



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		06/28/10		
Department:		Planning/Community Services		
Department Head		Phyllis Jarrell		
Agenda Coordinator (include phone #): Doris Carter, ext. 5350				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Community Development Block Grant funds in the amount of \$246,185 and HOME funds in the amount of \$320,493 for the provisions of various community services and developments; authorizing its execution by the City Manager or his authorized designee; and providing the effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-2011	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	1,976,098	1,976,098
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	-566,678	-566,678
BALANCE	0	0	1,409,420	1,409,420
FUND(S): GRANT FUND				
<p>COMMENTS: This item is a companion agenda item contingent on both the approval of the 2010-11 CDBG and HOME Action Plan and the approval of filing applications for Federal grant funds items. This item, in the amount of \$566,678, will establish an agreement to provide CDBG funds in the amount of \$246,185 and HOME funds in the amount of \$320,493 to various community organizations, leaving \$1,409,420 for other CDBG and HOME services programs and is projected to impact fiscal years 2010-11 and 2011-12.</p> <p>STRATEGIC PLAN GOAL: Allocating Federal grant funds to community organizations relates to the City's goals of Great Neighborhoods – 1st Choice to Live, Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>				
SUMMARY OF ITEM				
<p>This Resolution establishes agreements for CDBG and HOME funding with various agencies. Approval of the resolution will enable the agencies to begin using CDBG and HOME grant funds effective October 1, 2010.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution including Sample Agreements				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Community Development Block Grant funds in the amount of \$246,185 and HOME funds in the amount of \$320,493 for the provisions of various community services and developments; authorizing its execution by the City Manager or his authorized designee; and providing the effective date.

WHEREAS, the City Council has determined that various social service agencies operating within the City of Plano should receive a portion of the Community Development Block Grant funds and HOME funds received from the U. S. Department of Housing and Urban Development; and

WHEREAS, the City Council has been presented proposed CDBG public service, CDBG construction, and HOME agreements by and between the City of Plano and various social service agencies, sample copies of which are attached hereto as Exhibits "A", "B", and "C" respectively, which establish the general terms and conditions of funding; and

WHEREAS, the City Council has determined that it is in the best interests of the citizens of Plano that the Community Development Block Grant funds and HOME funds be utilized for the purposes for which they were granted to each of the agencies listed herein, and that each such purpose is a valid public purpose; and

WHEREAS, upon full review and consideration of the Agreements, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager, or his authorized designee, shall be authorized to execute them on behalf of the City of Plano;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. - The terms and conditions of the Agreements with the below-named agencies in the amounts specified, having been reviewed by the City Council and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved:

Community Development Block Grant Funds:	
Boys and Girls Clubs of Collin County	\$ 17,000
Communities in Schools Dallas Region	\$ 30,000
Health Services of North Texas	\$ 52,000
LaunchAbility	\$ 25,000
Maurice Barnett Geriatric Wellness Center – Gatekeeper	\$ 19,000
Maurice Barnett Geriatric Wellness Center – PHC	\$ 30,000
Plano Housing Corporation	\$ 35,000
<u>The Samaritan Inn – Homelessness Prevention</u>	<u>\$ 38,185</u>
Total:	\$246,185

HOME Funds:	
Christ United Methodist Church	\$ 50,000
Habitat for Humanity of South Collin County	\$162,000
<u>Plano Housing Corporation</u>	<u>\$108,493</u>
Total:	\$320,493

Section II. - The City Manager, or his authorized designee, is hereby authorized to execute the Agreements and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreements.

Section III. - This resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED THIS THE 28TH DAY OF JUNE, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

Approved as to form:

Diane C. Wetherbee, CITY ATTORNEY



**Funding Agreement Between the City of Plano and
(Insert SUBRECIPIENT's Name)**

**U.S. Department of Housing & Urban Development
Community Development Block Grant, CFDA Title 14-218, B-10-MC-48-0035**

This Agreement, entered this 1st day of October, 2010 by and between the City of Plano (herein called the "City") and **(Insert)** (herein called "Subrecipient").

WHEREAS, the City has received Federal grant monies to carry out the goals and objectives of the City of Plano's Consolidated Plan;

WHEREAS, the City is in need of assistance to further this program; and

WHEREAS, it is the desire of the parties hereto that Subrecipient engage in the performance of certain activities and in the development of programs related to the City of Plano's Consolidated Plan;

NOW THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

A. National Objectives

The Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet the CDBG'S program's National Objective of **(Insert objective, ex. benefiting low-and moderate-income persons, limited clientele)**, as defined in **(Insert reference, ex. 24 CFR Part 570.208(a)(2))**. The activity is eligible for funding under **(Insert reference, ex. 24 CFR 570.201(e))**. This program is a Public Service activity being reported with an objective of **(Insert objective, ex. Suitable Living Environment)** and an outcome of **(Insert outcome, ex. Availability/Accessibility (SL-1))** in the Performance Measurements Standards set forth by HUD.

B. Activities

The Subrecipient shall be responsible for **(Insert name of activity and scope)**.

Program Delivery

(Insert agency's activities, purpose and request for use of funds.)

C. Levels of Accomplishment

The Subrecipient agrees to provide the following levels of program service:

<u>Activity</u>	<u>Total Units/Year</u>
<u>(Insert persons served from grant request)</u>	<u>(Insert from grant request)</u>

D. Staffing

(Insert staffing and salaries from grant request)

E. Conditions of Use

Subrecipient shall use any and all funds furnished by City for purposes set forth in this Agreement and for no other purpose. Subrecipient agrees the expenditure of the funds shall be completed on or before September 30, 2011. Any grant funds remaining with Subrecipient which are not expended or encumbered on September 30, 2011 will be returned to the City unless otherwise extended in writing. If, during the term of this Agreement, Subrecipient wishes to utilize funds for purposes other than the activities noted above, such change will be allowed only if the proposed change is not in violation of Community Development Block Grant Regulations. Such change may be allowed only after approval by Subrecipient's Board, as evidenced by the official minutes of the board authorizing the change, and by the City Manager. No expenditure of funds in performance with the proposed change is permitted until written approval is executed by the City Manager or his designee.

F. Performance Monitoring

The City will monitor the performance of the Subrecipient against goals and performance standards as required herein once annually or as it deems necessary. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated. If compliance is not feasible, Subrecipient is obligated to reimburse the City the amount funded for the particular activity.

G. Eligibility of Clients

In accordance with 24 CFR Part 570.208(a)(2)(A), the activity carried out with the funds provided under this agreement **(Insert is or is not)** for a presumed benefit clientele as defined by the U.S. Department of Housing and Urban Development (HUD). All applicable documentation will be maintained by the Subrecipient to document **(Insert limited clientele or income qualification)** eligibility.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of October 2010 and terminate on the 30th day of September, 2011. The term of this agreement and the provisions herein shall be

extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other assets, including program income. If an extension is needed, written requests should be submitted by August 15, 2011.

III. BUDGET

See Exhibit A for line item budget. In addition, the City may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City. Any amendments to this budget must be approved in writing by the Community Services Manager before the budget revision can be effective and cannot change the scope of the project funded under this contract.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this contract shall not exceed **(Insert Amount)**. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. With the submission of original bills with proper documentation for the services described in Section I.B., the Subrecipient will be reimbursed within 30 days after the Subrecipient has submitted all proper documentation to the City.

ALL REQUESTS FOR FINAL REIMBURSEMENT MUST BE SUBMITTED TO THE CITY WITHIN THREE (3) DAYS AFTER THE LAST DATE OF THE CONTRACT. Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in OMB Circular A-110.

V. NOTICES

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

City
Christina Day, Manager
Community Services
City of Plano
1520 Avenue K
Plano, Texas 75074
972-941-5262
Fax: 972-941-7396

Subrecipient

VI. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning

Community Development Block Grants (CDBG). The Subrecipient also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this contract, including but not limited to the City of Plano's Subrecipient Compliance Manual. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

Nothing contained in the Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's compensation Insurance, as the Subrecipient.

C. Insurance

Subrecipient agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit B. Such insurance shall be evidenced by certificates, a copy of which shall be provided to the CDBG Administrator at the execution of this Agreement. Insurance provided by Agency is subject to approval by City.

D. HOLD HARMLESS AND INDEMNITY.

THE AGENCY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY AGENCY'S BREACH OF ANY THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE AGENCY, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR

ENTITY.

AGENCY AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF AGENCY'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF AGENCY'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. AGENCY SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF AGENCY FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND AGENCY SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT.

E. Grantee Recognition

The Subrecipient shall insure recognition of the role of the City in providing Community Development Block Grant resources for this contract. All activities, facilities, and items utilized pursuant to this contract shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this contract. The Subrecipient further agrees to utilize funds available under this Agreement rather than supplant funds otherwise available.

F. Amendments

The City 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 both organizations. Such amendments shall not invalidate this Agreement nor relieve or release the City or Subrecipient from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with Federal, State, or local guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding or the scope of services, such modifications will be incorporated only by written amendment and will not become effective until signed by both City, and the Subrecipient.

Any request for transfer of funds among the contract budget categories submitted by the Subrecipient will require written approval from the City of Plano, before the transfer can be effective. The Subrecipient may make transfer of CDBG funds between or among budget categories of Exhibit A, Budget, without requiring a formal amendment to this contract

provided:

1. The cumulative dollar amount of all transfers among budget categories is equal to or less than ten percent (10%) of the total amount of the budget;
2. The transfer will not change the scope of the project funded under this contract; and
3. The Subrecipient submits to City of Plano, a written statement specifying reason for transfer request, amount of funds to be transferred and identification of effected budget categories.

All other transfer of funds will require a formal amendment

G. Suspension or Termination

1. Failure to Comply with Terms

In accordance with 24 CFR 85.43, if Subrecipient materially fails to comply with any term of this contract, the City may take one or more of the following actions, as appropriate in the circumstances: (1) temporarily withhold cash payments pending correction of the deficiency by the Subrecipient or other more severe enforcement action by the City; (2) disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance; (3) wholly or partly suspend or terminate the current award for the Subrecipient's program, (4) withhold further awards for the program, or (5) take other remedies that are legally available.

2. Termination

In accordance with 24 CFR 85.44(a), this contract may be terminated at any time by the City with the consent of Subrecipient, in which case the City and Subrecipient shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated.

In accordance with 24 CFR 85.44(b), this contract may be terminated by Subrecipient upon written notification to the City, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the City may terminate the award in its entirety.

In accordance with 24 CFR 85.43, if Subrecipient materially fails to comply with any term of this contract, this contract may be terminated by the City upon written notification to the Subrecipient, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated.

In the event of termination, whether voluntary or involuntary, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials

prepared by the Subrecipient under this Agreement shall, at the option of the City, become the property of the City, and the Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

H. Reversion of Assets

Upon the expiration of this agreement, the subrecipient shall transfer to the City of Plano any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 must be either:

- (i) Used to meet one of the national objectives in §570.208 (formerly §570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or
- (ii) Not used in accordance with paragraph (i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG fund for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (i) of this section.)

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with OMB Circular A-110 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506, that are pertinent to the activities to be funded under this Agreement.

Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets the National Objective of the CDBG program of benefiting low/moderate income persons;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR Part 570.502, and OMB Circular A-110; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of five (5) years after the termination of the Agreement. Records for non-expendable property acquired with funds under this contract shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to: client name, address, ethnic breakdown, status (i.e. handicap, female-head of household, elderly), and description of service provided. Such information shall also be made available to City monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private, and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian, unless otherwise required by law.

5. Property Records

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

6. Close-Outs

The Subrecipient’s obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), final close-out reports and determining the custodianship of records. ALL REQUESTS FOR FINAL REIMBURSEMENT MUST BE SUBMITTED TO THE CITY WITHIN THREE (3) DAYS AFTER THE LAST DATE OF THE CONTRACT.

7. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the City, grantor Subrecipient, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor Subrecipient deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments.

In accordance with the Single Audit Act of 1984, the Single Audit Act Amendments of 1996 (Public Law 104-156), and revised OMB Circular A-133, subrecipients expending Federal Funds of \$500,000 or more in a fiscal year, are required to have an annual independent audit and a copy of the audit is to be forwarded to Housing & Community Development Services upon completion.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report monthly all program income as defined at 24 CFR 570.500(a) generated by activities carried out with CDBG funds made available under this contract. In the event that any program income is derived from the activities specified in this Agreement, such income shall be transferred to the City’s Grant Fund.

2. Payment Procedures

The City will pay to the Subrecipient funds available under this contract, based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. Payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with program income balances available in Subrecipient accounts. In addition, the City reserves the right to liquidate funds available under this contract for

costs incurred by the City on behalf of the Subrecipient.

3. Performance Reports

Subrecipient shall submit to City a quarterly Performance Report in a format prescribed by City and shall include the amount of funds obligated and expended for each of the eligible activity, and number of beneficiaries served – total and by income level.

Subrecipient shall submit a Performance Report quarterly no later than the final day of the following month after the completion of the quarter until all Community Development Block Grant amounts are reported and expended. The Subrecipient shall submit Progress Reports to the City in the form, content, and frequency as required by the City.

D. Procurement

1. Compliance

Subrecipient shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring for services to be provided under this Agreement Subrecipient shall comply at a minimum with the non-profit procurement standards at 24 CFR 84.40-48.

Purchases of items costing \$25,000 or more require sealed bids. The sealed bid process can be complicated; therefore, the Subrecipient is required to contact the City of Plano Grants Coordinator's office for assistance prior to starting the bid process.

For purchases of items costing between \$3,000 and \$25,000 three (3) written quotes for the item are required. These quotes should be placed in the Project file. If the Subrecipient is unable to obtain three (3) quotes, a list of the vendors contacted should be placed in the file, noting those vendors who did submit quotes. If there is only one vendor who makes the item to be purchased, this should be noted in the file with an explanation of what was done to determine there was only one vendor available.

For purchases costing less than \$3,000, only one quote is required. The sales slip from the store where the item was bought will suffice. Subrecipient is not precluded from obtaining several quotes to obtain the best price, even for low-cost items.

2. OMB Standards

The Subrecipient shall procure all materials, property, or services in accordance with the requirements of OMB Circular A-110, Procurement Standards, and shall subsequently follow Property Management Standards as modified by 24CFR 570.502(b)(3)(vi) covering utilization and disposal of property.

VIII. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with all applicable provisions of Title VI of the Civil

Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086, and with fair housing and nondiscrimination provisions set forth in 24 CFR 570.601 and 24 CFR 570.602.

2. Nondiscrimination

The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting SUBRECIPIENT setting forth the provisions of this nondiscrimination clause.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts with respect to any matters covered by this agreement by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein related to this contract.

4. EEO/AA Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A., Civil Rights, and B., Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

B. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; and lobbying political patronage, and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the labor standards as set forth in 24 CFR 570.603.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the City, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors.

The Subrecipient further agrees to ensure that, to the greatest extent feasible, opportunities for training and employment arising in connection with this project be given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

b. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor Subrecipient.

C. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this contract without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Subrecipient from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any Subrecipient or individual in the performance of this contract without the written consent of the City prior to the execution of such agreement. Subrecipient shall also comply with 24 CFR 570.609 with regard to debarment, suspension, or ineligibility status of selected subcontractors.

b. Payment

The City shall not be obligated or liable under this Agreement to any party other than the instant subrecipient for payment of any monies or for provision of any goods or services.

c. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure

contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

d. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

e. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

4. Affidavit of No Prohibited Interest

Subrecipient acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Subrecipient has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit C.

5. Lobbying

The Subrecipient hereby certifies that none of the funds provided under this Agreement shall be used for publicity or propaganda designed to support or defeat legislation pending before the U.S. Congress, a State Legislature, County Commissioners Court, or City Council.

6. Copyright

If this contract results in any copyrightable material or inventions, the City and/or grantor Subrecipient reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

7. Religious Organization

The Subrecipient agrees that funds provided under this contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).

IX. GENERAL PROVISIONS

A. Article and Section Headings

The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this agreement.

B. Partial Invalidity

If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

C. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

XI. EFFECTIVE DATE

This Agreement shall be effective from and after execution by both parties hereto. **SIGNED** on the date indicated below.

(SUBRECIPIENT)

By _____
Name _____
Title _____

Date: _____

CITY OF PLANO, TEXAS

Thomas H. Muehlenbeck
CITY MANAGER

Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee
CITY ATTORNEY

Acknowledgements

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **(Individual), (Title) of (Name of Recipient Agency), a (Type of Organization, for example, non-profit organization), on behalf of said (Organization).**

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **Thomas H. Muehlenbeck, City Manager, of the CITY OF PLANO, TEXAS, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.**

Notary Public, State of Texas

Exhibit A

2010 BUDGET: (INSERT SUBRECIPIENTS NAME)

Exhibit B

INSURANCE REQUIREMENTS

Agency shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Agency, its agents, representatives, employees, volunteers, officers, director, or subcontractors.

The Agency shall maintain insurance with limits not less than \$500,000 per occurrence, \$1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage (“occurrence”) form CG 0001). Coverage will include:

- A. Premises - Operations;
- B. Broad Form Contractual Liability;
- C. Broad Form Property Damage; and
- D. Personal Injury

The policy will be endorsed to contain the following provisions: "The City of Plano, its officers, officials, employees, volunteers, Boards and Commissions are to be added as 'Additional Insureds' as respects to liability arising out of any activities performed by or on behalf of the Agency." The policy shall contain no special limitations to the scope of coverage afforded to the City. The Agency's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Agency's insurance and shall not contribute with it.

Coverage shall be primary and non-contributory. Primary and non-contributory endorsement must be attached to the original certificate when submitted.

City prefers that insurance shall be placed with insurers with an A.M. Best rating of no less than A: VI or, a Standard & Poors rating of A or better.

The Agency shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state the coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. All endorsements required shall be attached to the original certificate when submitted.

Exhibit C

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned, declare and affirm that no person or officer of _____ (herein "Subrecipient") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

Name of Subrecipient

By:

Signature

Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2010.

Notary Public, State of _____



Funding Agreement Between the City of Plano and (Insert SUBRECIPIENT's Name)

**U.S. Department of Housing & Urban Development
Community Development Block Grant, CFDA Title 14-218, B-10-MC-48-0035**

This Agreement, entered this 1st day of October, 2010 by and between the City of Plano (herein called the "City") and (herein called "Subrecipient")

WHEREAS, the City has received Federal grants monies to carry out the goals and objectives of the City of Plano's Consolidated Plan.

WHEREAS, the City is in need of assistance to further this program; and

WHEREAS, it is the desire of the parties hereto that Subrecipient engage in the performance of certain activities and in the development of programs related to the City of Plano's Consolidated Plan.

NOW THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

A. National Objectives

The Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet the CDBG'S program's National Objective of **(Insert objective, ex. benefiting low-and moderate-income persons, limited clientele)**, as defined in **(Insert reference, ex. 24 CFR Part 570.208(a)(2))**. The activity is eligible for funding under **(Insert reference, ex. 24 CFR 570.201(e))**. This program is an activity being reported with an objective of **(Insert objective, ex. Suitable Living Environment)** and an outcome of **(Insert outcome, ex. Availability/Accessibility (SL-1))** in the Performance Measurements Standards set forth by HUD.

B. Activities

The Subrecipient shall be responsible for administering the **(Insert Project)**, in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds.

Program Delivery

(Describe project/ Describe the clients served from grant request.)

C. Levels of Accomplishment

The Subrecipient agrees to provide the following levels of program service:

<u>Activity</u>	-	<u>Total Units/Year</u>
Decent, Affordable Housing Units		(insert)

D. Staffing

No staffing funded in this project. **(insert if different)**

E. Conditions of Use

Subrecipient shall use any and all funds furnished by City for purposes set forth in this Agreement and for no other purpose. Subrecipient agrees the expenditure of the funds shall be completed on or before September 30, 2011. Any Grant funds remaining with Subrecipient which are not expended or encumbered on September 30, 2011 will be returned to the City unless otherwise extended in writing. If, during the term of this Agreement, Subrecipient wishes to utilize funds for purposes other than the activities noted above, such change will be allowed only if the proposed change is not in violation of Community Development Block Grant Regulations. Such change may be allowed only after approval by Subrecipient's Board, as evidenced by the official minutes of the board authorizing the change, and by the City Manager. No expenditure of funds in performance with the proposed change is permitted until written approval is executed by the City Manager or his designee.

F. Performance Monitoring

The City will monitor the performance of the Subrecipient against goals and performance standards as required herein once annually or as it deems necessary. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated. If compliance is not feasible, Subrecipient is obligated to reimburse the City the amount funded for the particular activity.

G. Eligibility of Clients

In accordance with 24 CFR Part 570.208(a)(2)(A), the activity carried out with the funds provided under this agreement **(Insert is or is not)** for a presumed benefit clientele as defined by the U.S. Department of Housing and Urban Development (HUD). All applicable documentation will be maintained by the Subrecipient to document **(Insert limited clientele or income qualification)** eligibility.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of October, 2010 and terminate on the 30th day of September, 2012. The term of this agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other assets, including program income. If an extension is needed, written requests should be submitted by August 15, 2012.

III. BUDGET

See Exhibit A for line item budget. In addition, the City may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City. Any amendments to this budget must be approved in writing by the City’s Neighborhood Services Manager before the amendment can be effective and cannot change the scope of the project funded under this contract.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this contract shall not exceed **(Insert amount)**. Draw downs for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. With the submission of original monthly bills with proper documentation for the services described in Section I.B., the Subrecipient will be reimbursed within 30 days after the Subrecipient has submitted all proper documentation to the City.

ALL REQUESTS FOR FINAL REIMBURSEMENT MUST BE SUBMITTED TO THE CITY NO LATER THAN THREE (3) DAYS AFTER THE LAST DATE OF THE CONTRACT. Payments may be contingent upon certification of the Subrecipient’s financial management system in accordance with the standards specified in OMB Circular A-110.

V. NOTICES

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

City
Christina Day, Manager
Community Services
City of Plano
1520 Avenue K
Plano, Texas 75074
972-941-5262
Fax: 972-941-7396

Subrecipient
(Insert)

VI. SPECIAL CONDITIONS

A. Use of Property

Except as provided in 24 CFR 570.505. (a)-(d), and prior written approval of the City of Plano, Subrecipient may not change the use of the property located at **(Insert)** within five (5) years of the contract close-out date.

B. Obligation to Meet National Objective

If the funding is in excess of \$25,000, the real property that was acquired or improved in whole or in part with CDBG funds, located at **(Insert location)** must continue to meet the National Objective specified in 1A above, until five years after the expiration of the agreement.

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)). The Subrecipient also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this contract, including but not limited to the City of Plano's Subrecipient Compliance Manual, as updated. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

Nothing contained in the Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's compensation Insurance, as the Subrecipient.

C. Insurance Requirements

Subrecipient agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit B. Such insurance shall be evidenced by certificates, a copy of which shall be provided to the CDBG Administrator at the execution of this Agreement. Insurance provided by Agency is subject to approval by City. The subrecipient shall comply with the bonding and insurance requirements of OMB Circular A-110 Insurance.

D. HOLD HARMLESS AND INDEMNITY

THE AGENCY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY AGENCY'S BREACH OF ANY THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE AGENCY, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

AGENCY AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF AGENCY'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF AGENCY'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. AGENCY SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF AGENCY FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND AGENCY SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT.

E. Grantee Recognition

The Subrecipient shall insure recognition of the role of the City in providing Community Development Block Grant resources for this contract. All activities, facilities, and items utilized pursuant to this contract shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this contract.

F. Amendments

The City 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 both organizations. Such amendments shall not invalidate this Agreement nor relieve or release the City or Subrecipient from its obligations under this Agreement.

The City 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 or the scope of services, such modifications will be incorporated only by written amendment and will not become effective until signed by both City, and the Subrecipient.

Any request for transfer of funds among the contract budget categories submitted by the Subrecipient will require written approval from the City of Plano, before the transfer can be effective. The Subrecipient may make transfer of CDBG funds between or among budget categories of Exhibit A, Budget, without requiring a formal amendment to this contract provided:

1. The cumulative dollar amount of all transfers among budget categories is equal to or less than ten percent (10%) of the total amount of the budget;
2. The transfer will not change the scope of the project funded under this contract; and
3. The Subrecipient submits to City of Plano, a written statement specifying reason for transfer, request, amount of funds to be transferred, and identification of effected budget categories.

All other transfer of funds will require a formal amendment.

G. Suspension or Termination

1. Failure to Comply with Terms

In accordance with 24 CFR 85.43, if Subrecipient materially fails to comply with any term of this contract, the City may take one or more of the following actions, as appropriate in the circumstances: (1) temporarily withhold cash payments pending correction of the deficiency by the Subrecipient or other more severe enforcement action by the City; (2) disallow (that is,

deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance; (3) wholly or partly suspend or terminate the current award for the Subrecipient's program, (4) withhold further awards for the program, or (5) take other remedies that are legally available.

2. Termination

In accordance with 24 CFR 85.44(a), this contract may be terminated at any time by the City with the consent of Subrecipient, in which case the City and Subrecipient shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated.

In accordance with 24 CFR 85.44(b), this contract may be terminated by Subrecipient upon written notification to the City, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the City may terminate the award in its entirety.

In accordance with 24 CFR 85.43, if Subrecipient materially fails to comply with any term of this contract, this contract may be terminated by the City upon written notification to the Subrecipient, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated.

In the event of termination, whether voluntary or involuntary, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Subrecipient under this Agreement shall, at the option of the City, become the property of the City, and the Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

H. Reversion of Assets

Upon the expiration of this agreement, the subrecipient shall transfer to the City of Plano any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 must be either:

- (i) Used to meet one of the national objectives in §570.208 (formerly §570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or
- (ii) Not used in accordance with paragraph (i) of this section, in which even the subrecipient shall pay to the recipient an amount equal to the current market value of the property less

any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (i) of this section.)

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with OMB Circular A-110 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” or A-21, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets the National Objective of the CDBG program of benefiting low/moderate income persons;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR Part 570.502, and OMB Circular A-110; and

g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of five (5) years after the termination of this Agreement. Records for non-expendable property acquired with funds under this contract shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to: client name, address, ethnic breakdown, status (i.e. handicap, female-head of household, elderly), and description of service provided. Such information shall also be made available to City monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private, and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian, unless otherwise required by law.

5. Property Records

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

6. Close-Outs

The Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), final close-out reports and determining the custodianship of records.

7. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the City, grantor Subrecipient, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor Subrecipient deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments.

In accordance with the Single Audit Act of 1984, the Single Audit Act Amendments of 1996 (Public Law 104-156), and revised OMB Circular A-133, subrecipients receiving in excess of \$300,000 in a fiscal year, or \$500,000 for fiscal years ending after December 31, 2003, are required to have an annual independent audit and a copy of the audit is to be forwarded to Community Development Services upon completion.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report monthly all program income as defined at 24 CFR 570.500(a) generated by activities carried out with CDBG funds made available under this contract. In the event that any program income is derived from the activities specified in this Agreement, such income shall be transferred to the City's Grant Fund.

2. Payment Procedures

The City will pay to the Subrecipient funds available under this contract, based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. Payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with program income balances available in Subrecipient accounts. In addition, the City reserves the right to liquidate funds available under this contract for costs incurred by the City on behalf of the Subrecipient.

3. Performance Reports

Subrecipient shall submit to City a quarterly Performance Report in a format prescribed by City and shall include the amount of funds obligated and expended for each of the eligible activity, and number of beneficiaries served – total and by income level.

Subrecipient shall submit a Performance Report quarterly no later than the final day of the following month after the completion of the quarter until all Community Development Block Grant amounts are reported, expended, and all close-out requirements have been met. The Subrecipient shall submit Progress Reports to the City in the form, content, and frequency as required by the City.

D. Procurement

1. Compliance

Subrecipient shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring for services to be provided under this Agreement Subrecipient shall comply at a minimum with the non-profit procurement standards at 24 CFR 84.40-48.

Purchases of items costing \$25,000 or more require sealed bids. The sealed bid process can be complicated; therefore, the Subrecipient is required to contact the City of Plano Grants Coordinator's office for assistance prior to starting the bid process.

For purchases of items costing between \$3,000 and \$25,000 three (3) written quotes for the item are required. These quotes should be placed in the Project file. If the Subrecipient is unable to obtain three (3) quotes, a list of the vendors contacted should be placed in the file, noting those vendors who did submit quotes. If there is only one vendor who makes the item to be purchased, this should be noted in the file with an explanation of what was done to determine there was only one vendor available.

For purchases costing less than \$3,000, only one quote is required. The sales slip from the store where the item was bought will suffice. Subrecipient is not precluded from obtaining several quotes to obtain the best price, even for low-cost items.

2. OMB Standards

The Subrecipient shall procure all materials, property, or services in accordance with the requirements of OMB Circular A-110, Procurement Standards, and shall subsequently follow Property Management Standards.

IX. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with all applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086, and with fair housing and nondiscrimination provisions set forth in 24 CFR 570.601 and 24 CFR 570.602.

2. Nondiscrimination

The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, ancestry, national origin, sex, disability or other handicap, age,

marital/familial status, or status with regard to public assistance. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts with respect to any matters covered by this agreement by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein related to this contract.

4. EEO/AA Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A., Civil Rights, and B., Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

B. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; and lobbying political patronage, and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the labor standards as set forth in 24 CFR 570.603.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the City, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors.

The Subrecipient further agrees to ensure that, to the greatest extent feasible, opportunities for training and employment arising in connection with this project be given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

b. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency.

C. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this contract without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Subrecipient from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the City prior to the execution of such agreement. Subrecipient shall also comply with 24 CFR 570.609 with regard to debarment, suspension, or ineligibility status of selected subcontractors.

b. Payment

The City shall not be obligated or liable under this Agreement to any party other than the instant subrecipient for payment of any monies or for provision of any goods or services.

c. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

d. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

e. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

4. Affidavit of No Prohibited Interest

Subrecipient acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Subrecipient has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit C.

5. Lobbying

The Subrecipient hereby certifies that none of the funds provided under this Agreement shall be used for publicity or propaganda designed to support or defeat legislation pending before the U.S. Congress, a State Legislature, County Commissioners Court, or City Council.

6. Copyright

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

7. Religious Organization

The Subrecipient agrees that funds provided under this contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).

X. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

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

B. Flood Disaster Protection

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

C. Lead-Based Paint

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

D. Historic Preservation

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

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

XI. GENERAL PROVISIONS

A. Article and Section Headings

The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this agreement.

B. Partial Invalidity

If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

C. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

XII. EFFECTIVE DATE

This Agreement shall be effective from and after execution by both parties hereto. **SIGNED** on the date indicated below.

(SUBRECIPIENT)

By _____
Name _____
Title _____

Date: _____

CITY OF PLANO, TEXAS

Thomas H. Muehlenbeck
CITY MANAGER

Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee
CITY ATTORNEY

Acknowledgements

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **(Individual), (Title) of (Name of Recipient Agency), a (Type of Organization, for example, non-profit organization), on behalf of said (Organization).**

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **Thomas H. Muehlenbeck, City Manager**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

Exhibit A

2011 BUDGET: (INSERT SUBRECIPIENTS NAME)

Exhibit B

INSURANCE REQUIREMENTS

Agency shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Agency, its agents, representatives, employees, volunteers, officers, director, or subcontractors.

The Agency shall maintain insurance with limits not less than \$500,000 per occurrence, \$1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage (“occurrence” form CG 0001). Coverage will include:

- A. Premises - Operations;
- B. Broad Form Contractual Liability;
- C. Broad Form Property Damage; and
- D. Personal Injury

The policy will be endorsed to contain the following provisions: "The City of Plano, its officers, officials, employees, volunteers, Boards and Commissions are to be added as 'Additional Insureds' as respects to liability arising out of any activities performed by or on behalf of the Agency." The policy shall contain no special limitations to the scope of coverage afforded to the City. The Agency's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Agency's insurance and shall not contribute with it.

Coverage shall be primary and non-contributory. Primary and non-contributory endorsement must be attached to the original certificate when submitted.

City prefers that insurance shall be placed with insurers with an A.M. Best rating of no less than A: VI or, a Standard & Poors rating of A or better.

The Agency shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state the coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. All endorsements required shall be attached to the original certificate when submitted.

Exhibit C

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned, declare and affirm that no person or officer of _____ (herein "Subrecipient") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

Name of Subrecipient

By:

Signature

Print Name

Title

Date

STATE OF TEXAS §

§

COUNTY OF COLLIN §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2010.

Notary Public, State of _____



**FUNDING AGREEMENT BETWEEN THE CITY OF PLANO AND
(Insert SUBRECEIPIENT's Name)**

**U.S. Department of Housing & Urban Development
Home Investment Partnership Program, CFDA #14-239, M-10-MCF-48-0035**

THIS AGREEMENT entered into this 1st day of October, 2010, between the City of Plano (hereinafter referred to as "CITY"), a Texas Home-Rule Municipal Corporation, acting by and through Community Services Division of the Department of Planning, and **(Insert)** (hereinafter, referred to as the "AGENCY").

WHEREAS, City has received certain funds from the U.S. Department of Housing and Urban Development (HUD) under Title II of the National Affordable Housing Act of 1990, (P.L. 10 01-625) hereinafter referred to as "the ACT"; and

WHEREAS, the implementing regulations of "the ACT" at Section 24, Part 92, of the Code of Federal Regulations (Final Rule of the Home Investment Partnership Program), and Subsequent Amendments hereinafter referred to as the "HOME Program", sets forth the requirements for the use of said funds; and

WHEREAS, the City Council of Plano, by resolution, pursuant to "the ACT", adopted a Consolidated Plan to carry out housing activities eligible under the HOME Program; and

WHEREAS, the AGENCY applied for funding from the City of Plano's HOME Program to carry out the acquisition and rehabilitation of housing for sale to low-to-moderate income residents of the City of Plano and hereinafter referred to as the "Project"; and

WHEREAS, the City Council of Plano adopted a budget for the HOME Program Year (2010-2011 beginning October 1, 2010 and ending September 30, 2011 and included therein the award of funds to the AGENCY for funding the "Project"; and

WHEREAS, in consideration of the award of funds by the City Council, the City hereby offers grant assistance to the AGENCY, (subject to the future availability of federal funds) to implement the approved AGENCY "Project" application in accordance with "the ACT" and the "HOME Program"; and

NOW THEREFORE, in consideration of the foregoing and the mutual agreements and covenants hereinafter set forth, the parties hereto legally intending to be bound hereby, do agree for themselves and their respective successors and assigns as follows:

I. PURPOSES/CONSIDERATION

The purpose of this Agreement is to provide terms and conditions under which City shall administer and make available the HOME Funds in an amount not to exceed _____00/100 Dollars (\$) pursuant to the HOME Funds. In Consideration of the City providing the above referenced funding, AGENCY shall pay costs associated with affordable housing and abide by the terms and conditions of this Agreement.

II. TERMS AND CONDITIONS OF USE OF HOME FUNDS

- A.** The AGENCY agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 92, the Housing and Urban Development regulations, concerning the HOME Investment Partnerships Program (HOME). The AGENCY also agrees to comply with all other applicable Federal, State and Local laws, regulations, and policies, governing the funds provided under this contract, including but not limited to the City of Plano’s Sub-recipient Compliance Manual. The AGENCY further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B.** City is providing the total sum of _____00/100 Dollars (\$) which must not be less than fifteen percent (15%) of City HOME allocations in the form of a grant from “AGENCY set-aside funds” in accordance with requirements of 24 CFR 92.300.
- C.** As operating expenses are not an eligible expense for set-aside funds, the HOME funds grant includes _____00/100 Dollars (\$) classified as AGENCY Operating Expenses which will not exceed five percent (5%) of City HOME allocation. These funds may not exceed \$50,000 or fifty percent (50%) of the AGENCY total annual operating expenses for the year, whichever is greater.
- D.** AGENCY shall use any and all HOME funds furnished by City under this agreement to provide homeownership housing opportunities for low-to-moderate income persons by acquiring single family pre-owned homes and rehabilitating those home units for purchase and permanent occupancy by HOME eligible low- to moderate-income persons as described in the Scope of Work set forth in Section IV and for no other purposes.
- E.** Subsidy limits are set for the HOME Investment. The minimum amount of HOME funds that can be invested is \$1,000 per unit. The Maximum per-unit HOME subsidy limit varies by Participating Jurisdiction. HUD determines the maximum amounts, which are based on the City’s 221(d) (3) program limits for the metropolitan area, each year.
- F.** AGENCY agrees that these HOME funds will not be used for any expenditure incurred before October 1, 2010.
- G.** AGENCY agrees the expenditure of the HOME funds shall be completed on or before September 30, 2012. Any HOME funds remaining with AGENCY which

are not expended or encumbered on September 30, 2012 will be returned to the City.

- H.** In Consideration of AGENCY's full and satisfactory performance of this Agreement, the City shall reimburse the actual allowable costs incurred by AGENCY in the performance of the Agreement in an amount not to exceed _____00/100 (\$).
- I.** If during the term of this Agreement, AGENCY wishes to utilize HOME funds for purposes other than stated above, such change will be allowed only if the proposed change is not in violation of HOME Regulations. Such change may be allowed only after approval by AGENCY's Board, as evidenced by the official minutes of the board authorizing the change, and by the City Manager. No expenditure of HOME Funds in conformance with the proposed change is permitted until written approval is received from the City Manager.
- J.** The AGENCY shall provide ongoing compliance requirements of HOME assisted properties for the entire affordability period set forth in Section V.E. For homebuyer units this includes monitoring units for principal residency and recapture of funds at time of resale.
- K.** Timely completion of the specified work in this agreement is an integral part of performance. Expenditure of HOME funds is subject to Federal deadlines, which could result in the loss of the Federal funds. By acceptance and execution of this agreement, it is agreed by the AGENCY that the Project will be completed as expeditiously as possible and that the AGENCY will make every effort to ensure that the project will proceed and will not be delayed. Failure to meet these deadlines can result in cancellation of this contract and the revocation of HOME funds. The necessity of timeliness shall cause appropriate provisions to be inserted in all contracts or subcontracts relative to the work tasks required by this agreement.
- L.** AGENCY shall not use these funds to purchase equipment that exceeds \$1,000 in total value.

III. INDEPENDENT CONTRACTOR

It is understood that the City enters into this Agreement with AGENCY for the purposes enumerated in Section II hereof, and it is understood that Agency is an Independent contractor and nothing herein shall be construed to constitute AGENCY as an agent, employee, or representative of the City or as expressing any intention of AGENCY to enter into a joint venture with City.

IV. SCOPE OF WORK

- A.** AGENCY shall purchase, rehabilitate, and sell _____ () single-family homes at market or below prices to eligible low-to moderate income families. Acquisition down payment will not exceed \$_____, and cost of rehab will not exceed \$_____.
- B.** AGENCY can provide direct homebuyer subsidies (down payment assistance to bring loan amounts down to an affordable level for each client. Subsidy not to exceed \$_____.
- C.** Homes shall be rehabilitated in accordance with HOME Program regulations, and AGENCY.
- D.** A maximum of _____ 00/100 Dollars (\$) may be used for administrative purposes, including salaries, benefits, rent, utilities, audit, and other administrative costs, called AGENCY Operating Expenses and shall not exceed five percent (5%) of the City HOME allocation for the grant year.
- E.** It is understood that AGENCY shall provide a specific working budget and realistic timetable as relates to acquisition, construction/rehabilitation, soft costs, development fees and other allowable cost/activities prior to any fund usage. Said budget shall identify all sources and uses of HOME funds, and allocate HOME and non-HOME funds to activities or line items, both as an overall budget which is known as (Exhibit A). An individual unit budget will be submitted prior to fund disbursement for each property acquired, rehabilitated, and sold. Said budget shall include:
1. The line item costs for the purchase, rehabilitation/construction of the houses and how each source of funds is to be utilized in the construction. The rehab/construction will be based on a scope of work explained by Plano Housing Corporation procedures, and performed by a designated inspector. The scope of work shall provide estimates for the cost of rehab or construction.
 2. The permanent sources of funding for the repayment of the construction loan.
 3. The anticipated sources of Temporary or permanent mortgages and any bridge financing that may be necessary.
 4. A detailed development schedule delineating the timeline for predevelopment, construction, sale, and closing of the financing for each housing unit.
 5. The total Project budget unless amended or modified by mutual agreement of the parties.
- F.** The AGENCY shall provide a reconciliation statement prior to closing the sale of each home.
- G.** The Scope of Work will be performed in essentially the manner proposed in the

AGENCY's application and or Agency procedures.

- H. The following timetable will be used as a guide for completing the acquisition agreement:

	<u>Purchase Date</u>	<u>Completion date</u>	<u>Sold Date</u>
Property #1			
Property #2			

V. **HOME PROJECT REQUIREMENTS**

A. **DISBURSEMENT OF FUNDS**

1. Grant funds will be disbursed on a reimbursement basis only. In no event shall the AGENCY request funding until such time that either eligible expenses have been incurred or funds are needed for expenses for eligible AGENCY Project set-aside cost in compliance with 24 CFR 92.301 and that will be expended in accordance with 92.502c.
2. Any expense incurred prior to October 1, 2010 (Grant effective date) is not considered to be an eligible expense.
3. No HOME project costs can be incurred, until the City has conducted an environmental review of the proposed project site as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the project.
4. The AGENCY shall provide documentation to the City for each request of HOME Program expenditure under this agreement. The request should be on a City designated form. AGENCY shall attach invoices bills, timesheets, etc. to the form as proof of expenditure. Upon receipt and verification of this documentation and verification that each expense is an eligible HOME expense, the CITY shall arrange for such funding to be paid to AGENCY. All such expenditures shall be in conformance to the approved Project budget. The City reserves the right to withhold payment until adequate documentation has been provided and reviewed. The City also reserves the right to inspect records and Project sites to determine that the reimbursement and compensation requests are reasonable.
5. AGENCY may submit a final invoice upon completion. Final payment shall be made after City has determined that all services have been rendered, files and documentation delivered, and units have been placed in service in full compliance with HOME Regulations, including submission of a completion report, documentation of eligible occupancy (eligible buyer), property standards (final inspection), and long term use restrictions.
6. AGENCY also agrees that failure to expend HOME funds within a reasonable time frame and in an acceptable manner or to complete the project could result

in the repayment of funds in accordance with 24 FR, Sec 92.503 (b)

7. Expenses incurred after the termination date will not be reimbursed under the Agreement and the City shall assume no liability for same. At the time of expiration, and HOME funds on hand and any accounts receivable attributable to the use of HOME funds shall be returned to the City.
8. The HOME funds advanced to the PROJECT will be secured by a note and mortgage, and in the case of a rental project, a deed covenant as required by 24 CFR Part 92.

B. ENVIRONMENTALS

1. Notwithstanding any provision of this agreement, the parties hereto agree and acknowledge that this agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the CITY of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 50 and 58.
2. The AGENCY shall not undertake or commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair, or construction prior to the environmental clearance. Any expenditure made prior to the clearance shall not be reimbursed.

C. PROCUREMENT STANDARDS

1. The AGENCY shall establish procurement procedure comply at a minimum with the nonprofit procurement standards at 24 CFR 84.40-.48. AGENCY shall also ensure that minority and women-owned businesses have equal opportunity to bid for materials and services contracts. Purchases of items or services costing \$25,000 or more require sealed bids.
2. For purchase of items costing between \$3,000 and \$25,000, three (3) written quotes for the item are required. These quotes should be placed in the Project file. If AGENCY is unable to obtain three (3) quotes, a list of the vendors contacted should be placed in the file, noting those vendors who did submit quotes. If there is only one vendor who makes the item to be purchased, this should be noted in the file with an explanation of what was done to determine there was only one vendor available. For purchases costing less than \$3,000, only one quote is required. The sales slip from the store where the item was bought will suffice. AGENCY is not precluded from obtaining several quotes to obtain the best price, even for low-cost items.

D. HOMEBUYER ELIGIBILITY

1. AGENCY must assure that purchasers of HOME assisted housing have a gross annual household income that does not exceed eighty percent (80%) of area median income (AMI), adjusted for household size, verification of household

income must be in accordance with 24 CFR 92.203. Verification documentation must not be more than 6 months old when the buyer is determined eligible. These income guidelines may be revised, at which time City will notify AGENCY of the changes. Upon such notification, all new clients must meet the revised guidelines.

2. AGENCY shall collect and maintain project beneficiary information pertaining to household size, income levels, racial characteristics, and the presence of female headed households in order to determine low- and moderate-income benefit in a cumulative and individual manner. Income documentation shall be in a form consistent with HOME requirements as stated in the HUD Technical Guide for Determining Income and Allowances under the HOME Program.
3. AGENCY will use the 24 CFR Part 5 method of calculating income.
4. AMI charts are provided by HUD annually. Current income eligibility guidelines are shown in Exhibit B.
5. Homes purchased by homebuyers must be located in the jurisdiction of the City of Plano.
6. The homebuyer must occupy the home as the principal residence of the recipient of HOME funds throughout the established period of affordability in accordance with 24 CFR 92.254 (a) (4).
7. The homebuyer's monthly housing cost (PITI) does not need to meet initial affordability requirements (e.g., 30% of annually gross income), nor does the PITI need to remain below a fixed percentage of gross monthly income over time. The AGENCY shall lend the HOME funds to the individual buyers in an amount sufficient to make the purchase affordable, but not to exceed \$_____.
8. The homebuyer will have a fee simple title to the property.
9. Ownership may be subject only to mortgages, deeds of trust, deed restrictions, or other debt instruments approved by the City of Plano.

E. AFFORDABILITY PERIOD

1. The HOME program sets affordability periods that relate to the resale of the property. The affordability period is based on the amount of HOME funds provided for the property.

If the homebuyer sells the property within the affordability period, recapture or resale requirements will be placed on the resale of the property.

<u>HOME Funds Provided</u>	<u>Affordability Period</u>
<\$15,000	5 years

\$15,000-\$40,000	10 years
>\$40,000	15 years

2. The AGENCY will track the homeowner for the entire affordability period and keep the City informed of residency and property status.

F. RECAPTURE AND REPAYMENT OF HOME FUNDS

1. The sale of the property by the homeowner during the affordability period triggers repayment of the direct HOME subsidy that the buyer received when he/she originally purchased the home.
2. The City has chosen the Recapture Option as a mechanism to reclaim all or part of proceeds from the sale of the property.
3. The City will use the “reduction during the affordability period (Forgiveness)” method of calculation and “shared insufficient proceeds” as its method of determining the amount of repayment required.
 - a. Under this method the direct HOME subsidy will be prorated and forgiven on a monthly basis. For example a 5 year affordability period will be forgiven at the rate of 1/60 per month; 10 year affordability at 1/120 per month; and 15 year affordability at 1/180 per month. This amount will be deducted from the full direct subsidy. If the proceeds from the sale of the property are sufficient to repay the City for the portion remaining of the original direct subsidy, the City will be paid and the homeowner will get the difference.
 - b. If the sale proceeds are insufficient to repay the City for the remaining portion of the original direct subsidy, the following calculation will be used:

$$\frac{\text{HOME Subsidy}}{\text{HOME Subsidy} + \text{Homeowner Invest.}} \times \text{Net Proceeds} = \text{HOME recapture}$$

4. The Recapture of funds will be enforced by having the homebuyer sign a note and deed of trust at the time of closing and recording the lien (deed of trust) with the Collin County Clerk’s Office. The City will provide this note and deed of trust as the beneficiary.
5. Funds recaptured because housing no longer meets affordability requirements are subject to the requirements on program income.
6. All HOME funds are subject to repayment in the event the Project does not meet all HOME requirements.
7. AGENCY understands that upon the completion of the Project, and HOME funds reserved but not expended under this agreement will revert to the City.
8. The AGENCY shall lend the HOME funds to the individual buyers in an amount sufficient to make the purchase affordable. Any HOME funds that

reduce the price of the property below the fair market value of the Property shall be secured by a HOME note and mortgage as required in 92.254(a)(5)(ii) using the note and mortgage prescribed or approved by the City (and consistent with the method of recapture identified in the City's Consolidated Plan).

G. AGENCY PROJECT PROCEEDS

1. Project proceeds, as defined herein, shall include any fees, program payable to AGENCY which are generated in the provision of housing assistance under this agreement, as well as prior HOME program income and/or proceeds being retained by AGENCY. 24 CFR 92.300 (a).
2. The City of Plano hereby authorizes the AGENCY to retain all project proceeds in conformance with 24 CFR 92.300 (a)(2). Project proceeds are not under the same regulations as program income (recaptured funds).
3. AGENCY proceeds may only be used for HOME eligible activities and other housing projects that benefit low-income families. Even after this written agreement expires, AGENCY proceeds will continue to be used for only HOME eligible activities and other housing projects that benefit low-income families.
4. The City of Plano stipulates that the AGENCY can use the project proceeds for the following activities per CPD Notice 97-9 (IV)(A).
 - a. HOME eligible activities or
 - b. Other low-income housing activities, which may include operational support of the AGENCY (assuming the AGENCY continues to meet its mission of providing affordable housing). This includes operational costs such as rent, salaries, and other affordable housing projects.
5. AGENCY will report quarterly on the use of project proceeds. The proceeds will be kept in a separate account which can be tracked monthly. The three bank statements for the quarter, invoices or bills must be submitted with the quarterly report.
6. AGENCY and the City understand that once the AGENCY proceeds are used, there shall be not further HOME requirements to meet. Funds generated from the use of AGENCY proceeds are not "AGENCY proceeds".

H. REPORTING REQUIREMENTS

1. AGENCY shall provide to the City quarterly reports, on forms provided by the City, which will report information for each quarter of the grant year. The quarters to be reported on will end in December, March, and June, and September. The reports will be due to the City not later than 30 days from the end of the quarter. A final report is required at the end of the grant year. These quarterly will include a report on NET PROCEEDS.

2. All reports shall state the total number of unduplicated households, including the ethnic origin, number in household, income level, disability status, and whether these persons are female head of household. In addition, AGENCY agrees to provide the City information as required to determine program eligibility, to meet national objectives, and to analyze the financial records pertinent to the project.
3. If AGENCY fails to submit said reports, the City will have the option to terminate this Agreement.
4. AGENCY shall also provide to the City one (1) copy of each audit of Agency's financial records which may be performed between the effective date of this Agreement and the expiration of the Agreement, or until such time as all funds have been expended and the scope of work completed.

VI. THE PROPERTY AND PROPERTY STANDARD REQUIREMENTS

A. TYPES OF PROPERTIES

AGENCY must determine that the property is an eligible property. Eligible property types include any property that will serve as the purchaser's principal residence within the city limits of Plano, including:

1. A single family property (one-unit)
2. A two-to-four unit property
3. A condominium unit
4. A cooperative unit
5. A manufactured home

B. VALUE OF PROPERTY

1. AGENCY must determine the "after completion" maximum value of the property prior to any work being performed by using estimates of value, appraisals, or tax assessments.
2. The post project value must not exceed ninety-five (95%) of the median purchase price.
3. If the property does not require rehab the sales price must not exceed ninety-five (95%) of the median purchase price.

C. PROPERTY STANDARDS

If a project is acquisition and rehabilitation, the property must meet local written rehabilitation standards, state and local code requirements, and handicapped accessibility requirements, where applicable.

D. INSURANCE, BONDING REQUIREMENTS, HOLD HARMLESS, AND INDEMNITY

1. Insurance:

- a. Agency agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as show in Exhibit “C”. Such insurance shall be evidenced by certificates, a copy of which shall be provided to the City within ten (10) days of execution of this Agreement. Insurance provided by Agency is subject to approval by City.
- b. The City shall be added as “additional insured” on general liability with respect to the services provided under this contract (See Exhibit C).
- c. Insurance companies, named insured and policy forms shall be subject to the approval of the City of Plano. Such approval shall not be unreasonably withheld. Insurance policies shall not contain endorsements or policy conditions that reduce coverage provided to the City of Plano. AGENCY shall be responsible to City of Plano or Insurance companies insuring City for all costs resulting from both financially unsound insurance companies selected by AGENCY and their inadequate insurance coverage.

2. Bonding - AGENCY shall observe sound business practices with respect to providing such bonding insurance as would provide adequate coverage for activities under this Agreement in compliance with 24 CFR 85.36 (h)..

3. Flood Insurance:

- a. Consistent with Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), HOME funds may not be used with respect to the acquisition, new construction, or rehabilitation of a project located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazard.
 - i. The community in which the area is situated is participating in the National Flood Insurance Program (44 CFR Parts 59-79), or less than a year has passed since FEMA notification regarding such hazards, and
 - ii. Flood Insurance is obtained as a condition of approval of the commitment.
- b. The City shall require and monitor compliance where an area has been identified by FEMA as having special flood hazards that the AGENCY shall be responsible for assuring the flood insurance under the National Flood Insurance Program is obtained and maintained. Copies of records pertaining to flood insurance protection shall be provided to the City upon request.
- c. No payments will be made to the AGENCY until the current certifications of insurance have been provided.

HOLD HARMLESS AND INDEMNITY - THE AGENCY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY AGENCY'S BREACH OF ANY THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE AGENCY, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

AGENCY AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF AGENCY'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF AGENCY'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. AGENCY SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF AGENCY FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND AGENCY SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT.

E. RECORDS RETENTION

AGENCY shall maintain accurate accounting records which document and justify all expenditures made pursuant to this Agreement. All income qualification

information, all original books of entry and all canceled checks and any other financial records will be retained for no less than five (5) years from August 31 following the program year in which HOME Funds were last expended under this Agreement. All accounting procedures, records, and reports shall be available for inspection by a duly authorized representative of the City or the U.S. Department of Housing and Urban Development.

F. TERMINATION

1. In accordance with 24 CFR 85.43, suspension or termination may occur if the AGENCY materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.
2. If, through any cause, the AGENCY shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if the AGENCY shall violate any of the conditions, agreements or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the AGENCY of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, the AGENCY shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder to the date of said termination. Notwithstanding the above, the AGENCY shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the AGENCY and the City may withhold any payments to the AGENCY for the purpose of setoff until such time as the exact amount of damages due the City from the AGENCY is determined whether by court of competent jurisdiction or otherwise.

VII. ADMINISTRATION OF THE AGENCY/CITY OBLIGATIONS

A. AGENCY CERTIFICATION

1. Only non-profit organizations that have been certified by HOME participating jurisdictions as a Community Housing Development Organization can receive funds from the minimum fifteen percent (15%) set aside.
2. AGENCY must be certified by the participating jurisdiction regarding Legal Status, Organizational structure, and Capacity and Experience. A HUD checklist will be used to recertify the AGENCY.
3. AGENCY certification must be renewed annually. AGENCY agrees to provide all necessary documentation to the City for the purpose of recertification.

B. MATCH

1. The HOME Program requires that the funds used by the AGENCY be matched by the City of Plano. The City depends upon the donations and volunteerism of

non-profits for this match of (25%) of the total Home funds drawn down for project costs. For every dollar of HOME funds drawn down for a project, there is a \$0.25 match obligation. The AGENCY operating expenses and HOME administrative and planning funds do not require match.

2. Match is a permanent contribution to affordable housing. Match is not leveraging, but the City's contribution to the HOME program - the local, non-federal contribution to the partnership.
3. The City's match credits are a community's non-federal contributions of cash, assets, services, labor and other resource of value to the HOME Program.
4. The AGENCY will provide the City documentation of any source of cash, assets, services, labor and other resources of value to the HOME program that is eligible for match. Documentation will include check copies of any cash donation or grant received, deposit slips confirming deposit, and proof of use of funds.

C. RECORD KEEPING

The City must establish and maintain sufficient records to document that program requirements are met.

D. MONITORING

1. The City may perform periodic on-site monitoring of AGENCY for compliance with the terms and conditions of this agreement and the regulations of 24 CFR 92. If the monitoring reveals deficiencies in the agency's performance, a written report shall be prepared, identifying the deficiencies and establishing a time frame for correcting the deficiencies.
2. The City reserves the right to audit the records of the AGENCY any time during the performance of this agreement and for a period of five (5) years after final payment is made under this agreement.
3. AGENCY will provide reports and access to Project files as requested by the City during the Project and for five (5) years after completion and closeout of this agreement.
4. If required, the AGENCY will provide the City with a certified audit of the AGENCY's records representing the fiscal year during which the Project becomes complete. Whenever the amount of federal funding is at or exceeds \$500,000 pursuant to the requirements of OMB Circular A-133.
5. Access shall be immediately granted to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Agency or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

E. DEFAULT

1. If AGENCY fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the agreement, and more particularly if the AGENCY refuses or fails to proceed with the work with such diligence as will insure its completion within the time fixed by the schedule set forth in Section II, AGENCY shall be in default and notice in writing shall be given to Agency of such default by the City. If agency fails to cure such default within such time as may be required by such notice, City may at its option terminate and cancel the agreement.
2. In the event of such termination, all HOME Funds awarded to AGENCY pursuant to this agreement shall be immediately revoked and any approvals related to the project shall immediately be deemed revoked and canceled. In such event, AGENCY will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this agreement.
3. Such termination shall not affect or terminate any of the rights of City as against the AGENCY then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the City under the law and the note and deed of trust (if in effect), including but not limited to compelling AGENCY to complete the project in accordance with the terms of this Agreement, in a court of equity.
4. The waiver of a breach of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

F. NON-ASSIGNMENT

AGENCY shall not assign any of AGENCY'S obligations or duties under this Agreement without first obtaining written consent from the Community Relations Commission and City Manager.

VIII. UNIFORM ADMISTRATIVE REQUIREMENTS

To the extent applicable to a nongovernmental recipient of federal funds, the AGENCY shall comply with OMB Circulars A-87, A-102, A-110, A-122, A-133, as amended, the Davis-Bacon Act (40 U.S.C. 276a et seq.), as amended, and as supplemented by Department of Labor regulations (CFR 29 Part 5, as amended), the Copeland Anti-Kickback Act (18 USC 874), as amended, and as supplemented by Department of Labor regulations (CFR 29 Part 3, as amended), the Agreement Work Hours and Safety Standards Act (40 USC 327 et seq.), as amended, and as supplemented by Department of Labor regulations (CFR 29 Part 5, as amended); Executive Order 11246 (Equal Opportunity), as amended, and as supplemented by Department of Labor regulations (CFR 41 chapter 60, as amended); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq., as amended and Section 104 (d) of the Act), and in accordance with CFR 24 Part 42, as amended.

IX. OTHER FEDERAL REQUIREMENTS

A. EQUAL OPPORTUNITY AND FAIR HOUSING.

In accordance with the Program Guidelines and Section CFR 24 92.350 of the HOME Regulations, no person in the United States shall on the ground 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 activity funded in whole or in part from HOME funds. In addition, 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 (CFR 3, 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 of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24CFR 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 (U.S.C. 1701u) that:
 - a. To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with HOME funds be given to low-income persons residing within the unit of general local government or the metropolitan area (or non-metropolitan City) as determined by HUD, in which the project is located; and
 - b. To the greatest extent feasible contracts for work to be performed in connection with any such project be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area (or non-metropolitan City) as the project.
5. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise).

The AGENCY must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. The AGENCY will cooperate with the City in its minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the procurement of property and services including, without limitation, real estate firms, construction firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services.

When procuring property, goods and services, the DCDLRP may require that the AGENCY follow the City's procurement procedures which reflect applicable State and local laws and regulations and which shall conform to applicable Federal law, regulations and standards. The AGENCY shall consult the DCDLRP on any procurement to assure conformance with applicable laws, regulations, and standards.

B. EQUAL ACCESS

The AGENCY shall provide the services set forth in Section I without discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, marital status, physical handicap, or age.

C. NON-DISCRIMINATION

The AGENCY agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of the AGENCY, will state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief.

D. AFFIRMATIVE MARKETING

The AGENCY must adopt affirmative marketing procedures and requirements for HOME-assisted housing containing five (5) or more housing units. Affirmative marketing steps shall 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 and shall comply with the requirements and procedures of 24 CFR 92.351 of the Regulations. The AGENCY shall also comply with the "Affirmative Marketing Procedures" adopted by the City that are attached hereto as Exhibit D.

E. ENVIRONMENTAL REVIEW

The AGENCY will provide information necessary for the DCDLRP to determine the environmental effects of each activity carried out with HOME funds 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 and shall comply with all requirements and actions for each activity that it carries out with HOME funds, in accordance with the requirements imposed on AGENCY under 24 CFR Part 58.

F. DISPLACEMENT, RELOCATION, AND ACQUISITION

1. The AGENCY 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.
2. The AGENCY shall consult the DCDLRP, prior to proceeding with any project activity with HOME funds that may cause temporary or permanent displacement to assure compliance with appropriate relocation requirements as provided in Section 24 CFR 92.353 of the Regulations and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR Part 24, as amended and the Fair Housing Act (42 U.S.C. 3601-19).
3. If HOME funds are used in a project, the project is subject to the requirements of the Housing and Community Development Act of 1974. This includes the section 104 (d) requirements to provide relocation assistance and replace low/moderate-income housing as described at 24 CFR 570.606 (c) (Entitlement Program).
4. Real Property Acquisition Requirements: The acquisition of real property for a HOME project is subject to the URA and the requirements of 49 CFR Part 24, subpart B.

G. LABOR REQUIREMENTS

1. Section 24 CFR 92.354 of the Regulations requires that any contract for the construction (rehabilitation or new construction) of affordable housing with (twelve) 12 or more units assisted with funds made available under HOME must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276 a-5), will be paid to all laborers and mechanics employed in the development of affordable housing involved, and such agreements must also be subject to the overtime provisions, as applicable, to the Work Hours and Safety Standards Act (40 U.S.C. 327-332).
2. The AGENCY shall comply with regulations issued under these Acts and with other Federal Laws and Regulations pertaining to labor standards and HUD handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. The DCDLRP shall require certification as to compliance with the provisions of this section before making any payment under such agreement.

H. LEAD-BASED PAINT

1. In accordance with Section 24 CFR 92.355 of the HOME Regulations as amended, housing assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and is, therefore, subject to 24 CFR Part 35. Unless otherwise provided, the AGENCY shall be responsible for testing and abatement activities.
2. The AGENCY will assure compliance with Federal Regulations in regard to lead-based paint which Regulations require that applicants, owners, and tenants of HUD-associated housing and rehabilitation projects constructed before 1978 be provided with information on the following: that the property may contain lead-based paint; of the hazards of lead-based paint; of the symptoms and treatment of lead-based paint poisoning; of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards); of the advisability and availability of blood lead level screening for children under seven years of age; and that in the event lead-based paint is found in the property, appropriate abatement procedures may be undertaken.

I. DEBARMENT AND SUSPENSION

As required by 2 CFR 2424, federal funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor, subcontractor, developer, business, consultant, or any entity during any period of debarment, suspension, or placement in ineligibility status.

X. REVERSION OF ASSETS

Upon expiration of the agreement, the AGENCY will also transfer any remaining unencumbered funds, and any accounts receivable attributable to HOME funds, to the CITY for deposit to the HOME Investment Trust Fund account. Unexpended funds, recaptured funds and repayments under Unexpended funds, recaptured funds and repayments under 24 CFR, 92.252 (a) (4) and 92.254 (a) (5) as well as any interest earned on cash advances from the U.S. Treasury are not program income and shall be promptly remitted to the City for deposit to the HOME Investment Trust Fund Account. AGENCY is to report any funds received.

XI. MISCELLANEOUS

1. Entire Agreement/Amendment - This Agreement and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.
2. Agency Representation - The undersigned represents and warrants that he or she is the duly authorized representative of AGENCY and that this Agreement has been approved and accepted by the Board of Directors (or equivalent) of the AGENCY.

3. Binding on the Parties - This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, and assigns. Notwithstanding, however, this Agreement shall not be considered fully executed or binding on the City until the same shall have been executed by agency and the City Manager or his designee, and approved and accepted by the City Council of the City of Plano in open meeting as required by law.

4. Notice - All notices or other communication which shall or may be given pursuant to this agreement shall be in writing and shall be delivered by personal services, or by certified or registered mail, return receipt requested, addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally serviced; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier. Notice shall be in writing delivered to the parties as follows:

<u>City</u>	<u>Agency</u>
Christina Day Community Services City of Plano, Texas P.O. Box 860358 Plano, TX 75086-0358 Telephone: 972-941-5262	Insert Name Address Phone

5. Paragraph Headings - The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provisions in this Agreement.

6. Waiver/Breach - No waiver or breach of any provision of this Agreement shall constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

7. Contract Interpretation - Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

8. Severability - Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or the City of Plano, Texas, such provisions, paragraphs, sentences, words, or phrases shall be deemed modified to the extent necessary in order to conform with such laws; or, if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

9. Venue - In the event of breach of this Agreement, this Agreement shall be governed by the laws of the State of Texas and exclusive venue for all causes of action shall be instituted and maintained in Collin County, Texas.

10. Availability of Funds - Funding for this agreement is contingent on the availability of HOME Funds and continued authorization for program activities and is subject to amendment or termination due to lack of HOME Funds, or authorization, reduction of HOME Funds, and/or change in regulations.

XII. CONFLICT OF INTEREST

- A. AGENCY warrants and covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of its services hereunder. AGENCY further warrants and covenants that in the performance of this agreement, no person having such interest shall be employed.
- B. HOME conflict of interest provisions, as stated in 24 CFR 92.356, as well as the provisions of 24 CFR 85.36 and 24 CFR 84.42, apply to the award of any contracts under this agreement and the selection of households to occupy HOME-assisted units.
- C. No employee, agent, consultant, elected official, or appointed official of AGENCY may obtain a financial interest or unit benefits from a HOME-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition includes the following:
 1. Any interest in any contract, subcontract or agreement with respect to a HOME-assisted Project or program administered by AGENCY, or the proceeds hereunder; or
 2. Any unit benefits or financial assistance associated with HOME Projects or programs administered by AGENCY, including occupancy of a rental housing unit in a HOME-assisted rental Project; receipt of HOME tenant-based rental assistance; purchase or occupancy of a homebuyer unit in a HOME-assisted Project; receipt of HOME homebuyer acquisition assistance; or receipt of HOME owner-occupied rehabilitation assistance.
- D. This prohibition does not apply to an employee or agent of the agency who occupies a HOME-assisted unit as the on-site Project manager or maintenance worker.
- E. Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested by agency in writing to the City. AGENCY must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. City may grant exceptions or forward the request to HUD as permitted by 24 CFR 92.356, 85.36, and 84.42, as they apply.
- F. AGENCY acknowledges and represents that AGENCY is aware of the laws related to prohibited interests found in the City Charter and the City Code of Conduct and

that the existence of a prohibited interest at any time will render the agreement voidable. At the time of execution of this agreement, a duly authorized representative of the AGENCY shall execute the Affidavit of No Prohibited Interest attached and incorporated herein as Exhibit "E".

VIII. EFFECTIVE DATE

This agreement shall be effective from and after execution by both parties hereto. **SIGNED** on the date indicated below:

(SUBRECEPIENT)

By _____
Executive Director

Date: _____

City of Plano, Texas

Thomas H. Muehlenbeck,
City Manager

Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee
City Attorney

Acknowledgements

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by _____, Executive Director of **(Name of Recipient Agency)**, a non-profit corporation, on behalf of said **(Organization)**.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, Tom Muehlenbeck, City Manager, of the City of Plano, Texas, a Home-Rule Municipal Corporation, on behalf of said Municipal Corporation.

Notary Public, State of Texas

EXHIBIT A

2010 BUDGET: (INSERT SUBRECIENTS NAME)

EXHIBIT B
2010 HUD INCOME LIMITS

<u>HOUSEHOLD SIZE</u>	<u>MAXIMUM INCOME</u>
1 person	\$38,300
2 person	\$43,750
3 person	\$49,200
4 person	\$54,650
5 person	\$59,050
6 person	\$63,400
7 person	\$67,800
8 person	\$72,150

EXHIBIT C

INSURANCE REQUIREMENTS

Agency shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Agency, its agents, representatives, employees, volunteers, officers, director, or subcontractors.

The Agency shall maintain insurance with limits not less than \$500,000 per occurrence, \$1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence" form CG 0001). Coverage will include:

- A. Premises - Operations;
- B. Broad Form Contractual Liability;
- C. Broad Form Property Damage; and
- D. Personal Injury

The policy will be endorsed to contain the following provisions: "The City of Plano, its officers, officials, employees, volunteers, Boards and Commissions are to be added as 'Additional Insureds' as respects to liability arising out of any activities performed by or on behalf of the Agency." The policy shall contain no special limitations to the scope of coverage afforded to the City. The Agency's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Agency's insurance and shall not contribute with it.

Coverage shall be primary and non-contributory. Primary and non-contributory endorsement must be attached to the original certificate when submitted.

City prefers that insurance shall be placed with insurers with an A.M. Best rating of no less than A: VI or, a Standard & Poors rating of A or better.

The Agency shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state the coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. All endorsements required shall be attached to the original certificate when submitted.

EXHIBIT D

AFFIRMATIVE MARKETING POLICIES AND PROCEDURES

POLICY

The Developer believes that individuals of similar economic levels in the same housing market areas should have available to them a like range of housing choices regardless of their race, color, religion, sex, age, handicap, familial status, or national origin.

PROCEDURE

The Developer will carry out this policy through affirmative marketing procedures designed specifically for the House on the Corner program as outlined below:

A. Affirmative Marketing

1. The Equal Housing Opportunity logo will be displayed on all materials.
2. The Developer will work closely with diverse community organizations, to ensure that families in need of housing assistance are aware of the opportunities available through this program.

B. Recordkeeping

The Developer will keep records of the following:

1. The racial, ethnic, and gender characteristics of applicants in the ninety (90) days following closing as required by Section 511.71(a)(2).
2. Copies of advertisements materials.

EXHIBIT E

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned, declare and affirm that no person or officer of PLANO HOUSING CORPORATION (herein "AGENCY") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract void.

(Insert SUBRECIPIENT Name)

By: _____

Signature

Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

SUBSCRIBED AND SWORN TO before me this _____ day of _____,
2010.

Notary Public, State of Texas