



**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:		September 24, 2012		
Department:		Planning		
Department Head		Phyllis Jarrell		
Agenda Coordinator (include phone #): Karen Suiter x7566				
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 \$183,344 and HOME funds in the amount of \$276,533 for the provisions of various community services and developments; authorizing the execution by the City Manager or his authorized designee; and providing the effective dates.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2012-13	Prior Year (CIP Only)	Current Year	Future Years
	2013-14			TOTALS
Budget		0	344,908	114,969
Encumbered/Expended Amount		0	0	0
This Item		0	-344,908	-114,969
BALANCE		0	0	0
FUND(S): HUD GRANT FUND				
<p>COMMENTS: This item, in the total amount of \$459,877 is included in the 2012-13 Budget. Of the total amount, \$344,908 will be expended in 2012-13 while \$114,969 will be expended in 2013-14.</p> <p>STRATEGIC PLAN GOAL: Funding for various community organizations relates to the City's goal of 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, 2012. These funding amounts and recipients were approved by City Council on June 25, 2012, meeting as part of the City's Action Plan, which details the annual use of U.S. Department of Housing and Urban Development funds.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution, Sample Agreements			Community Relations Commission	

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 \$183,344 and HOME funds in the amount of \$276,533 for the provisions of various community services and developments; authorizing the execution by the City Manager or his authorized designee; and providing the effective dates.

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	\$ 30,000
Communities in Schools Dallas Region	\$ 15,000
LaunchAbility	\$ 10,000
Maurice Barnett Geriatric Wellness Center – Gatekeeper	\$ 22,000
Maurice Barnett Geriatric Wellness Center – PHC	\$ 33,344
Plano Housing Corporation	\$ 25,000
The Samaritan Inn – Homelessness Prevention	\$ 48,000
Total:	\$183,344

HOME Funds:	
Christ United Methodist Church	\$ 42,000
Habitat for Humanity of South Collin County	\$134,533
Plano Housing Corporation	\$100,000
Total:	\$276,533

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 24TH DAY OF SEPTEMBER, 2012.

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-12-MC-48-0035**

This Agreement, entered this 1st day of October, 2012 by and between the City of Plano (herein called the "City") and (Insert SUBRECIPIENT's Name) (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 Community Development Block Grant ("CDBG") 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.

The Agreement consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

1. Grant Budget (**Exhibit "A"**);
2. Current Year Consolidated Grant Application, Section 2, Program To Be Funded (**Exhibit "B"**)
3. Insurance Requirements (**Exhibit "C"**); and
4. Affidavit of No Prohibited Interest (**Exhibit "D"**).

These documents make up the Agreement Documents and what is called for by one shall be binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Agreement Documents, the inconsistency or conflict shall be resolved by giving precedence first to this written agreement then to the Agreement Documents in the order in which they are listed above. These documents shall be referred to collectively as the "Agreement Documents."

B. Activities

Subrecipient will carry out activities as described in Section 2 of their Consolidated Grant Application, and provided in **Exhibit B** attached hereto and incorporated herein by reference. **(INSERT ANY KNOWN CHANGES OR EXCEPTIONS HERE)** Modifications to the activities described in Exhibit B prior to or during the term of the contract that impact the quality, quantity or availability of services to Plano clients are acceptable only as agreed by the City, per the Community Services Manager's written approval.

C. Levels of Accomplishment

<u>Activity</u>	<u>Total (Persons/Families or Households)/Year</u>
<u>(Activity 1)</u>	<u>(X)</u>
<u>(Activity 2)</u>	<u>(X)</u>

D. 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, 2013. Any grant funds remaining with Subrecipient which are not expended or encumbered on September 30, 2013 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.

E. Performance Monitoring

The City will monitor the performance of the Subrecipient against goals and performance standards as required herein once annually or as deemed necessary by the City. Performance determined by the City to be substandard 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 as determined by the City, Subrecipient is obligated to reimburse the City the

amount funded for the particular activity.

F. 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 2012 and terminate on the 30th day of September, 2013. The term of this agreement and the provisions herein may 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, 2013.

III. BUDGET

See **Exhibit A** attached hereto and incorporated herein by reference 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 with the 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 **Exhibit A** herein and in accordance with performance. The Subrecipient will be reimbursed within 30 days after submission of all proper documentation, including but not limited to original monthly bills and supporting documentation for services described in Section I.B, *supra*, 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
(Insert contact information)

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, 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 any employer/employee relationship 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 City shall be exempt from any and all duties to provide unemployment compensation, FICA, retirement, life and/or medical insurance and worker's compensation insurance to Subrecipient and its employees, agents, and contractors.

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 C** attached hereto and incorporated herein by reference. 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. INDEMNIFICATION

SUBRECIPIENT 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 SUBRECIPIENT'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF SUBRECIPIENT, 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.

SUBRECIPIENT 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 SUBRECIPIENT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF SUBRECIPIENT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. SUBRECIPIENT 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 SUBRECIPIENT FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND SUBRECIPIENT 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 parties. Such amendments shall neither invalidate this Agreement nor relieve or release the City or Subrecipient from their respective 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, before the transfer can be effective. The Subrecipient may make transfer of CDBG funds between or among budget categories of **Exhibit A** attached hereto and incorporated herein by reference 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 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) pursue any other legally available remedies.

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, in the case of a partial termination, if 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 based on the time limits set forth in Section I.D. or termination as set forth in section I.E., the Subrecipient shall transfer to the City any CDBG funds on hand at the time of expiration or termination 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:

1. Used to meet one of the national objectives in 24 CFR §570.208 for a term ending five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the City; or
2. If not used in accordance with paragraph (1) of this section, the Subrecipient shall pay to the City 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 (1) 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 Circular 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 CDBG program’s national objective 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 or expiration 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 are 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, ethnicity, income, and description of service provided. Such information shall also be made available to City monitors or their designees for review upon request within five (5) business days.

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, Subrecipient, their designees or the Federal Government, at any time during normal business hours, as often as the City or 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 shall not exceed expenditures. 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 apply funds available under this contract for costs incurred by the City on behalf of the Subrecipient.

3. Performance Reports

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

Subrecipient shall submit a Performance Report quarterly no later than thirty (30) days after the end of the quarter until all CDBG amounts are reported and expended, and all close-out requirements have been met. The Subrecipient shall submit Progress Reports to the City in a form and containing information 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 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.

Sealed bids are required for purchases of items costing \$25,000 or more. 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.

Three (3) written quotes are required for purchases of items costing between \$3,000 and

\$25,000. These quotes should be placed in the Subrecipient's 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 receipt or invoice 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 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 agencies or officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions governing or 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 VIII.A., Civil Rights, and B., Employment Restrictions, 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 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u)(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 any 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 obligations to third parties

The City shall not be obligated or liable under this Agreement to any party other than the 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 any areas of noncompliance.

d. Content

The Subrecipient shall cause all of the provisions of this contract 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 neither 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 D**.

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 a 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.

D. Venue

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that this Agreement is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

X. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

XI. EFFECTIVE DATE

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

(SUBRECIPIENT)

(Name)
(Title)

Date: _____

CITY OF PLANO, TEXAS

Christina Day
Community Services Manager

Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, 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 _____, 2012, by Christina Day, Community Services 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

2012 BUDGET: (INSERT SUBRECIPIENTS NAME)

Exhibit B

PROGRAM DELIVERY ACTIVITIES PER
SECTION 2 OF CURRENT YEAR CONSOLIDATED GRANT APPLICATION

Exhibit C

INSURANCE REQUIREMENTS

1. General Provisions

- 1.1. The Agency shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Agency. The Agency shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Agency is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2. Agency shall cause each subcontractor employed by Agency to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3. The Agency agrees that the insurance requirements specified in this section do not reduce the liability Agency has assumed in any indemnification/hold harmless section of this contract.
- 1.4. City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Agency to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5. Insurance coverage required by this section shall:
 - 1.5.1. Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City, and
 - 1.5.2. Be with an insurer possessing an A-VII. A. M. Best Rating.

2. Minimum Insurance Coverage & Limits

- 2.1. Commercial General Liability. Agency shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.
 - 2.1.1. Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2. Minimum Limits of Insurance

- 2.1.2.1. \$1,000,000 Per Occurrence
- 2.1.2.2. \$1,000,000 Personal/Advertising Injury
- 2.1.2.3. \$2,000,000 General Aggregate
- 2.1.2.4. \$2,000,000 Products/Completed Operations Aggregate

2.2. Commercial Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

2.2.1. Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).

2.2.2. Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided in ISO form CA 00 01.

2.2.3. Contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section or under any applicable automobile physical damage coverage.

3. Evidence of Insurance

3.1. Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2. Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3. City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site or commencing any service pursuant to this contract until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4. Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5. The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

- 3.5.1. List each insurers' NAIC Number or FEIN,
- 3.5.2. List **2012 Community Development Block Grant, program name, location of service, and services dates of October 1, 2012 through September 30, 2013.**
- 3.5.3. State waiver of subrogation is in favor of City with regard to Workers' Compensation Coverage if required listed as required in Section 2.0, Minimum Coverage & Limits of this document,
- 3.5.4. List the specific number of days cancellation provided pursuant to policy language for notice of cancellation to certificate, and
- 3.5.5. List City of Plano, Office of Risk Management, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section.

Exhibit D

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 _____, 2012.

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-12-MC-48-0035**

This Agreement, entered this 1st day of October, 2012 by and between the City of Plano (herein called the "City") and (Insert SUBRECIPIENT's Name) (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 Community Development Block Grant ("CDBG") 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.

The Agreement consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) The Budget (**Exhibit "A"**);
- (b) Insurance Requirements (**Exhibit "B"**); and
- (c) Affidavit of No Prohibited Interest (**Exhibit "C"**).

These documents make up the Agreement Documents and what is called for by one shall be binding as if called for by all. In the event of an inconsistency or conflict in any of the

provisions of the Agreement Documents, the inconsistency or conflict shall be resolved by giving precedence first to this written agreement then to the Agreement Documents in the order in which they are listed above. These documents shall be referred to collectively as the “Agreement Documents.”

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.

(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. 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, 2014. Any grant funds remaining with Subrecipient which are not expended or encumbered on September 30, 2014 will be returned to the City unless otherwise authorized in writing by the City. 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.

E. Performance Monitoring

The City will monitor the performance of the Subrecipient against goals and performance standards as required herein once annually or as deemed necessary by the City. Performance determined by the City to be substandard 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 as determined by the City, Subrecipient is obligated to reimburse the City the amount funded for the particular activity.

F. 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, 2012 and terminate on the 30th day of September, 2014. The term of this agreement and the provisions herein may 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, 2014.

III. BUDGET

See **Exhibit A** attached hereto and incorporated herein by reference 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 with the content prescribed by the City. Any amendments to **Exhibit A** 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**). Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in **Exhibit A** herein and in accordance with performance. The Subrecipient will be reimbursed within 30 days after submission of all proper documentation, including, but not limited to original monthly bills and supporting documentation for services described in Section I.B, *supra*, 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 Section 1.A, *supra*, 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 any employer/employee relationship 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 City shall be exempt from any and all duties to provide unemployment compensation, FICA, retirement, life and/or medical insurance and worker's compensation insurance to Subrecipient and its employees, agents and contractors.

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** attached hereto and incorporated herein by reference. 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. INDEMNIFICATION

SUBRECIPIENT 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 SUBRECIPIENT'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF SUBRECIPIENT, 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 SUBRECIPIENT 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.

SUBRECIPIENT 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 SUBRECIPIENT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF SUBRECIPIENT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. SUBRECIPIENT 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 SUBRECIPIENT FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND SUBRECIPIENT 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 parties. Such amendments shall neither invalidate this Agreement nor relieve or release the City or Subrecipient from their respective 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, before the transfer can be effective. The Subrecipient may make transfer of CDBG funds between or among budget categories of **Exhibit A**, attached hereto and incorporated herein by reference, 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 a written statement specifying reason for transfer, request, amount of funds to be transferred, and identification of affected 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) pursue any other legally available remedies.

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, in the case of a partial termination, if 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 based on the time limits set forth in section I.D. or termination set forth in section I.E., the Subrecipient shall transfer to the City any CDBG funds on hand at the time of expiration or termination 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:

1. Used to meet one of the national objectives set forth in 24 CFR §570.208 for a term ending five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the City; or
2. If not used in accordance with paragraph (i) of this section, the Subrecipient shall pay to the City 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 Circular 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 CDBG program’s national objective 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 or expiration 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 are 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, ethnicity, income and description of service provided. Such information shall also be made available to City monitors or their designees for review upon request within five (5) business days.

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, Subrecipient, their designees or the Federal Government, at any time during normal business hours, as often as the City or 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 and paid by the Subrecipient, and shall not exceed expenditures. 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 apply funds available under this contract for costs incurred by the City on behalf of the Subrecipient.

3. Performance Reports

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

Subrecipient shall submit a Performance Report quarterly no later than thirty (30) days after the end of the quarter until all CDBG amounts are reported, expended, and all close-out requirements have been met. The Subrecipient shall submit Progress Reports to the City in a form and containing information 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 services to be provided under this Agreement Subrecipient shall comply with the non-profit procurement standards of 24 CFR 84.40-48.

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

Three (3) written quotes are required for purchases of items costing between \$3,000 and \$25,000. These quotes shall be placed in the Subrecipient's 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. A receipt or invoice 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, 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 agencies or officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions governing or 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 IX.A., Civil Rights, and B. Employment Restrictions, 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 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u)(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 any 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 obligations to third parties

The City shall not be obligated or liable under this Agreement to any party other than the 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 any 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 neither 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 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 a 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.

D. Venue

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that this Agreement is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

XII. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

XIII. 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

Christina Day
Community Services Manager

Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, 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 _____, 2012, by Christina Day, Community Services 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

2012 BUDGET: (INSERT SUBRECIPIENTS NAME)

Exhibit B

INSURANCE REQUIREMENTS

1. General Provisions

- 1.1. The Agency shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Agency. The Agency shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Agency is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2. Agency shall cause each subcontractor employed by Agency to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3. The Agency agrees that the insurance requirements specified in this section do not reduce the liability Agency has assumed in any indemnification/hold harmless section of this contract.
- 1.4. City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Agency to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5. Insurance coverage required by this section shall:
 - 1.5.1. Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City, and
 - 1.5.2. Be with an insurer possessing an A-VII. A. M. Best Rating.

2. Minimum Insurance Coverage & Limits

- 2.1. Commercial General Liability. Agency shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.
 - 2.1.1. Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2. Minimum Limits of Insurance

- 2.1.2.1. \$1,000,000 Per Occurrence
- 2.1.2.2. \$1,000,000 Personal/Advertising Injury
- 2.1.2.3. \$2,000,000 General Aggregate
- 2.1.2.4. \$2,000,000 Products/Completed Operations Aggregate

2.2. Commercial Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

2.2.1. Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).

2.2.2. Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided in ISO form CA 00 01.

2.2.3. Contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section or under any applicable automobile physical damage coverage.

3. Evidence of Insurance

3.1. Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2. Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3. City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site or commencing any service pursuant to this contract until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4. Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5. The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

- 3.5.1. List each insurers' NAIC Number or FEIN,
- 3.5.2. List **2012 Community Development Block Grant, program name, location of service, and services dates of October 1, 2012 through September 30, 2013.**
- 3.5.3. State waiver of subrogation is in favor of City with regard to Workers' Compensation Coverage if required listed as required in Section 2.0, Minimum Coverage & Limits of this document,
- 3.5.4. List the specific number of days cancellation provided pursuant to policy language for notice of cancellation to certificate, and
- 3.5.5. List City of Plano, Office of Risk Management, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section.

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 _____, 2012.

Notary Public, State of _____



**FUNDING AGREEMENT BETWEEN THE CITY OF PLANO
AND
(Insert DEVELOPER)**

**U.S. Department of Housing & Urban Development
Home Investment Partnership Program, CFDA #14-239, M-12-MCF-48-0234**

THIS AGREEMENT entered into this 1st day of October, 2012, between the City of Plano (hereinafter referred to as “City”), a Texas Home-Rule Municipal Corporation, acting by and through the Community Services Division of the Department of Planning, and **(Insert Name of Developer)** (hereinafter, referred to as the “Developer”).

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 Developer applied for funding from the City of Plano’s HOME Program to provide decent, affordable housing 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 (2012-2013) beginning October 1, 2012 and ending September 30, 2014 and included therein the award of funds to the Developer 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 Developer, (subject to the future availability of federal funds) to implement the approved Developer “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 (**Insert Amount**). In consideration of the City providing the above referenced funding, Developer shall pay costs associated with affordable housing and abide by the terms and conditions of this Agreement.

The Agreement shall consist of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- A. Grant Budget (Exhibit "A");
- B. HUD Income Limits (Exhibit "B");
- C. Insurance Requirements (Exhibit "C");
- D. Affirmative Marketing Policies and Procedures (Exhibit "D");
- E. Affidavit of No Prohibited Interest (Exhibit "E").

These documents make up the Agreement Documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Agreement Documents, the inconsistency or conflict shall be resolved by giving precedence first to this written agreement then to the Agreement Documents in the order in which they are listed above. These documents shall be referred to collectively as the "Agreement Documents."

II. TERMS AND CONDITIONS OF USE OF HOME FUNDS

- A. The Developer 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 Developer 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 Developer further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. The Developer agrees to comply with the requirements of the Consolidated and Further Continuing Appropriation Act of 2012 (P.L. 112-55), including but not limited to the following.
 - 1. Any 2012 HOME grant funds used for activities not completed within four years of the commitment date, (as determined by the latter of the signatures of each party to this written agreement), must be repaid to the HOME Investment Trust Fund. Completion requires: (1) all necessary construction work to have been accepted by the City; and (2) the homebuyer unit is ready for occupancy.
 - 2. The Developer understands that no activity will be eligible for 2012 HOME funding until the City has:
 - a. Underwritten the project,

- b. Assessed the development capacity and fiscal soundness of the developer, and
 - c. Examined neighborhood market conditions to ensure adequate need for that project.
- Any activity undertaken prior to these items being completed and authorization from the City received will be ineligible for use of HOME funding.
3. If any homebuyer unit is not sold to an eligible buyer within six months of completion, funds must be returned. "Sold" is defined as having a legitimate, industry standard sales contract for the unit fully executed by both the buyer and seller.
 4. The Developer has qualified staff with development experience sufficient to meet the requirements of the HOME program.
- C. City is providing the total sum of **(Insert Amount)** which must not be less than fifteen percent (15%) of the City's HOME allocation **(Insert Amount)** in accordance with requirements of 24 CFR 92.300.

1. All HOME funds may only be expended consistent with the budget approved and detailed in Exhibit A.
2. In consideration of Developer's full and satisfactory performance of this Agreement, the City shall reimburse the actual allowable costs incurred by Developer in the performance of the Agreement.
3. The sum total of HOME funds above includes **(Insert Amount)** classified for Operating Expenses, which will not exceed five percent (5%) of City HOME allocation **(Insert Amount)**. This allocation is consistent with regulations stating these funds may not exceed \$50,000 or fifty percent (50%) of the Developer total annual operating expenses for the year, whichever is greater.
4. 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 amount, based on the 221(d)(3) program limits, for Plano is:

Size:	0 bedrooms	1 bedroom	2 bedrooms	3 bedrooms	4 bedrooms
Limit:	100,742	115,484	140,429	181,668	199,417

5. Developer shall not use these funds to purchase equipment that exceeds \$1,000 in total value.
6. 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 HOME funds between or among budget categories of Exhibit A attached hereto and incorporated herein by reference without requiring a formal amendment to this contract provided:

- a. 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;
- b. The transfer will not change the scope of the project funded under this contract; and
- c. The Subrecipient submits to City of Plano a written statement specifying the reason for transfer request, the amount of funds to be transferred and identification of effected budget categories.

All other transfers of funds will require a formal amendment.

- D. Developer 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 **(Insert Description)**, as described in the Scope of Work set forth in Section IV, and for no other purposes.
- E. Developer agrees that these HOME funds will not be used for any expenditure incurred before October 1, 2012.
- F. Developer agrees the expenditure of the HOME funds shall be completed on or before September 30, 2014. Any HOME funds remaining with Developer which are not expended or encumbered on September 30, 2014 will be returned to the City.
- G. If during the term of this Agreement, Developer 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 Developer's Board, as evidenced by the official minutes of the board authorizing the change, and by the City Manager or his designee. No expenditure of HOME Funds in conformance with the proposed change is permitted until written approval is received from the City Manager or his designee.
- H. The Developer 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 annual monitoring of units for principal residency and **(Insert either recapture or resale)** of funds at time of resale.
- I. 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, if not met by acceptance and execution of this agreement, it is agreed by the Developer that the project will be completed as expeditiously as possible and that the Developer will make every effort to ensure that the project will proceed without delay. Failure to meet these deadlines can result in cancellation of this contract and the revocation of HOME funds. Appropriate provisions regarding the importance of timely completion of work will be inserted in all contracts or subcontracts relative to the work tasks required by this agreement.

III. INDEPENDENT CONTRACTOR

It is understood that the City enters into this Agreement with Developer for the purposes enumerated in Section II hereof, and it is understood that Developer is an independent contractor and nothing herein shall be construed to characterize Developer (or any of Developer's employees) as an agent, employee, or representative of the City or as expressing any intention of Developer to enter into a joint venture with City.

IV. SCOPE OF WORK

- A. Developer shall (**Insert detailed program description consistent with 2012 application for funding**).
- B. Developer can provide direct homebuyer subsidies to bring loan amounts down to an affordable level for each client.
- C. Homes shall be rehabilitated in accordance with HOME program regulations and Developer policy.
- D. It is understood that Developer shall provide a specific working budget and realistic timetable for acquisition, rehabilitation, construction, 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. An activity budget will be submitted prior to fund disbursement for each property acquired, rehabilitated, and sold. Said budget shall include:
 - 1. The line item costs and how each source of funds is to be utilized in the activity. The project will be based on a scope of work consistent with Developer procedures.
 - 2. The permanent source of funding for the repayment of any 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, rehabilitation, sale, and closing of the financing for each housing unit.
 - 5. The total activity budget may be amended or modified by mutual agreement of the Developer and the City.
- E. The Developer shall provide a reconciliation statement prior to closing the sale of each home.
- F. The Scope of Work will be performed in essentially the manner proposed in the Developer application and or Developer's written procedures.

G. 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>
<i>Property #1</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>
<i>Property #2</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>
<i>Property #3</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>

V. **HOME PROJECT REQUIREMENTS**

A. **DISBURSEMENT OF FUNDS**

1. Grant funds will be disbursed on a reimbursement basis only.
2. Any expense incurred prior to October 1, 2012 (Grant effective date) is not considered to be an eligible expense.
3. No HOME activity costs can be incurred until the City has conducted an environmental review of the proposed activity site as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the activity and/or project.
4. The Developer shall provide documentation to the City for each HOME program expenditure request under this agreement. The request should be on a City designated form. Developer 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 Developer. All such expenditures shall be in conformance to the approved project budget, Exhibit A, and the activity 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 activity sites to determine that the reimbursement and compensation requests are reasonable.
5. Developer 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. Developer 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 CFR, 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,

any HOME funds on hand and any accounts receivable attributable to the use of HOME funds shall be returned to the City.

B. ENVIRONMENTAL REVIEW

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 Developer 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 Developer shall establish procurement procedures that comply at a minimum with the nonprofit procurement standards at 24 CFR 84.40-.48. Developer 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 Developer's file. If Developer 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.
3. For purchases costing less than \$3,000, only one quote is required. A receipt or invoice from the store where the item was bought will suffice. Developer is not precluded from obtaining several quotes to obtain the best price, even for low-cost items.

D. HOME BUYER ELIGIBILITY

1. Developer 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 six (6) months old at closing. These income guidelines may be revised, at which time City will notify Developer of the changes. Upon such notification, all new clients must meet the revised guidelines.

2. Developer shall collect and maintain homebuyer 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. Developer 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** attached hereto and incorporated herein by reference.
5. Homes purchased by homebuyers must be located within the City limits 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 should not exceed 35% of their gross monthly income, and the total debt ratio should not exceed 45% of their gross monthly income. These ratios will be based on the income and debt calculations of the first lien holder. The sales price of the home shall be based on market value. The Developer shall refer the homebuyer to the City of Plano's down payment and closing cost assistance program in order to aid in making the home as affordable as possible
8. The homebuyer will have a fee simple title to the property, 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 a property is sold at market value, the difference is considered part of the buyer subsidy and included in the affordability period calculation.

2. If the homebuyer sells the property within the affordability period, recapture 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

3. The Developer 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 (OR RESALE STANDARDS MAY SUBSTITUTE HERE)

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:

$$\frac{\text{HOME subsidy}}{(\text{HOME subsidy} + \text{Homeowner investment})} * \text{Net proceeds} = \text{HOME recapture}$$

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. Developer understands that upon the completion of the project, any HOME funds reserved but not expended under this agreement will revert to the City.

8. The Developer 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 24 CFR 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. DEVELOPER PROJECT PROCEEDS

1. Project proceeds, as defined herein, shall include any fees payable to Developer 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 Developer per 24 CFR 92.300(a).
2. The City of Plano hereby authorizes the Developer 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. Developer proceeds may only be used for HOME eligible activities and other housing projects that benefit low-income families. Even after this written agreement expires, Developer project 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 Developer 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 Developer, assuming the Developer continues to meet its mission of providing affordable housing. This includes operational costs such as rent, salaries, and other affordable housing projects.
5. Developer 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 and bills must be submitted with the quarterly report.
6. Developer and the City understand that once the Developer proceeds are used, there shall not be any additional HOME requirements to meet. Funds generated from the use of Developer proceeds are not "Developer proceeds".

H. REPORTING REQUIREMENTS

1. Developer shall provide to the City quarterly reports, on forms provided by the City, which will report information for each quarter of the grant year, which 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 respective quarter. A final report is required at the end of the grant year.

2. All reports shall state the total number of unduplicated households, including the ethnic origin, number in household, income level, disability status, and whether there is a female head of household. In addition, Developer 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, including the status of net proceeds.
3. If Developer fails to submit said reports, the City will have the option to terminate this Agreement.
4. Developer shall also provide to the City one (1) copy of each audit of Developer'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 STANDARDS REQUIREMENTS

A. TYPES OF PROPERTIES

Developer 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. Developer 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 after completion value must not exceed ninety-five percent (95%) of the median purchase price.
3. If the property does not require rehabilitation, the sales price must not exceed ninety-five percent (95%) of the median purchase price.

C. PROPERTY STANDARDS

The property must meet local written rehabilitation standards, state and local code requirements, and handicapped accessibility requirements, where applicable.

D. INSURANCE, BONDING REQUIREMENTS, AND INDEMNIFICATION

1. Insurance

- a. Developer agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in **Exhibit C** attached hereto and incorporated herein by reference. 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 Developer is subject to approval by City.
- b. 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. Developer shall be responsible to City of Plano or the insurance companies insuring City for all costs resulting from any financially unsound insurance companies selected by Developer and their inadequate insurance coverage.

2. Bonding

Developer shall observe sound business practices with respect to providing bonding insurance that provides 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 unit 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. The Developer shall be responsible for assuring that 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 Developer until the current insurance certifications have been provided.

4. INDEMNIFICATION

THE DEVELOPER 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 DEVELOPER'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 DEVELOPER, 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.

DEVELOPER 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 DEVELOPER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. DEVELOPER 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 DEVELOPER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO

RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND DEVELOPER 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

Developer 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 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 Developer 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 Developer shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Developer 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 Developer 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 Developer 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 Developer 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 Developer and the City may withhold any payments to the Developer for the purpose of setoff until such time as the exact amount of damages due the City from the Developer is determined whether by court of competent jurisdiction or otherwise.

VII. ADMINISTRATION OF THE DEVELOPER/CITY OBLIGATIONS

A. DEVELOPER 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. Developer 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 Developer.

3. Developer certification must be renewed annually. Developer 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 Developer be matched by the City of Plano. The City depends upon the donations and volunteerism of non-profits for this match of twenty-five percent (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 Developer operating expenses and HOME administrative and planning funds do not require a 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 resources of value to the HOME Program.
4. The Developer 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 AND RETENTION

1. The City must establish and maintain sufficient records to document that program requirements are met. Records must be maintained concerning the following categories: designation as a participating jurisdiction; program records; CHDO records; financial records: program administrative records; and records concerning other federal requirements.
2. The City will retain all records for five (5) years in keeping with Consolidated Plan requirements. Homeownership records will be kept for five years after project completion. Resale/recapture records will be kept for five years after the affordability period ends. Written agreements will be maintained for five years after the agreement ends.
3. The City will provide citizens and other interested parties with reasonable access to records, consistent with state and local laws regarding privacy and confidentiality, including information and records relating to the Consolidated Plan and the use of assistance under the programs covered by the Consolidated Plan.

D. MONITORING

1. The City may perform periodic on-site monitoring of Developer for compliance with the terms and conditions of this agreement and the regulations of 24 CFR 92. If the monitoring reveals deficiencies in the Developer'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 Developer 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. Developer 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 Developer will provide the City with a certified audit of the Developer'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 Developer 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 Developer 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 Developer 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, Terms and Conditions of Use of Home Funds, Developer shall be in default and notice in writing shall be given to Developer of such default by the City. If Developer 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 Developer 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, Developer 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 Developer 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 Developer to complete the project in accordance with the terms of this Agreement, in a court of proper jurisdiction.

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

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

VIII. UNIFORM ADMINISTRATIVE REQUIREMENTS

To the extent applicable to a nongovernmental recipient of federal funds, the Developer shall comply with OMB Circulars A-87, A-102, A-110, A-122, A-133, as amended, Davis Bacon and Related Acts (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 24 CFR Part 1;

2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
3. The requirements of Executive Order 11246 (3 CFR 1964-65, Comp., p.339) (Equal Employment Opportunity) and the implementing Regulations issued at 41 CFR chapter 60;
4. The requirements of Section 3 of the Housing and Urban Development Act of 1968 (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 activity 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 Developer must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. The Developer 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.

B. EQUAL ACCESS

The Developer 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 Developer 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 Developer, 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 or political belief.

D. AFFIRMATIVE MARKETING

The Developer 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. The Developer shall also comply with the “Affirmative Marketing Procedures” adopted by the City that are attached hereto as **Exhibit D** and incorporated herein by reference.

E. ENVIRONMENTAL REVIEW

The Developer 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 Developer under 24 CFR Part 58.

F. DISPLACEMENT, RELOCATION, AND ACQUISITION

1. The Developer must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds.
2. The Developer shall consult the Department of Conservation Division of Land Resource Protection (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 an activity, 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. The acquisition of real property for a HOME project is subject to the Uniform Act (URA) and the requirements of 49 CFR Part 24, subpart B.

5. The City of Plano will not allow HOME funds to be used on any activity for which a displaced tenant would be eligible to apply for relocation reimbursement.

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 Davis Bacon and Related Acts (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 Developer 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 Developer shall be responsible for testing and abatement activities.
2. The Developer will assure compliance with Federal Regulations in regard to lead-based paint which require that applicants, owners, and tenants of HUD-associated housing and rehabilitation activities (including structures 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.

J. RELIGIOUS ORGANIZATION

The Developer 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). If the Developer is a religious or faith-based organization, it is eligible to participate in the HOME program, but HOME program funds may not be used to engage in inherently religious activities such as worship, religious instruction, or proselytization. If Developer conducts such activities, the activities will be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.

X. REVERSION OF ASSETS

Upon expiration of the agreement, the Developer 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 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. Developer is to report any funds so received.

XI. MISCELLANEOUS

A. 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.

B. DEVELOPER REPRESENTATION

The undersigned represents and warrants that he or she is the duly authorized representative of Developer and that this Agreement has been approved and accepted by the Board of Directors (or equivalent) of the Developer.

C. 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 executed by Developer 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.

D. 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 service, 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. Notice shall be deemed given on the day on which personally served; 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:

City

Developer

Christina Day
Community Services
City of Plano, Texas
P.O. Box 860358
Plano, TX 75086-0358
972-941-7151

(Insert Name)
(Insert Title)
(Insert Developer)
(Insert Address)
(Insert City, State, and ZIP Code)
(Insert Phone Number)

E. 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.

F. 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.

G. 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.

H. 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 other applicable law, such provisions, paragraphs, sentences, words, or phrases shall be deemed modified to the extent necessary in order to confirm 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.

I. 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.

J. 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.** Developer 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. Developer 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 Developer 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 Developer, or the proceeds hereunder; or
 - 2. Any unit benefits or financial assistance associated with HOME Projects or programs administered by Developer, 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 Developer who occupies a HOME-assisted unit as the on-site manager or maintenance worker.
- E.** Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested in writing to the City. Developer 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. Developer acknowledges and represents that Developer 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 Developer shall execute the Affidavit of No Prohibited Interest attached and incorporated herein by reference as **Exhibit E**.

XIII. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

XIV. EFFECTIVE DATE

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

DEVELOPER

(Insert Name)
Executive Director

Date: _____

CITY OF PLANO, TEXAS

Christina Day
Community Services Manager

Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee
City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by (Insert Name), (Insert Title) of (Insert Developer), a non-profit corporation, on behalf of said Developer.

Notary Public, State of Texas

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, Christina Day, Community Services 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

2012 BUDGET

(Insert Budget Table Consistent with 2012 Application)

EXHIBIT B

2012 HUD INCOME LIMITS

<u>HOUSEHOLD SIZE</u>	<u>MAXIMUM INCOME</u>
1 person	\$39,300
2 person	\$44,900
3 person	\$50,500
4 person	\$56,100
5 person	\$60,600
6 person	\$65,100
7 person	\$69,600
8 person	\$74,100

EXHIBIT C

INSURANCE REQUIREMENTS

1. General Provisions

- 1.1. The Developer shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Developer. The Developer shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Developer is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2. Developer shall cause each subcontractor employed by Developer to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3. The Developer agrees that the insurance requirements specified in this section do not reduce the liability Developer has assumed in any indemnification/hold harmless section of this contract.
- 1.4. City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Developer to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5. Insurance coverage required by this section shall:
 - 1.5.1. Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City, and
 - 1.5.2. Be with an insurer possessing an A-VII. A. M. Best Rating.

2. Minimum Insurance Coverage & Limits

- 2.1. Commercial General Liability. Developer shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.
 - 2.1.1. Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2. Minimum Limits of Insurance

- 2.1.2.1. \$1,000,000 Per Occurrence
- 2.1.2.2. \$1,000,000 Personal/Advertising Injury
- 2.1.2.3. \$2,000,000 General Aggregate
- 2.1.2.4. \$2,000,000 Products/Completed Operations Aggregate

2.2. Commercial Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

2.2.1. Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).

2.2.2. Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided in ISO form CA 00 01.

2.2.3. Contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section or under any applicable automobile physical damage coverage.

3. Evidence of Insurance

3.1. Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2. Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3. City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site or commencing any service pursuant to this contract until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4. Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5. The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

3.5.1. List each insurers' NAIC Number or FEIN,

- 3.5.2. List **2012 HOME Grant, (Insert Developer, City, State), and services dates of October 1, 2012 through September 30, 2014.**
- 3.5.3. State waiver of subrogation is in favor of City with regard to Workers' Compensation Coverage if required listed as required in Section 2.0, Minimum Coverage & Limits of this document,
- 3.5.4. List the specific number of days cancellation provided pursuant to policy language for notice of cancellation to certificate, and
- 3.5.5. List City of Plano, Office of Risk Management, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section.

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 (Insert DEVELOPER) (herein "Developer") 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 Developer)

Developer

By:

Signature

(Insert Name)

Print Name

(Insert Title)

Title

Date

STATE OF TEXAS

§

COUNTY OF COLLIN

§

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SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2012.

Notary Public, State of Texas