecipient materially fails to comply with any term of this Agreement. Also, according to 24 CFR 85.44, the Grantee and Subrecipient may terminate this Agreement for convenience. If this Agreement is terminated after the Grantee has reimbursed Subrecipient for eligible costs the Subrecipient has incurred and Subrecipient fails to produce an affordable housing unit, the Subrecipient is required to reimburse the Grantee.

## **XII.**

### **DURATION OF AGREEMENT**

Housing assisted with HOME funds must meet the affordability requirements of Sections 92.252 or 92.254 of the HOME program, as applicable. This Agreement is in effect for the period of affordability as based upon 92.252 which includes the following:

- (a) Purchase with or without rehabilitation. Housing that is for purchase by a family qualifies as affordable housing only if the housing:
  - (1) (i) Has an initial purchase price that does not exceed 95% of the median purchase price for the type of single-family housing (1- to

- 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the jurisdiction as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and
- (ii) Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards in 92.251, that does not exceed the limit described in (a)(1)(i) of this section.
- (2) Is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase;
  - (3) Is purchased within 36 months if a lease-purchase agreement in conjunction with a homebuyer program is used to acquire the housing;
  - (4) Is subject - for minimum periods of: 5 years where the per unit amount of HOME funds provided is less than \$15,000; 10 years where the per unit amount of HOME funds provided is \$15,000 to \$40,000; and 15 years where the per unit amount of HOME funds provided is greater than \$40,000 - to resale restrictions or recapture provisions that are established by the Grantee and determined by HUD to be appropriate to either:
    - (i) Make the housing available for subsequent purchase only to a low-income family that will use the property as its principal residence; and
      - (A) Provide the owner with a fair return on investment, including any improvements, and
      - (B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must terminate upon occurrence of any of the following termination events: Foreclosure, transfer in lieu of foreclosure or assignment of a FHA insured mortgage to HUD. The Grantee 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, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property; or
    - (ii) A Grantee may structure the recapture provisions, subject to HUD approval, based on its program design and market conditions.
      - (A) The following methods of recapture would be acceptable to the Department:
        - (1) Recapture the entire amount of the HOME investment, except that the HOME investment amount may be reduced prorata based on the time

the homeowner has owned and occupied the unit measured against the required affordability period.

### **XIII.**

#### **MONITORING**

Not less than annually, Grantee will review the performance of the Subrecipient assisted with HOME funds. The review may include on-site inspection to determine compliance with housing codes. The results of each review may be included in the Grantee's performance report and may be made available to the public. Grantee will also perform periodic desk reviews.

### **XIV.**

#### **RECORDKEEPING**

Subrecipient will cooperate fully with Grantee in monitoring the Program. In this regard, Subrecipient agrees to keep records sufficient to document its compliance with all applicable laws, regulations, and agreement terms. In addition, Subrecipient agrees to keep paper or digital 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. Subrecipient 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, digital records and papers relating to the operations of Subrecipient under this Agreement for the purpose of audit, examination, exception and transcription at all reasonable hours at all offices of Subrecipient. The Grantee reserves the right to perform an audit of the funds received under this Agreement in order to ensure Subrecipient's compliance with applicable federal regulations.

### **XV.**

#### **REPORTS AND AUDITS**

15.01 For all agreements in the amount of \$25,000 or more, Subrecipient must submit to Grantee an annual financial statement. If the Subrecipient receives awards of federal funds that total above \$500,000, a single audit must be submitted with specific reference to OMB Circulars A-110, A-122 and/or A-133, as appropriate. The audit may cover either Subrecipient'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.

15.02 Grantee reserves the right to perform an audit of Subrecipient's program operations and finances at any time during the term of this Agreement to ensure compliance with OMB Circular A-133, and Subrecipient 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 Subrecipient 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).

15.03 If, as a result of any audit, it is determined that Subrecipient has misused, misapplied, or misappropriated all or any part of the grant funds described herein, Subrecipient 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.

## XVI.

### CLOSEOUTS

16.01 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.

## XVII.

### APPLICABLE LAWS

#### 17.01 Federal

Subrecipient 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

Subrecipient, 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. Subrecipient 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.

#### 17.02 Section 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, Subrecipient 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.

Subrecipient 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. Subrecipient certifies and agrees that it is under no contractual or other disability that would prevent it from complying with these requirements.

Subrecipient 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.

Subrecipient 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 County, 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. Subrecipient 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 Subrecipient with a preliminary statement of ability to comply with the requirements of these regulations.

Grantee and Subrecipient 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 Subrecipient, and their respective successors, assignees and subcontractors. Failure to fulfill these requirements shall subject Subrecipient 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.

#### 17.03 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, Subrecipient 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 Subrecipient 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 Subrecipient will take such action as the County 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.

#### 17.04 Labor

Subrecipient agrees to use prevailing wages for the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C 276a-276a-5) for all housing projects that include 12 or more units assisted with HOME funds. The contract for construction must contain these wage provisions if HOME funds are used for any project costs in CFR 92.206, including construction or non construction costs, of housing with 12 or more HOME-assisted units.

The prevailing wage provisions do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

The prevailing wage provisions do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or a supplement to, rent payments.

#### 17.05 Consultant Activities

Subrecipient shall not pay more than a reasonable rate of compensation for personal services paid with HOME funds.

#### 17.06 Other Laws

Subrecipient 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. Subrecipient 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 Subrecipient of any such violations on the part of Subrecipient or any of its officers, members, agents, employees, program participants or subcontractors, then Subrecipient shall immediately desist from and correct such violation.

## **XVIII.**

### **PROHIBITION AGAINST DISCRIMINATION**

#### **18.01 Generally**

Subrecipient, 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 Subrecipient permit its officers, members, agents, employees, subcontractors or program participants to engage in such discrimination.

#### **18.02 Employment**

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

1. Subrecipient will not unlawfully discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subrecipient 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. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Subrecipient, will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

### 18.03 Age

In accordance with the policy of the Executive Branch of the federal government, Subrecipient 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.

Subrecipient 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.

### 18.04 Disability

In accordance with the provisions of the Americans With Disabilities Act of 1990 ("ADA"), Subrecipient 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 Subrecipient or any of its subcontractors. Subrecipient 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 Subrecipient's and/or its subcontractors' alleged failure to comply with above-referenced laws concerning disability discrimination in the performance of this Agreement.

## **XIX.**

### **PROHIBITION AGAINST INTEREST**

19.01 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. Subrecipient shall incorporate, or cause to be incorporated, like language prohibiting such interest in all agreements and subagreements hereunder.

19.02 No officer, employee, member, or program participant of Subrecipient 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 Subrecipient of any land, materials, supplies, or services purchased with any funds transferred hereunder,

except on behalf of Subrecipient, as an officer, employee, member, or program participant. Any willful violation of this paragraph with the knowledge, expressed or implied, of Subrecipient or its subcontractors shall render this Agreement voidable by Fort Bend County.

**XX.**

**NON-ASSIGNMENT**

Subrecipient 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.

**XXI.**

**INDEPENDENT SUBRECIPIENT**

21.01 Subrecipient shall operate hereunder as an independent Subrecipient and not as an officer, agent, servant or employee of Grantee. Subrecipient 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 Subrecipient, 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 Subrecipient. It is expressly understood and agreed that no officer, member, agent, employee, subSubrecipient, licensee or invitee of the Subrecipient, 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 Subrecipient, its officers, members, agents, employees, subcontractors, program participants, licenses or invitees.

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

**XXII.**

**INDEMNITY; INSURANCE; BOND**

22.01 Subrecipient 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, Subrecipients, or subcontractors of Grantee; and Subrecipient 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, Subrecipients or subcontractors of Grantee. Subrecipient 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 Subrecipient, 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, Subrecipients, or subcontractors of Grantee.

22.02 Prior to commencement of service, the Subrecipient shall furnish the County 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 County. The Subrecipient shall provide certified copies of insurance endorsements and/or policies if requested by the County. The Subrecipient 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

Subrecipient 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 County. 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

Subrecipient 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

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

### Employers' Liability Insurance

Subrecipient 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.

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

22.04 If required coverage is written on a claims-made basis, Subrecipient 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 two (2) years beginning from the time that work under the contract is completed.

## **XXIII.**

### **WAIVER OF IMMUNITY**

If Subrecipient, 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, Subrecipient 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.

## **XXIV.**

### **TERMINATION**

Grantee may terminate this Agreement whenever such termination is determined to be in the best interest of Grantee, in event of Subrecipient's default, inability, or failure to perform or to comply with any of the terms herein, or for other good cause. Subrecipient 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 Subrecipient's or any Subrecipient's default, inability or failure to perform under this Agreement.

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

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

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

24.05 HOME funds provided hereunder may be used as collateral for loans to Subrecipient to defray program operation expenses, and any attempted use of HOME funds for this purpose will result in termination of this Agreement by Grantee.

## XXV.

### MISCELLANEOUS PROVISIONS

25.01 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 funds; that all monies distributed to Subrecipient 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 Subrecipient under or in connection with this Agreement.

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

25.03 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.

25.04 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.

25.05 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.

25.06 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.

## XXVI.

### NOTICES

Communication and details concerning this Agreement shall be directed to the following Agreement representatives:

<u>Grantee</u>	<u>Subrecipient</u>
Marilynn Kindell, Director Fort Bend County Community Development Department  4520 Reading Road, Suite A Rosenberg, Texas 77471	Ronald Castillo, Executive Director Fort Bend Community Revitalization Projects 13330 South Gessner Rd. Missouri City, Texas 77489

## XXVII.

### AMENDMENTS

27.01 Grantee or Subrecipient 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 Subrecipient from its obligations under this Agreement.

27.02 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 Subrecipient.

**EXECUTION**

This Agreement shall become effective upon execution by County.

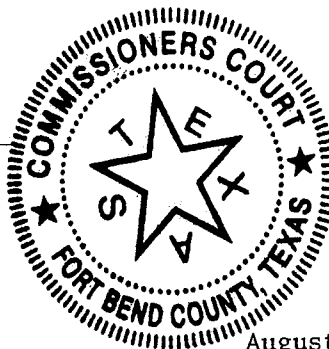
FORT BEND COUNTY

*Robert E. Hebert*  
Robert E. Hebert, County Judge

9-6-2011  
Date

ATTEST:

*Dianne Wilson*  
Dianne Wilson, County Clerk



APPROVED AS TO FORM:

*Mary E. Reun*  
Assistant County Attorney

August 25, 2011  
Date

APPROVED: COUNTY PROJECT MANAGER

*Marilynn Kindell*  
Marilynn Kindell, Director  
Fort Bend County Community Development Department

FORT BEND COMMUNITY REVITALIZATION PROJECTS:

*[Signature]*  
By  
Board President

8/30/11  
Date

ATTEST:

*Parula M. Robinson*  
Board Secretary

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$75,000.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

*Robert E. Sturdivant*  
Robert E. Sturdivant, County Auditor

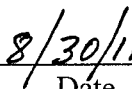
**EXHIBIT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND OTHER RESPONSIBILITY MATTER FOR PRIMARY COVERED TRANSACTIONS**

FORT BEND COUNTY COMMUNITY REVITALIZATION PROJECTS

- (1) The prospective primary participant 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 department or agency;
  - (b) Have not within a three-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 agreement 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 (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

## EXHIBIT B

### **Affirmative Fair Housing Marketing Strategy HOME Investment Partnerships Program Fort Bend County**

This section includes Fort Bend County's statement of policy and procedures to be followed by the County to meet the requirements for affirmative marketing, and establishing and overseeing a minority and woman's business outreach program under 24 CFR 92.350 and 92.351, respectively.

#### **Part A: Affirmative Marketing**

The HOME Program guidelines require each participating jurisdiction to adopt marketing procedures and requirements for HOME-assisted housing containing five (5) or more housing units. 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 affirmative marketing procedures do not apply to families with housing assistance provided by the PHA or families with tenant based rental assistance provided with HOME funds.) The participating jurisdiction must annually assess the affirmative marketing program to determine the success of affirmative marketing actions and any corrective actions.

The affirmative marketing requirements and procedures adopted must include:

- (1) Methods for informing the public, owners, and potential tenants about federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);
- (2) Requirements and practices each owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
- (3) Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);
- (4) Records that will be kept describing actions taken by the participating jurisdiction and by owners to affirmatively market units and records to assess the results of these actions; and
- (5) A description of how the participating jurisdiction will assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

## **Part B: Affirmative Marketing Policy**

This affirmative marketing policy pertains to all housing containing five or more units assisted by the Fort Bend County Community Development Department or the U.S. Department of Housing and Urban Development (HUD). Fort Bend County will annually assess the affirmative marketing program to determine its success and will take any necessary corrective actions. The affirmative marketing requirements and procedures include the following:

- (1) Fort Bend County and its subrecipients will use the Equal Housing Opportunity logotype/slogan in all press releases or notices to the public or solicitations pertaining to housing containing five or more units.
- (2) Fort Bend County will require owners of HUD-assisted housing containing five or more units to:
  - (i) use major and community newspapers, community contacts, and the Equal Opportunity logotypes/slogan when advertising vacant housing units;
  - (ii) perform special outreach to persons in the housing market area who are not likely to apply for the housing without special outreach. Special outreach may include contacting community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies; and,
  - (iii) submit copies of all materials used to affirmatively market vacant housing units, records documenting actions taken by the owner to affirmatively market vacant housing, and any other documentation required by Fort Bend County and HUD.
- (3) Fort Bend County and its subrecipients will assess their affirmative marketing efforts annually. If affirmative marketing efforts are not successful, the County will determine the corrective actions necessary to meet the affirmative marketing requirements.

## EXHIBIT C

### **Conflict of Interest Disclosure Form HOME Investment Partnerships Program**

The HOME Program regulations at Section 92.356 (f) states that no Subrecipient, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent or consultant of the Subrecipient, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an Subrecipient, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to a Subrecipient-occupant of single-family housing or to an employee or agent of the Subrecipient or developer of a rental housing project who occupies a HOME assisted unit as the project manager or maintenance worker.

Upon written request of a housing Subrecipient or developer, the Grantee may grant an exception to the provisions stated above on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the Subrecipient's or developer's HOME-assisted project. In determining whether to grant a requested exception, the Grantee shall consider the following factors:

1. Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
2. Whether the person has withdrawn from his or her function or responsibilities, or the decision-making process with respect to the specific assisted housing in question;
3. Whether the tenant protection requirements of 92.253 are being observed;
4. Whether the affirmative marketing requirements of 92.351 are being observed and followed; and
5. Any other factor relevant to the Grantee's determination, including the timing of the requested exception.

I certify that no conflict of interest exists between Fort Bend County and

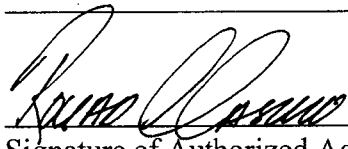
FORT BEND COMMUNITY REVITALIZATION PROJECTS  
(Name of Organization)

I certify that a conflict of interest exists between Fort Bend County and

\_\_\_\_\_  
(Name of Organization)

The nature of the conflict of interest is described below: (Please identify the individual, employment, and the conflict of interest [their affiliation with your organization]).

\_\_\_\_\_



\_\_\_\_\_  
Signature of Authorized Agency Official

8/30/11

\_\_\_\_\_  
Date

RONALD M. CASTILLO EXECUTIVE DIRECTOR  
Typed Name and Title