TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM ("**HOME**")
RESERVATION SYSTEM PARTICIPANT AGREEMENT

ADMINISTRATOR AGREEMENT #**2020-0051**
WITH
CITY OF SLATON,
a political subdivision of the State of Texas

CFDA 14.239 HOME INVESTMENT PARTNERSHIPS PROGRAM
Awarding Federal Agency: U.S. Department of Housing and Urban Development
Pass Through Entity: Texas Department of Housing and Community Affairs
HUD Entity Type: State Recipient
Unique Entity Identifier Number: 012679841

This HOME RESERVATION SYSTEM PARTICIPANT AGREEMENT ADMINISTRATOR AGREEMENT #2020-0051 ("**Agreement**") in connection with approval to participate in the HOME Investment Partnerships Program Reservation System is made and entered into by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas ("**Department**") and **CITY OF SLATON, a political subdivision of the State of Texas** ("**Administrator**"), herein collectively referred to as "**Parties**". For and in consideration of the promises herein made, and the mutual benefits derived and to be derived, the Parties hereto agree and by execution hereof are bound to the mutual obligations and to the performance and accomplishment of the tasks which are the substance of this Agreement.

RECITALS

WHEREAS, the Department has entered into a grant agreement with the U.S Department of Housing and Urban Development ("**HUD**") pursuant to which HUD will provide funds to Department to make available to eligible applicants in accordance with the Program Requirements;

WHEREAS, the Department is a designated Participating Jurisdiction within the meaning of 24 CFR Part 92 and has the authority to make a subaward or otherwise contract with eligible organizations to participate in the administration of HOME funds ("**HOME Funds**") to eligible applicants in accordance with the Program Requirements;

WHEREAS, the governing board of the Department ("**Board**") adopted Title 10, Part 1, Chapter 1 ("**Administration**"), Chapter 2 ("**Enforcement**"), Chapter 20 ("**Single Family Programs Umbrella Rule**"), Chapter 21 ("**Minimum Energy Efficiency Requirements for Single Family Construction Activities**") and Chapter 23 ("**Single Family HOME Program Rule**"), of the Texas Administrative Code (collectively, "**State HOME Rules**"), applicable to this Agreement which set forth, among other things, the rules and requirements by which the Department will administer the HOME Funds;

WHEREAS, the Department is authorized to enter into this Agreement subject to the terms and conditions set forth herein for Administrator to administer the HOME program to serve Qualified Households under the Reservation System and Administrator agrees to administer the HOME Funds in accordance with the ("**Program Requirements**"**)** which include but are not limited to: the HOME Investment Partnerships Act of 1990, 42 U.S.C. §§12721-12839 ("**Federal Act**"); applicable Federal and CPD Notices issued by HUD; implementing regulations at 24 CFR Part 92; Chapter 2306 of the Texas Government Code ("**State Act**"); the State HOME Rules; the Application and Application Submission Procedures Manual; the terms of this Agreement; and the certifications attached hereto as Addendums A, B, and C, the exhibit attached hereto as Exhibit A, and all the attachments hereto, incorporated herein for all relevant purposes, as may be amended from time to time; and the applicable Notice of Funding Availability ("**NOFA**"); and

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, including the Recitals, which are contractual in nature, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

A. Unless the context clearly indicates otherwise, a capitalized term shall have the meaning assigned to it as stated in this Agreement. If a capitalized term is used herein but not defined, the term shall have the meaning assigned to it in or for purposes of the Program Requirements. In case of a conflict between the State HOME Rules with respect to the meaning of a defined term, the meaning assigned by HUD in the Federal Act and its implementing federal regulations shall control.

B. The meanings of the capitalized terms used herein and not defined in the Program Requirements are set forth herein.

(1) "**Grant Documents**" means any and all documents and instruments executed or delivered by the Qualified Household receiving assistance or the Administrator in connection with the HOME Funds that evidences the award of HOME Funds to the Administrator and includes, without limitation, a conditional grant agreement, memorandum of conditional grant agreement, and disbursement disclosures.

(2) "**Loan Documents**" means any and all documents and instruments executed or delivered by the Qualified Household receiving assistance or the Administrator in connection with the HOME Funds that secures, evidences or in any way pertains to the indebtedness of HOME Funds to the Department and includes, without

limitation, a note, a deed of trust, and, for Activities involving construction, a construction loan agreement.

(3) "**Loan/Grant Documents**" means Loan Documents and Grant Documents.

(4) "**Qualified Household**" means a household whose adjusted income is 80% or below the applicable area median family income ("**AMFI**") limit level based upon said household's adjusted income determined in accordance with 24 CFR Parts 5 and 92 and as further defined in Section 3.5 of this Agreement.

(5) "**Reservation or Reservation of Funds**" has the meaning of "Reservation" as set out in the Program Requirements.

(6) **"State of Texas Consolidated Plan** or **"Plan"** means the five year Consolidated Plan and Annual Action Plans required by HUD in accordance with 24 CFR §91.520. The Plan covers five HUD funded programs, including HOME. The Department's Plan may be found on the Department's Housing Resource Center webpage found at: http://www.tdhca.state.tx.us/housing-center/pubs-plans.htm

ARTICLE II
TERM

This Agreement shall be effective on the latter date of execution by the authorized representative of the Department and the Administrator and shall remain in full force and effect for thirty-six (36) months ("**Term**"), unless earlier terminated or amended in accordance with the provisions herein.

ARTICLE III
RESERVATION SYSTEM PARTICIPATION

Section 3.1 Reservation System Access

A. General. This Agreement is entered into in accordance with the Program Requirements. Execution of this Agreement does not guarantee the availability of funds to carry out the Activities described herein.

B. Access. An Administrator shall have access to submit a Qualified Household for a Reservation of Funds at any time during the Term of this Agreement, provided sufficient funds are available. To the extent that the Department makes HOME Funds available for the eligible Activities specified in Subsection E of this Section 3.1, the Administrator shall have access to the Department's Housing Contract System (https://contract.tdhca.state.tx.us/alligator/Login.m) to make a Reservation of Funds in accordance with the terms and conditions herein.

C. Household Commitment Contract. For any Qualified Household that is approved for a Reservation of Funds, the Administrator must enter into an agreement ("**Household Commitment Contract**") with Department to govern the performance requirements and responsibilities of the Activity and to specify the applicable Program Requirements for the Activity funded with the approved HOME Funds. Execution by the Administrator of a Household Commitment Contract under this Agreement is an acknowledgement that the Activity performed under the Household Commitment Contract is subject to the Single Family HOME Program Rule in effect at the time of submission of Activity to the Reservation System. The Household Commitment Contract is attached hereto as Exhibit A.

D. Limitation of Liability. Notwithstanding any other provision of this Agreement to the contrary, the total of all payments and other obligations incurred by Department under this Agreement shall not exceed the amounts available under the Reservation System after making all appropriate adjustments and provisions for other obligations, limitations, costs, and expenses. Department's obligations under this Agreement are contingent upon the actual receipt and availability by Department of adequate HOME federal funds. If sufficient funds are not available to fund Activities under this Agreement, Department shall notify Administrator in writing within a reasonable time after such fact is determined. Department may then terminate this Agreement and will not be liable for the failure to make any payment to Administrator under this Agreement.

E. Set-Asides. Administrator shall participate in the Reservation System to serve Qualified Households under the following selected Reservation System set-asides that were previously elected by the Administrator in their Application, provided HOME Funds are available for the selected set-asides:

☒ **Homeowner Reconstruction Assistance ("HRA") Set-Aside #1003148** (10 TAC §§23.30-32)

☐ **Contract for Deed ("CFD") Set-Aside #** (10 TAC §§23.40-42)

☐ **Tenant-Based Rental Assistance ("TBRA") Set-Aside #** (10 TAC §§23.50-52)

☐ **Homebuyer Assistance with New Construction ("HANC") Set-Aside #** (10 TAC §§23.70-72)

☐ **Single-Family Programs for Persons with Disabilities ("PWD") Set-Aside** including the following activities:

☐ TBRA **#** (10 TAC §§23.50-52)

☐ HRA # (10 TAC §§23.30-32)

☐ **Disaster Set-Aside** including the following activities:

☐TBRA **#** (10 TAC §§23.50-52)

☐ HRA **#** (10 TAC §§23.30-32)

Section 3.2 Administration

A. For completed Activities (except as provided below for TBRA), Administrator may receive reimbursement for reasonable administrative costs directly related to this Agreement and the Program Requirements in an amount that is not more than four percent (4%) of the Direct Activity Costs as defined in the Single Family HOME Program Rule, subject to the provisions of this Agreement, for eligible costs under this Agreement less any soft costs actually reimbursed or for which may be reimbursed and not including the amount of any Match provided. Alternately, Administrator may request up to ten percent (10%) of modified total direct costs ("**MTDC**") as defined in 2 CFR §200.68, provided that the Administrator notifies the Department of the election to use the ten percent (10%) MTDC approach, costs are consistently charged as either indirect or direct costs, and costs are not double charged or inconsistently charged as both.

B. Administrator shall be allowed to draw administrative costs (including pre-award costs) incurred on a pro-rata basis, based on Project funds disbursements and in accordance with the Program Requirements (except as provided below for TBRA Activities). To the extent that an Activity is not completed in accordance with this Agreement and the Program Requirements, funds disbursed under this section shall be repaid to Department within thirty (30) calendar days of such notice being provided to Administrator.

C. For TBRA Activities, Administrator shall be allowed to draw up to twenty-five percent (25%) of the actual allowable administrative costs (including pre-award costs) incurred at the initial stage of the Agreement, with the remaining seventy-five percent (75%) funded on a pro-rata basis, based on TBRA Project funds disbursements and in accordance with the Program Requirements. To the extent that an Activity is not completed in accordance with this Agreement and the Program Requirements, funds disbursed under this section shall be repaid to Department within thirty (30) calendar days of such notice being provided to Administrator.

D. For completed TBRA Activities, if Match funds equal five percent (5%) of the Direct Activity Costs, an additional one percent (1%) of the total Direct Activity Costs can be reimbursed for administrative costs.

Section 3.3 Match

Unless otherwise waived by the State HOME Rules, Administrator will identify and provide eligible Match funds in accordance with the requirements of Single Family HOME Program Rule and in an amount consistent with the provisions of this Section 3.3 and the Program Requirements.

A. HRA. For HRA Activities, Match is required in accordance with 10 TAC §23.30(a) based on the following tiers: (a) Zero percent (0%) of Direct Activity Costs exclusive of Match is required as Match when (i) the Service Area includes the entire unincorporated area of a county where the population of Administrator's Service Area is less than or equal to 20,000 persons, or (ii) the Service Area does not include the entire unincorporated area of a county and the population of the Administrator's Service Area is less than or equal to 3,000 persons; and (b) One percent (1%) of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 15 percent (15%).

B. HANC. For HANC Activities, Match is required in accordance with 10 TAC §23.70(a) based on the following tiers: (a) No Match is required when (i) the Service Area includes the entire unincorporated area of a county where the population of Administrator's Service Area is less than or equal to 20,000 persons, or (ii) the Service Area does not include the entire unincorporated area of a county and the population of the Administrator's Service Area is less than or equal to 3,000 persons; and (b) One percent (1%) of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 15 percent (15%).

C. TBRA. For TBRA Activities, no Match funds are required. Notwithstanding, if Match funds in an amount equal to five percent (5%) or more of Direct Activity Costs is provided for a TBRA Activity, funds for administrative costs may be increased by one percent (1%) in accordance with 10 TAC §23.51(g).

Section 3.4 Service Area

A Reservation of Funds for a Qualified Household is limited to areas located in **SLATON CITY, in LUBBOCK COUNTY**, Texas, in a jurisdiction that is not a participating jurisdiction as defined in 24 CFR §92.105 (except as allowed under the Persons with Disabilities set-aside), and in the Uniform State Service Region Number **ONE (1)**, unless otherwise approved by the Department by written amendment to this Agreement.

Section 3.5 Targeted Households

A. Each Qualified Household served under the Agreement is required to have an income that is less than or equal to 80% of AMFI determined in accordance with 24 CFR Part 92 and 24 CFR §5.609; will occupy the unit for which HOME Funds are being provided as the Qualified Household's principal residence in accordance with the Program Requirements; and that meets all other Program Requirements.

B. In accordance with 10 TAC §23.27(c), except for Qualified Households served with Disaster set-aside funds, Administrator will serve at least one (1) "extremely low-income" Qualified Household for every four (4) Qualified Household submitted for a Reservation of Funds and approved assistance. For purposes of this subsection, "extremely low-income" is defined as Qualified Households that are either (i) at or below 30% AMFI for the county in which they will reside without the increase of poverty guidelines or (ii) have an income lower than the statewide 30% income limit, without adjustments to HUD limits.

C. All Qualified Households assisted under the PWD set-aside shall consist of at least one Qualified Household member who has a disability. A Person is considered to have a disability if the Person has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions. A Person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability and as further defined at 24 CFR §92.2.

D. All Qualified Households assisted under the Disaster set-aside shall be Qualified Households directly affected by a federal, state, or locally declared disaster that occurred less than three (3) years prior to the effective date of this Agreement.

Section 3.6 Construction Standards

A. New Construction and Reconstruction. Each unit reconstructed or newly constructed with HOME Funds, at a minimum, must meet or exceed the 2000 International Residential Code ("**IRC**") as required by the State HOME Rules and 24 CFR §92.251(a)(2); local building codes and ordinances including zoning ordinances in accordance with the Single Family HOME Program Rule; applicable construction standards in 10 TAC Chapters 20, 21, §23.31(k), §23.41(k), and §23.11(m); and the architectural plans must be certified by a licensed architect or engineer. The Administrator must also ensure compliance with the accessibility requirements for newly constructed single family affordable housing, established by Section 2306.514 of the State Act, the energy efficiency standards established by Section 2306.187 of the State Act, and the International Residential Codes, as required by Subchapter G, Chapter 214, Local Government Code.

B. TBRA. For TBRA, rental units must be inspected for compliance with HQS as established by HUD before occupancy and at least once annually.

Section 3.7 Prohibited Activities and Fees

In accordance with 24 CFR §92.214, Administrators may not charge servicing, origination, or other fees for the purpose of covering costs of administering the HOME program (e.g., fees for construction management or for inspections for compliance with property standards), except that Administrators may charge homebuyers a fee for housing counseling.

Section 3.8 Payment and Performance Bonds

If the assistance of HOME Funds is for New Construction and is secured by a first lien favoring the Department, further evidenced by Loan Documents, assurance of completion of the improvements in the form of payment and performance bonds in the full amount of the construction contract/construction loan agreement or equivalent guarantee in the sole and reasonable determination of the Department may be required. If the Department determines such assurance of completion is required, the Department shall be the obligee and such evidence must be provided to the Department before closing of the Loan Documents.

ARTICLE IV
RECAPTURE AND REPAYMENT OF HOME FUNDS; SALE OR TRANSFER OF THE PROPERTY

Section 4.1 Recapture of Funds and Resale Provisions

A. General. When applicable, the Department shall use the federal resale or recapture requirements in 24 CFR §92.254 and 10 TAC §23.29 to determine the amount of funds subject to recapture or to determine that resale provisions must be imposed.

B. Recapture. Administrator and assisted Qualified Household shall be subject to the following recapture provisions in accordance with the current State of Texas Consolidated Plan, as amended each fiscal year and from time to time, and the Department reserves the right to include in any Loan/Grant Documents, provisions to force recapture of all funds disbursed under this Agreement or an executed Household Commitment Contract (a template of which is attached hereto as Exhibit A) for any of the following events and any other event agreed to by the parties in the Loan/Grant Documents:

(1) Failure to Comply With Federal Affordability. A housing unit assisted with HOME Funds fails to comply, or ceases to comply, with the federal affordability requirements in 24 CFR §92.254 as otherwise specified herein, the Department has elected to utilize recapture provision in accordance with 24 CFR §92.254, the current State of Texas Consolidated Plan, and 10 TAC §23.29 as its primary method for recapturing the HOME Funds.

(2) Rented or Leased Property; Principal Residence Requirement. In the event that a federal affordability period is required and the housing unit assisted with HOME Funds is rented or leased, or otherwise ceases to be the principal residence of the last remaining member of the Qualified Household, the forgiveness of the Loan/Grant Documents, if applicable, will cease and the entire HOME investment is subject to recapture in accordance with the requirements of 24 CFR §92.254, the current State of Texas Consolidated Plan and 10 TAC §23.29. When calculating the entire HOME investment amount subject to recapture under Loan Documents, the HOME investment amount is reduced by any loan payments paid and credited to the balance of the Loan Documents. Loan forgiveness is not the same as loan payments for purposes of this item (2).

(3) Voluntary Sale of Property. In the event that a federal affordability period is required and the housing unit assisted with HOME Funds is sold, including through a short sale or deed in lieu of foreclosure, prior to the end of the affordability period, the Department will recapture the amount of net proceeds (i.e. the sales price minus closing costs; any other necessary transaction costs; and loan repayment other than HOME

Funds) available based on the requirements of 24 CFR §92.254, the current State of Texas Consolidated Plan and 10 TAC §23.29. If net proceeds are in excess of the amount of the HOME investment that is subject to recapture, then the proceeds in excess of the HOME loan repayment will be paid to the original Qualified Household. If there are no net proceeds from the sale, no repayment will be required of the original Qualified Household and the balance of the Loan Documents shall be forgiven as outline in the current State of Texas Consolidated Plan.

(4) Sale to Income Eligible Household. In the event of a sale of the housing unit to a purchaser that is an income eligible household, the subsequent qualified income eligible purchasing household may assume the existing Loan Documents and recapture obligation if no additional HOME program assistance is provided. If the qualified income eligible purchasing household needs additional HOME Funds in excess of the balance of the Loan Documents, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original Qualified Household must be recaptured.

(5) Recapture Amount. The recapture amount will be calculated by the Department as the HOME investment reduced on a pro rata share based on the time the Qualified Household has owned and occupied the housing unit measured against the required federal affordability period.

(6) Alienation. This recapture provision does not constitute a restraint on alienation. The Qualified Household can sell the housing unit to any willing buyer at any price. The sale of the housing unit prior to the end of the affordability period will be subject to the provisions under this Section 4.1.

C. Resale. In certain limited instances and to the extent allowed by law, Administrator and assisted Qualified Household may be subject to the following federal resale requirements under 24 CFR §92.254(a)(i), the current State of Texas Consolidated Plan and 10 TAC §23.29, if the housing unit assisted with HOME Funds is made available for subsequent purchase at an affordable price to a reasonable range of qualified income eligible purchasing households that will use the housing unit as their principal residence:

(1) Rented or Leased Property; Principal Residence Requirement. In the event that a federal affordability period is required and the housing unit assisted with HOME Funds is rented or leased, or otherwise ceases to be the principal residence of the original Qualified Household, the HOME investment must be repaid and the Loan Documents become immediately due and payable if the housing unit does not continue to meet the federal affordability requirements for the remainder of the federal affordability period.

(2) Voluntary Sale of Property. In the event that a federal affordability period is required and the housing unit assisted with HOME Funds is sold or transferred, including through a short sale or deed in lieu of foreclosure, to a qualified income eligible purchasing household at an affordable price, the qualified income eligible purchasing

household may assume the Loan Documents and the federal affordability period will remain in effect.

(3) Fair Return on Investment to Initial Qualified Household/Seller. The Qualified Household is required to sell the home at an affordable price to a reasonable range of low income homebuyers that will occupy the home as their Principal Residence. The price at resale of housing unit must provide the initial Qualified Household seller a fair return on investment. Fair return on investment is defined as the sum of down payment and closing costs paid from the initial Qualified Household seller's cash at purchase, closing costs paid by the initial Qualified Household seller at sale, the principal payments only made by initial Qualified Household seller in excess of the amount required by the Loan Documents, and any documented capital improvements in excess of $500.00. Fair return on investment is paid to the initial Qualified Household seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then fair return shall remain in force.

(4) Appreciated Value. The initial Qualified Household investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial Qualified Household seller or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department. If appreciated value is zero, or less than zero, then no appreciated value exists. The balance of the Loan Documents will be assumed by the subsequent qualified income eligible purchasing household and the federal affordability period will remain in effect.

D. Transfer Upon Death. In the event that a federal affordability period is not required and the housing unit transfers by devise, descent or operation of law upon the death of the Qualified Household, forgiveness of the installment payments under the Loan Documents may continue until maturity or the grant amount under the Grant Documents may be forgiven, if the new household qualifies for assistance in accordance with the Program Requirements or if decedent's estate sells the housing unite to a purchasing household that qualifies for assistance in accordance with Program Requirements. If the housing unit is occupied by a non-qualified household or the housing unit transfers by devise, descent, or operation of law to a non-qualified household, the forgiveness may end.

E. Grants. In the event that a federal affordability period is not required, Grant Documents may be forgiven annually during the Department's state affordability period and not subject to recapture of the entire grant amount in the event the housing unit is no longer the principal residence of any member of the Qualified Household. The outstanding amount owed under the Grant Documents will be based on the remaining state affordability term.

F. Recapture of Funds Under this Agreement. Department reserves the right to recapture funds under this Agreement for the following:

(1) If the Department determines that Administrator will be unable to expend all funds awarded or complete the construction on any Activity assisted with HOME Funds within the term of a Household Commitment Contract, as may be extended by the Department.

(2) If the HOME Funds have been determined by the Department or HUD to have been expended for costs other than eligible costs and have not been repaid to the Department within thirty (30) business days of such notice being provided to Administrator.

(3) If the Department determines that Administrator will be unable to expend HOME Funds within the construction period as defined in the Loan/Grant Documents (as applicable) or the funds disbursed did not result in the completion of the units for construction Activities. Any home demolished that cannot be reconstructed within term of the Household Commitment Contract becomes the responsibility of the Administrator for completion.

(4) For Administrator's repeated or prolonged failure to provide any reports required by Program Requirements.

Section 4.2 Sale of the Property; Refinance or Payoff of Superior Lien

A. General. A Qualified Household assisted with a loan funded under this Agreement shall be subject to the provisions of this section in the case of a sale of the property, the refinancing of any superior lien loans, or payoff of a superior lien on the property, or if the property ceases to be the primary residence of the Qualified Household during the affordability period.

B. Sale; Principal Residence; Event of Default. If at any time prior to the end of the loan term following completion of construction there occurs (1) a sale of the property, (2) a time when the unit ceases to be the assisted Qualified Household's principal residence, or (3) an event of default, the Department's superior liens and subordinate liens funded under the Agreement shall become due and payable to the extend allowed by Federal law.

C. Refinance of Superior Lien. In the event that the assisted Qualified Household refinances any superior lien, (1) the Department at its discretion will re-subordinate its lien if the Qualified Household can provide documentation acceptable to the Department showing that no funds are due the assisted Qualified Household as a result of the refinance and the refinance will not adversely impact the ability for the Qualified Household to continue to meet the affordability requirements of the Department's loan, or (2) the Qualified Household will pay off the Department's lien.

D. Payoff of Superior Lien. In the event of payoff of any superior lien, the assisted Qualified Household will repay the balance of the Department's loan(s) in full.

ARTICLE V
RESERVATION, COMMITMENT, LOAN CLOSING AND DISBURSEMENT OF HOME FUNDS

Section 5.1 Reservation and Commitment of HOME Funds

A. Reservation. An approved Reservation of Funds and Commitment of Funds shall be required for each Activity that receives HOME Funds under this Agreement and the Reservation System.

B. Reservation of Funds and Documentation. For a Commitment of Funds to a Qualified Household, Administrator must submit to the Department at its offices in Travis County, Texas, a properly completed electronic Reservation of Funds for an Activity and support documentation using the Housing Contract System (https://contract.tdhca.state.tx.us/alligator/Login.m) in accordance with the Program Requirements and as required and specified by Department in its sole and reasonable discretion.

C. Deficiency. A Reservation of Funds shall not constitute a Commitment of Funds until Administrator has submitted all required documentation and such documentation has been accepted by Department. If, during review, the Department identifies administrative deficiencies, the Department will allow a cure period of ten (10) business days beginning at the start of the first business day following the date the Administrator is notified of the administrative deficiency. If any administrative deficiency remains after the cure period, the Department shall, in its sole discretion, disapprove the request. Disapproved requests shall not constitute a Reservation of Funds. Parties will follow the administrative deficiency process under Section 23.2812) of the Single Family HOME Program Rule.

Section 5.2 Disbursement of HOME Funds

A. Request for Funds and Disbursement. Administrator may not request disbursement of funds for eligible costs incurred under this Agreement until the funds are needed for payment of eligible costs in accordance with the Program Requirements. Administrator shall submit to Department at its offices in Travis County, Texas, a properly completed electronic request for funds and support documentation using the Housing Contract System (https://contract.tdhca.state.tx.us/alligator/Login.m) in accordance with the Program Requirements and as required and as specified by Department in its sole discretion.

B. Department Approval. Department shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment until Department has reviewed and approved such request. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME Funds to Administrator as may be necessary or advisable for compliance with all Program Requirements.

C. Training. Administrator agrees to attend training, as may be required by Department, prior to the disbursement of any funds under this Agreement.

D. Execution of Loan and Grant Documents. Department shall not release any funds for any costs incurred by Administrator under this Agreement until Department has received from Administrator the following: executed, legally enforceable Loan Documents or Grant Documents, as applicable, for each assisted Qualified Household containing remedies adequate to enforce the Program Requirements including the affordability requirements of 24 CFR §92.254. Administrator shall record such agreements in the real property records of the county in which the Unit is located and return the original documents, duly certified as to recordation by the appropriate county official, to Department. Receipt of such certified recorded original Loan/Grant Documents by Department is required prior to disbursement of any funds under this Agreement.

E. Fiscal Controls. Department shall not release HOME Funds for any costs incurred by Administrator under this Agreement until Department has received certification from Administrator that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided under this Agreement. The Department shall specify the content and form of such certification.

F. Cost Incurred Outside of Term. Department shall not be obligated to pay for costs incurred or performances rendered by Administrator before the execution of this Agreement, unless otherwise specified, or for any costs incurred or performances rendered after the termination date of the Household Commitment Contract under which the Commitment of Funds is made. Costs incurred for administration shall be reimbursed in accordance with Section 3.2 provided they occur during the Term of this Agreement or during the term of any Household Commitment Contract executed in accordance with this Agreement, unless otherwise specified. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred within six (6) months of the effective date of this Agreement in accordance with 24 CFR §92.212 and at the discretion of the Department. Documentation for reimbursement of costs incurred in accordance with this paragraph must be submitted in accordance with this Section and before the sixtieth (60^{th}) day after the applicable termination date.

G. Department Obligations. Department shall not disburse HOME Funds under this Agreement until and unless the actual receipt by Department of adequate federal funds to meet Department's liabilities under this Agreement. If adequate funds are not available to make payments under this Agreement, Department shall notify Administrator in writing within a reasonable time after such fact is determined. In that event, this Agreement shall terminate and neither Department nor Administrator shall have any further rights or obligations hereunder.

H. Withholding of Disbursements. In addition to the limitations on liability otherwise specified in this Agreement, it is expressly understood and agreed by the Parties hereto that if Administrator fails to submit to Department in a timely and satisfactory manner any Required Reports, Department may, at its sole option and in its sole discretion, withhold any or all disbursements otherwise due or requested by Administrator hereunder. If Department withholds such disbursements, it shall notify Administrator in writing of its decision, the reasons for this action and the time period in which Administrator must bring itself into compliance.

I. Termination. Disbursements withheld pursuant to this section may be held by Department until such time as the Administrator is in compliance with the requirements for which funds are being withheld. If Administrator fails to perform as required within the stated cure period, Department may terminate this Agreement in accordance with Section 10.2 of this Agreement and Administrator hereby agrees and acknowledges that upon termination, Administrator's rights to any funds shall be terminated.

Section 5.3 Loan Origination and Loan Closing of HOME Funds

In the event Administrator determines a Qualified Household is not eligible for a grant, but is eligible for a residential mortgage loan ("**Qualified Household Mortgage Loan**"), based upon a Qualified Household's information provided in the program application to Administrator for verification that the Qualified Household meets Program Requirements, Administrator agrees to the following:

A. Mortgage Loan Application Intake. Administrator shall require a Qualified Household applicant to complete the loan application supplement to the program application. With respect to taking the loan application of a Qualified Household applicant for a Qualified Household Mortgage Loan, Administrator represents the following:

(1) At all times during the Term of this Agreement, any person taking a loan application for a Qualified Household Mortgage Loan on Administrator's behalf shall either (a) possess all required licenses for taking the application for a residential mortgage loan and be in good standing with respect thereto or (b) will be exempt from such licensure pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans. Administrator will, upon request, immediately provide the Department with documentation to support this representation.

(2) If Administrator is exempt from such licensure, Administrator must submit to the Department written documentation supporting said exemption. Written documentation may include a certification, affidavit or letter from (a) the Administrator's Board of Directors or Executive Director, (b) an attorney licensed to practice law in the State of Texas, or (c) the Texas Department of Savings and Mortgage Lending.

(3) Administrator will cause any person taking such an application for the Qualified Household Mortgage Loan on its behalf to provide their full name and Nationwide Mortgage Licensing System and Registry ("**NMLSR**") identification number if they have a license number, in the appropriate place on said loan intake application. The loan application for all Qualified Household Mortgage Loans must include this licensing information and must be submitted to the Department with its request for preparation of Loan Documents documentation.

(4) Administrator's failure to originate Qualified Household Mortgage Loans in accordance with all applicable state and federal laws and regulations will be deemed an event of default under this Agreement.

(5) In accordance with Section 7.14 of this Agreement, Administrator shall provide the Qualified Household applicant with a copy of the privacy notice (which is included in the Qualified Household Mortgage Loan Application) at the time the Qualified Household Mortgage Loan Application is taken. Administrator must ensure that the Qualified Household executes the acknowledgement (which is included in the Qualified Household Mortgage Loan Application) acknowledging receipt of the privacy notice and that the executed acknowledgement is returned to the Department.

B. Qualified Household Mortgage Loan Disclosures**.** Within 24 hours of Administrator's receipt of the loan application of a Qualified Household applicant and prior to the closing of the Loan Documents, Administrator shall:

(1) Within twenty-four (24) hours of taking the loan application, Administrator shall submit copies of the loan application to the Department for review. The loan application and associated documents necessary for the Department to prepare any initial mortgage disclosures, including the Loan Estimate and other TILA-RESPA Integrated Disclosures ("**TRID**") required for Qualified Household Mortgage Loan applications taken on or after October 3, 2015must be complete and accurate. The Department shall prepare and distribute initial mortgage disclosures to Qualified Household applicants in compliance with all applicable state and federal laws that are currently in effect including but not limited to the following: (a) the Dodd Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, 124 Stat.1375), (b) the Truth in Lending Act ("**TILA**") (15 U.S.C. §1601 *et seq*.) and its implementing regulations at 12 CFR Part 1026 ("**Regulation Z**"), (c) the Real Estate Settlement Procedures Act ("**RESPA"**) (12 U.S.C. 2601 *et seq*.) and its implementing regulations at 12 CFR §1024 ("**Regulation X**"), (d) the TRID rule that integrates disclosures under TILA and RESPA, and (e) any and all applicable Texas laws, statutes, and regulations in the origination, closing and servicing of residential mortgage loan transactions (collectively referred to as "**Mortgage Loan Disclosure Regulations**").

(2) The Department reserves the right to review any and loan application documents, review the costs associated with the initial mortgage and integrated

disclosures, request supporting documentation to assist with the Department's review, and reject any loan application submitted by Administrator.

(3) If a change in circumstance occurs that requires any revision to the initial mortgage and integrated disclosures prepared by Administrator, the Department may, as applicable:

(a) require the Administrator to revise the initial mortgage and integrated disclosures and timely deliver the revised initial mortgage and integrated disclosures to Qualified Household applicants in accordance with the Mortgage Loan Disclosure Regulations,

(b) revise the initial mortgage and integrated disclosures itself and deliver the revised initial mortgage and integrated disclosures to Qualified Household applicants in accordance with the Mortgage Loan Disclosure Regulations, or

(c) require the Administrator to re-disclose the initial mortgage and integrated disclosures if disclosure can be done within the allowable time periods in accordance with the Mortgage Loan Disclosure Regulations.

(4) If the Department rejects any loan application because the loan product as disclosed is not offered or the Qualified Household applicant does not qualify for that loan product, the Department may, as applicable:

(a) require the Administrator to take another loan application of the Qualified Household for a Department loan product for which applicant may qualify, or

(b) terminate this Agreement in accordance with Section 10.2 of the Agreement based on the Department's evaluation of Administrator's ability to perform under this Agreement.

(5) Administrator's failure to originate Qualified Household Mortgage Loans in accordance with all applicable state and federal laws and regulations will be deemed an event of default under this Agreement.

C. <u>Loan Closings.</u> With respect to the closing of a Qualified Household Mortgage Loan, Administrator represents the following:

(1) All loan closings shall be conducted in accordance with all applicable state and federal laws and regulations.

(2) At the closing of the Qualified Household Mortgage Loan, the Qualified Household shall execute the applicable Loan Documents for an amount of HOME Funds in accordance with Section 5.2 of this Agreement and the Program Requirements.

(3) Immediately after the closing of the Qualified Household Mortgage Loan, the Department must receive the original note before Department can authorize any disbursement of HOME Funds under the loan.

(4) Within ninety (90) days after the closing of the Qualified Household Mortgage Loan, the Department must receive the original recorded deed of trust and, if applicable, the original recorded document of any of the other Loan Documents that require recordation in the county or state records in accordance with Section 5.2(D) of this Agreement. Failure to submit said documents within ninety (90) days after the loan closing date will result in the Department withholding payment for disbursement requests.

(5) Administrator's failure to conduct loan closings in accordance with all applicable state and federal laws and regulations is deemed an event of default under this Agreement and the Household Commitment Contract.

D. Training. Administrator agrees to attend training, as may be required by Department prior to the closing of any Qualified Household Mortgage Loans.

E. Compliance with Laws. Administrator expressly acknowledges that compliance with state and federal laws and regulations regarding residential mortgage loan origination, residential mortgage disclosures and residential mortgage loan closing is Administrator's responsibility, and the fact that Administrator or anyone acting on Administrator's behalf, either takes a residential mortgage loan application and submits it to the Department or prepares and delivers a mortgage disclosure to the Qualified Household applicant and that the Department proceeds with closing of a loan does not in any manner constitute a finding, conclusion, or representation by the Department that the Administrator is in compliance with or exempt from such legal requirements.

ARTICLE VI
AMENDMENTS

Section 6.1 Changes, Amendments and Extensions

A. General. Except as specifically provided otherwise in this Agreement or in the State HOME Rules, any changes, additions, or deletions to the terms of this Agreement shall be in writing and executed by both Parties to this Agreement in accordance with Section 20.14 of the Single Family Programs Umbrella Rule.

B. Extensions and Fund Increases. Except as specifically provided otherwise in this Agreement, any extensions to the Household Commitment Contract or increases in fund amounts under the Household Commitment Contract shall comply with the extension requirements in Section 23.27(g) of the Single Family HOME Program Rule.

C. Amendments and Changes Required by Law. Any changes, additions, or deletions to the terms of this Agreement which are required by changes in federal or state law, or regulations, are automatically incorporated into this Agreement without the requirement of a written amendment hereto, and shall become effective on the date designated by such law or regulation. Said changes, additions, or deletions referenced under this Subsection C may be further evidenced in a written amendment.

Section 6.2 Facsimile Signatures

A facsimile or electronic copy executed by both Parties will be sufficient to evidence the Parties agreement to any amendment, revision or change to this Agreement. If any Party returns this copy by facsimile machine or electronic transmission, the signing Party intends the copy of its authorized signature printed by the receiving machine or electronic transmission, to be its original signature.

Section 6.3 Amendments to Grant Documents

If any amendment to this Agreement affects the Grant Documents, the Grant Documents will be amended accordingly at the expense of the Administrator or Qualified Household in accordance with Section 20.14(a) of the Single Family Umbrella Program Rules.

Section 6.4 Modifications to Loan Documents

If any amendment to this Agreement affects the Loan Documents, the Loan Documents will be modified accordingly at the expense of the Administrator or Borrower in accordance with Section 20.14(c) of the Single Family Umbrella Program Rules.

ARTICLE VII
CROSS-CUTTING FEDERAL REQUIREMENTS

Section 7.1 Environmental Clearance

A. The environmental effects of any Activity carried out with funds that may be accessed under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 ("**NEPA**") and the related activities listed in HUD's implementing regulations at 24 CFR Parts 50, 51, 55 and 58. Each such Activity must have an environmental review completed and support documentation prepared complying with the National Environmental Policy Act of 1969 (42 U.S.C. §4821 *et seq.*) and regulations at 24 CFR Parts 50, 51, 55 and Part 58. No funds may be committed to an Activity before the completion of the environmental review process, including the requirements of 24 CFR §58.6, and the Department has provided written clearance. Notwithstanding anything herein to the contrary, the Department may condition commitment of funds on the completion of the environmental review.

B. If funds are provided under this Agreement to a "state recipient" as said term is defined under 24 CFR §92.201(b)(2), the recipient is delegated authority as the Responsible Entity ("**RE**") and makes all environmental clearance determinations. The Department assumes the role of HUD pursuant to 24 CFR Part 58, "Subpart H – Release of Funds for Particular Projects" and is responsible for reviewing and approving the Request for Release of Funds and granting the recipient the Authority to Use Grant Funds.

C. A non-unit of general local government is not delegated authority to become an RE and make environmental determinations and therefore, shall assist Department in completing the environmental review by providing all relevant documentation needed to perform an environmental review, or carry out mitigating measures required, or selecting an alternate property for assistance.

D. Both state recipients and subrecipients may be required to attend HOME training for environmental assessment. The assessments must be satisfactory to Department. This Agreement is conditional in nature and does not grant Administrator legal claim to any HOME Funds for a specific project or site until the environmental review process is approved by Department. The agreement to provide funds to the project is conditional on Department's or Administrator's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

E. Funds provided under this Agreement may not be used in connection with acquisition or New Construction or Reconstruction of housing located in an area identified by the Federal Emergency Management Agency ("**FEMA**") as having special flood hazards, unless the locality in which the site is located is participating in the National Flood Insurance Program ("**NFIP**") or less than a year has passed since FEMA notification regarding such hazards and flood insurance is obtained as a condition of approval of the commitment. Administrator must determine if the locality participates in the NFIP during the preliminary stages of the environmental clearance process.

F. Administrator may enter into a written agreement for the conditional commitment of HOME Funds for a specific project prior to the completion of the environmental review process. The Department must ensure that any such agreement does not provide the Administrator, recipient, or contractor any legal claim to any amount of HOME Funds to be used for the specific project or site unless and until the site has received environmental clearance. The following language is acceptable in an otherwise appropriately drafted agreement and must be included in any contract to conditionally acquire residential property for the purposes of the HOME program:

> "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 Department of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The Parties further agree that the provision of any funds to the project is conditioned the Department's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review."

Section 7.2 <u>Affirmative Marketing and Advertising</u>

Administrator shall adopt affirmative marketing procedures and requirements that are consistent with the Department's Affirmative Marketing Plan. The affirmative marketing procedures and requirements shall include, but not be limited to, those specified in at 10 TAC §20.9 of the Single Family Umbrella Rule and 24 CFR §92.351. The procedures and requirements shall be prepared and implemented in a manner prescribed by Department.

Section 7.3 <u>Labor Standards</u>

A. Administrator understands and acknowledges that every contract for the construction of housing that includes twelve (12) or more units under one construction contract assisted with HOME Funds must contain labor standards provisions in accordance with 24 CFR §92.354.

B. Administrator understands and acknowledges that every construction contract involving the employment of mechanics and laborers of said construction shall be subject to the Davis Bacon Act and Related Acts ("**<u>DBRA</u>**") prevailing wage mandates and "Related" federal labor laws, as applicable.

C. Construction contractors and subcontractors must comply with regulations issued under these Federal acts described herein, with other Federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010) and (2) HUD Handbook on Federal Labor Standards Compliance in Housing and Community Development Programs, as applicable.

D. Administrator also understands that structuring the proposed assistance for the construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

Section 7.4 Displaced Persons

A. Administrator shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§4201 – 4655, 49 CFR Part 24, and 24 CFR §92.353, and Section 104(d) of the Housing and Community Development Act set out in 24 CFR Part 42.

B. Administrator 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.

C. Administrator shall follow HUD Handbook 1378.

D. HOME Funds do not cover relocation assistance costs. Purchase of a dwelling occupied by a renter or removal of an occupied unit on a property other than the homeowner occupied dwelling is subject to the Uniform Relocation Act ("**URA**"). Administrator must ensure compliance with federal relocation assistance regulations including payment of moving expenses and relocation housing payments.

Section 7.5 Lead-Based Paint

Administrator shall comply with 24 CFR §92.355 which requires that housing assisted with HOME Funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4821 *et seq*.), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including as applicable subparts A, B, J, K, M and R). Administrator shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

Section 7.6 Section 3 Compliance

A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701u ("**Section 3**"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The Parties agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this Agreement, the Parties certify that they are under no contractual or other impediment that would prevent them from complying with the 24 CFR Part 75 regulations.

C. The Administrator agrees to send to each labor organization or representative of workers with which the Administrator has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Administrators commitments under this section of the Agreement, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Administrator agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The Administrator will not subcontract with any subcontractor where the Administrator has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

E. The Administrator will certify that any vacant employment positions, including training positions, that are filled (i) after a contractor is selected but before the contract is executed, and (ii) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the Administrators obligations under 24 CFR Part 75.

F. Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

Section 7.7 Equal Employment Opportunity Program

The Administrator agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

Section 7.8 Limited English Proficiency ("LEP")

Administrator shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000 Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Administrator must take reasonable steps to insure that LEP persons have meaningful access to the program and activities.

Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

Section 7.9 Minority/Women's Business Enterprise

The Administrator will use its best efforts for minority outreach to afford minority business enterprises and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement and must prescribe procedures acceptable to HUD for a minority outreach program under Executive Orders 11625, 12432 and 12138. The Administrator may rely on written representations by businesses regarding their status as minority and women-owned business enterprises in lieu of an independent investigation.

Section 7.10 Procurement of Recovered Materials

Administrator, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency ("**EPA**") at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Section 7.11 Drug-Free Workplace

Administrator will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701 *et seq.*) and HUD's implementing regulations including, without limitation, 2 CFR Parts 182 and 2429. Administrator affirms by executing the "Certification Regarding Drug-Free Workplace Requirements" attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

Section 7.12 Affirmatively Furthering Fair Housing

By Administrator's execution of this Agreement, Administrator agrees to use funds in a manner that follows the "State of Texas's Analysis of Impediments" and will maintain records in this regard. In addition, if administrator is a State Recipient and is required to conduct its own analysis of impediments it will also follow that document and will maintain records in this regard.

Section 7.13 Information Security and Privacy Requirements. Administrator shall comply with the information security and privacy requirements under 10 TAC §1.24 to ensure the security and privacy of Protected Information (as said term is defined under 10 TAC §1.24). Prior to beginning any work under this Agreement, Administrator shall either (i) have an effective, fully executed _Information Security and Privacy Agreement ("**ISPA**"), as required by 10 TAC §1.24, on file with the Department, or (ii) will execute and submit to the Department an ISPA in accordance with instructions found on the Department's website at the "Information Security and Privacy Agreement" link."

Section 7.14 Privacy Laws

Subject to Open Records provision in Subsection D, Section 8.1 of the Agreement, Administrator shall comply with the privacy laws, as applicable, under the Gramm-Leach-Bliley Act ("**GLBA**") (15 U.S.C. §6801 *et seq*.) and its implementing regulation at 12 CFR Part 1016 ("**Regulation P**"), as said laws may be amended from time to time, when sharing nonpublic personal information with third parties. Administrator may only share personal information of Qualified Household for its everyday business purposes in the performance of this Agreement. Administrator agrees that it will not market any personal information, public or nonpublic, obtained from Qualified Household for any reason.

Section 7.15 Equal Credit Opportunity Act

Administrator shall assist the Department in its compliance with all federal and state laws and regulations relating to the extension of credit including the Equal Credit Opportunity Act ("**ECOA**") (15 U.S.C. 1691 *et seq*.) and its implementing regulation at 12 CFR Part 1002 ("**Regulation B**"), as said laws and regulations may be amended from time to time.

Section 7.16 Violence against Women Act

A. The Violence Against Women Act ("**VAWA**") provides basic protections for applicants and tenants receiving rental assistance. Pursuant to 24 CFR §92.359, certain VAWA provisions are now required for Administrators that administer HOME funds. The "Notice of Occupancy Rights under the Violence Against Women Act" based on HUD form 5380, and the "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking," HUD form 5382, must be provided by Administrator to:

(1) All applicants for TBRA at the time of admittance or denial;

(2) TBRA Households prior to execution of a Rental Assistance Agreement;

(3) TBRA Households with any notification of eviction or notification of termination of assistance; and

(4) TBRA Households either during an annual recertification or lease renewal process, whichever is applicable.

B. In addition, HOME Administrators will be required follow the Department's Emergency Transfer Plan pursuant to 24 CFR §5.2005(e), and keep records of all outcomes. A copy of the Department's Emergency Transfer Plan is located on the Department's website.

Section 7.17 Prevention of Trafficking

Administrator and its contractors must comply with Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. §7104 *et seq*.). If Administrator or its contractor or subcontractor engages in, or uses labor recruiters, brokers or other agents who engage in any of the prohibited activities under Section 106(g) of the Trafficking Victims Protection Act of 2000, Department may terminate this Agreement and Administrator hereby agrees and acknowledges that upon termination, Administrator 's rights to any funds shall be terminated.

ARTICLE VIII
RECORDS AND REPORTING

Section 8.1 Retention and Accessibility of Records

A. General. Administrator shall establish and maintain sufficient records at its regular place of business, as specified by Department and in accordance with 24 CFR §92.508, including records that demonstrate that each Qualified Household assisted with funds provided under this Agreement is income eligible in accordance with 24 CFR §92.203 and 24 CFR §5.609.

B. Access to Records. Administrator agrees that Department, HUD, the Auditor of the State of Texas, the United States General Accounting Office, the Comptroller of the United States, or any of their duly authorized representatives, shall have the right to access and to examine all books, accounts, records, reports, files, and other papers or property belonging to or in use by Administrator pertaining to this Agreement. Such right to access shall continue as long as the records are retained by Administrator. Administrator agrees to cooperate with any examination conducted pursuant to this Subsection B.

C. Record Retention. All records pertinent to this Agreement shall be retained by Administrator for a period of five (5) years in accordance with 24 CFR §92.508(c), except:

(1) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

(2) Records covering displacement and acquisitions must be retained for five (5) years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with 24 CFR Part 92.

D. Open Records. Administrator acknowledges that Department is subject to the Texas Public Information Act and that all information collected, assembled, or maintained by Administrator pertaining to this Agreement, except records made confidential by law, are subject to the Texas Public Information Act (Chapter 552 of the Texas Government Code) and must provide citizens, public agencies, and other interested parties with reasonable access to all records pertaining to this Agreement subject to and in accordance with the Texas Public Information Act.

E. Subcontracts. Administrator shall include the substance of this Section 8.1 in all of its subcontracts.

Section 8.2 Reporting Requirements

A. Administrator shall submit to Department such reports on the operation and performance of this Agreement as may be required by Department, including but not limited to the reports specified in this section. Administrator shall provide Department with all reports necessary for Department's compliance with 24 CFR Part 92, or any other federal or state law or regulation, which shall hereby be referred to as "**Required Reports**."

B. In addition to Required Reports, the Administrator shall provide reports to Department regarding program Activities as necessary to evidence progress of performance in accordance with the Program Requirements.

ARTICLE IX
INSURANCE, ADMINISTRATIVE REQUIREMENTS, AUDITS AND MONITORING

Section 9.1 Insurance

A. General Liability Insurance. If Administrator is a nonprofit corporation, the Department, in its sole and reasonable discretion, may require Administrator to maintain director or officer liability insurance coverage in an amount that is sufficient to protect the interests of Department if there is a risk of an actionable act or omission by a director or officer of Administrator resulting in damages to Department's interests, in accordance with 2 CFR §200.304.

B. Property and Title Insurance. Administrator shall provide Department with certificates of insurance evidencing Administrator's current and effective property and title insurance coverage. Administrator agrees to notify the Department immediately upon receipt of notification of the termination, cancellation, expiration, or modification of any required insurance coverage or policy endorsements. Administrator agrees to suspend the performance of all work performed under this Agreement until the Administrator satisfies the required coverage requirements, obtains the required policy endorsements and delivers to Department certificates of insurance evidencing that such coverage and policy endorsements are current and effective, and receives notification from Department that the performance of work under this Agreement may recommence.

C. Construction. For Activities involving construction, in addition and without limitation to the insurance required in this Agreement and the Loan/Grant Documents, Administrator or Administrator's subcontractors as applicable, shall carry builder's risk property insurance covering the construction of the improvements in a face amount of not less than the insurable value of the improvements containing a loss payable clause in favor or Texas Department of Housing and Community Affairs, as its interest may appear.

Section 9.2 Uniform Administrative Requirements, Cost Principles, Program Income and Audit Requirements

A. Administrative Requirements; Cost Principles. Administrator shall comply with the cost principles and uniform administrative requirements set forth in 2 CFR Part 200. If Administrator is a local government as defined in Chapter 783 of the Texas Government Code, the Uniform Grant Management Standards will also apply to all Household Commitment Contracts effective before January 1, 2022, and the Texas Grant Management Standards will apply thereafter..

B. Program Income. Administrator may not retain program income of any kind, however derived, under this Agreement, including the retention of program income to fund other eligible HOME Activities. Administrator shall comply with the requirements of 24 CFR §92.503 to account for program income, repayments, and recaptured funds related to Activities financed in whole or in part with funds provided under this Agreement. Administrator shall provide reports of program income as requested by Department. Program income derived under this Agreement must be submitted to Department within ten (10) calendar days of receipt.

C. Audit. Department reserves the right to conduct additional audits of the funds received and performances rendered under this Agreement. Administrator agrees to permit Department or its authorized representative to audit Administrator's records and to obtain any documents, materials, or information necessary to facilitate such audit.

D. Audit Expenditure Threshold. Audit requirements are set forth in 2 CFR Part 200. The expenditure threshold requiring an audit is $750,000.00 of Federal Funds.

E. Audit Certification Form. Administrator shall submit to Department, within sixty (60) days after the end of each fiscal year, an "Audit Certification Form" (available from the Department) for each fiscal year in which any month of the Administrator's fiscal year overlaps a month of the Term of this Agreement.

F. Subcontracts. The Administrator shall include language in any subcontract that provides the Department the ability to directly review, monitor, and/or audit the operational and financial performance and/or records of work performed under this Agreement.

Section 9.3 Monitoring

A. Inspections and Reviews. Department reserves the right to carry out field inspections and desk reviews to ensure compliance with the requirements of this Agreement. After each monitoring visit or desk review, Department shall provide Administrator with a written report of the monitor's findings. If the monitoring reports note deficiencies in Administrator's performance under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by Administrator.

B. Default. Failure by Administrator to take the action specified in the monitoring report may be cause for suspension, termination or recapture of funds, as provided in Section 10.2 of this Agreement.

ARTICLE X
GENERAL PROVISIONS

Section 10.1 Indemnification, Default and Remedies

A. Indemnification. It is expressly understood and agreed by the Parties hereto that Department is contracting with Administrator as an independent contractor, and that Administrator, as such, agrees to hold Department harmless and to the extent allowed by law indemnify Department from and against any and all claims, demands, and causes of action of every kind and character which may be asserted by any third party occurring or in any way incident to, arising out of, or in connection with the services to be performed by Administrator under this Agreement.

B. Default. Administrator understands that the following shall be an event of default under this Agreement:

(1) Merger. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of Texas, and such is not cured prior to causing material harm to Administrator's ability to perform under the terms of this Agreement or in accordance with the Program Requirements; and

(2) Compliance with Laws. Administrator's failure to comply with the terms of this Agreement, Program Requirements, Cross-Cutting Federal Requirements under Article VII of this Agreement, Mortgage Loan Disclosure Regulations, all applicable laws and regulations regarding residential mortgage loan origination and closing, and all applicable local, state and federal laws.

C. Remedies.

(1). It is expressly understood and agreed by the Parties hereto that any right or remedy provided for in this section, or in any other provision of this Agreement, shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law. Nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other right or remedy. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

(2). Administrator understands that any defaults under this Agreement or failure to perform under the terms of this Agreement or in accordance with the Program Requirements may result in the Department's imposition of the applicable remedies specified in Title 10, Part 1, Chapters 1 and 2 of the Texas Administrative Code, as applicable.

Section 10.2 Termination

A. Administrator acknowledges that in the event Administrator is unable to perform in accordance with this Agreement, as required by this Agreement and any associated Loan/Grant Documents as applicable, Administrator shall terminate this Agreement and surrender Administrator's rights to any committed funds in accordance with requirements of 2 CFR §200.338, Remedies for noncompliance.

B. Department may terminate this Agreement, in whole or in part, for any of the following events and any other event agreed to by the parties in the Loan/Grant Documents:

(1) A violation of any law, regulation or order applicable to the Administrator by the Administrator that has or might reasonably be expected to have a material adverse impact on the Administrator's ability to fulfill the terms of this Agreement and is not cured within the applicable cure period, if any, provided in such law, regulation, or order;

(2) Gross negligence, fraud, willful misconduct, misappropriation of funds, or criminal activity by Administrator or any affiliate of the Administrator providing services to or in connection with this Agreement or Administrator;

(3) Any action or event that is considered an event of default hereunder and is not cured within the applicable time period;

(4) The Administrator and/or its contractors are debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD on the Exclusions Extract on SAM.gov; or

(5) The Administrator does not achieve performance benchmarks as outlined in this Agreement or NOFA or for any other reason in the Department's reasonable discretion.

C. Upon termination of this Agreement, all funds, if any, remaining on hand on the date of termination and all accounts receivable attributable to the use of funds received under this Agreement shall revert to Department. Administrator shall return these assets to Department within ten (10) calendar days after the date of termination.

Section 10.3 <u>Subcontracts</u>

A. Administrator shall include language in any subcontract that failure of subcontractor/consultant to adequately perform under the contract may result in penalties up to and including debarment from performing additional work for the Department.

B. Administrator shall only subcontract for performance of Activities described in this Agreement after Administrator has obtained the appropriate documentation verifying the subcontractor's eligibility, as required by state of federal law or specified by Department, for each such proposed subcontract. Administrator, in subcontracting for any Activities described in this Agreement, expressly understands that in entering into such subcontracts, Department is in no way liable to Administrator's subcontractor(s).

C. In no event shall any provision of this section constitute adoption, ratification, or acceptance of Administrator's or subcontractor's performance hereunder. Department maintains the right to insist upon Administrator's full compliance with the terms of this Agreement, and by the act of approval under this section, Department does not waive any right of action which may exist or which may subsequently accrue to Department under this Agreement.

Section 10.4 <u>Conflict of Interest</u>

A. Administrator shall ensure that no employee, agent, consultant, officer or elected or appointed official of Administrator, who exercises or has exercised any functions or responsibilities with respect to Activities assisted with funds provided under this Agreement or who is in a position to participate in a decision making process, or gain inside information with regard to such Activities, may obtain a personal or financial interest or benefit from a HOME assisted Activity, or have an interest in any contract, subcontract, or agreement (or the proceeds thereof) with respect to 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.

B. Administrator shall ensure that no employee, officer, or agent of Administrator shall participate in the selection, or in the award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. Administrator shall comply with 24 CFR §92.356 (exceptions can only made by HUD in writing).

C. No owner, developer or sponsor of HOME-assisted housing, including their officers, employees, agents, consultants or elected or appointed officials may occupy a HOME-assisted unit in a development (with the exceptions of (1) an individual living in a HOME-assisted rental housing development where he/she is a project manager or a maintenance worker in that development and (2) an individual receiving HOME Funds to acquire or rehabilitate his/her principal residence).

D. None of the HOME Funds may be paid to an entity or organization that provides down payment assistance if the Activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing, whether or not made in conjunction with the sale of specific housing acquired with funds provided under this Agreement.

E. It is the responsibility of Administrator to comply with all applicable laws, rules, regulations, ordinances, and other legal requirements regarding prohibited acts including, but not limited to, conflicts of interest and nepotism. In that regard the Administrator is required to have in place and at all times follow written policies to ensure such compliance and to avoid prohibited acts or the appearance thereof. If an actual or suspected prohibited act or the appearance thereof occurs or is alleged, Administrator shall promptly identify same, review the matter with its counsel, and advise the Department (1) what, factually, occurred, (2) was there any violation of legal requirements or policy, and (3) if there was a violation, what will be the corrective action to address that matter and prevent any recurrences.

F. Administrator shall include the substance of this Section 10.4 in all of its subcontracts.

Section 10.5 <u>Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity</u>

A. Administrator shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or Activity funded in whole or in part with funds provided under this Agreement. Administrator shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d *et seq*.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 *et seq*.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U. S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 *et seq*.), the Equal Opportunity in Housing (Executive Order 11063 as amended by

Executive Order 12259) and it implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 *et seq*.), as implemented by HUD at 24 CFR Parts 100-115.

B. Administrator shall include the substance of this Section 10.5 in all of its subcontracts.

Section 10.6 <u>Faith Based Activities</u>

None of the performances rendered by Administrator under this Agreement shall involve, and no portion of the funds received by Administrator under this Agreement shall be used in support of any explicitly religious activity, such as worship, religious instruction, or proselytization. Administrator shall comply with the regulations promulgated by HUD at 24 CFR §92.257.

Section 10.7 <u>Legal Authority</u>

A. <u>General</u>. Administrator assures and guarantees Department that Administrator possesses the legal authority to enter into this Agreement, to receive funds authorized by this Agreement, and to perform the services Administrator has obligated itself to perform under this Agreement.

B. <u>Signature Authority</u>. The person(s) signing and executing this Agreement on behalf of Administrator does hereby warrant and guarantee that he is duly authorized by Administrator to execute this Agreement on behalf of Administrator and to validly and legally bind Administrator to all the terms, performances, and provisions of this Agreement.

C. <u>Good Standing</u>. Upon request by the Department, Administrator shall furnish satisfactory proof of its compliance therewith, including, but not limited to, a certified copy of a "Good Standing Certificate" issued by the Texas Comptroller of Public Accounts.

Section 10.8 <u>Litigation and Claims</u>

A. Administrator shall give Department immediate notice, in writing, of the occurrence of any of the following events:

(1) any action, including any proceeding before an administrative agency, filed against Administrator in connection with this Agreement; and

(2) any claim against Administrator, the cost and expense of which Administrator may be entitled to be reimbursed by Department.

B. Except as otherwise directed by Department, Administrator shall furnish immediately to Department copies of all pertinent papers received by Administrator with respect to such action or claim.

Section 10.9 Oral and Written Agreements

A. All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

B. All attachments enumerated and denominated below are a part of this Agreement and constitute promised performances under this Agreement:

(1) Addendum A- Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements
(2) Addendum B- Certification Regarding Drug-Free Workplace Requirements
(3) Addendum C- Certification Regarding Debarment, Suspension and Other Responsibility Matters
(4) Exhibit A- Household Commitment Contract Template

Section 10.10 Venue and Jurisdiction

A. Jurisdiction. This Agreement shall be construed under and in accordance with the laws of the State of Texas.

B. Venue. Venue for any litigation regarding this Agreement shall be fixed in any court of competent jurisdiction in Travis County, Texas; provided, however, the foregoing shall not be construed as a waiver by either party of sovereign immunity, official immunity or any other immunity or defense provided by law.

Section 10.11 Compliance with Federal, State and Local Law

A. Change in Law. Should the Federal or State Act change so that compliance with the applicable State HOME Rules is not possible, the Administrator shall comply with the applicable changes to the Federal and State Acts.

B. Applicable Single Family HOME Program Rule. If the Administrator wishes to administer HOME Funds under different Single Family HOME Program Rule adopted after the date of the Administrator's application, then the Administrator shall submit their request in writing. The Department may approve the request and require an amendment hereto to identify the applicable Single Family HOME Program Rule. Partial adoptions of the Single Family HOME Program Rule shall not be granted. See 10 TAC §23.1(a). In accordance with 10 TAC §23.27(a), Reservations submitted under this Agreement will be subject to the provisions of the Single Family HOME Program Rule in effect as of the date of submission by the Administrator. If the

Department approves the request and an amended and restated agreement is executed, all subsequent Household Commitment Contracts will be subject to the later adopted Single Family HOME Program Rule identified in the amended and restated agreement.

C. Federal, State and Local Law. Administrator shall comply with all federal, state and local laws, statutes, ordinances, rules, regulations, orders and decrees of any court or administrative body or tribunal related to the Activities and performances of Administrator under this Agreement including, but not limited to: (1) the Program Requirements, (2) residential mortgage lending laws in Article V of this Agreement, (3) the Mortgage Loan Disclosure Regulations, (4) federal cross-cutting requirements in Article VII of this Agreement, (5) the fair housing laws and (6), the federal requirements set forth in 24 CFR Part 5, Subpart A. Upon request by Department, Administrator shall furnish satisfactory proof of its compliance therewith.

D. Illegal Activity. Administrator shall not violate any federal, state, or local laws, stated herein or otherwise, nor commit any illegal activity in the performance of or associated with the performance of this Agreement. No funds under this Agreement shall be used for any illegal activity or activity that violates any federal, state, or local laws.

Section 10.12 Certification Regarding Undocumented Workers

Pursuant to Chapter 2264 of the Texas Government Code, by execution of this Agreement, Administrator hereby certifies that the Administrator, or a branch, division or department of Administrator does not and will not knowingly employ an undocumented worker, where "undocumented worker" means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. If, after receiving a public subsidy, Administrator, or a branch, division, or department of Administrator is convicted of a violation under 8 U.S.C. §1324a(f), Administrator shall repay the amount of the public subsidy with interest, at the rate of five percent (5%) per annum, not later than the 120th day after the date Department notifies Administrator of the violation.

Section 10.13 Political Aid and Legislative Influence Prohibited

A. None of the funds provided under this Agreement shall be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any state official or employee from furnishing to any member of its governing body upon request, or to any other local or state official or employee or to any citizen information in the hands of the employee or official not considered under law to be confidential information.

B. No funds provided under this Agreement may be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government of the State of Texas or the government of the United States.

C. None of the funds provided under this Agreement shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award governed by the Byrd Anti-Lobbying Amendment (31 U.S.C. §1352) as stated and therein and evidenced by Administrators and each of its tiers execution of the "Certification Regarding Lobbying for Contracts, Grants, Loans and Cooperative Agreements" attached hereto as Addendum A hereto and incorporated herein for all relevant purposes.

Section 10.14 Debarred and Suspended Parties

By signing this Agreement, Administrator certifies that neither it nor its current principle parties are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency as provided in the "Certification Regarding Debarment, Suspension and Other Responsibility Matters" attached hereto as Addendum C and incorporated herein for all relevant purposes. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in the certification attached as Addendum C, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Administrator also certifies that it will not make any award provided by this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. Administrator agrees that prior to entering into any agreement with a potential subcontractor that the verification process to comply with this requirement will be accomplished by checking the System for Award Management ("**SAM"**) at www.sam.gov and including a copy of the results in its project files. After said verification, Administrator may decide the frequency by which it determines the eligibility of its subcontractors during the term of the subcontractor's agreement. Administrator may subsequently rely upon a certification of a subcontractor that is not proposed for debarment under 48 CFR Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless Administrator knows that the certification is erroneous. Failure of Administrator to furnish the certification attached hereto as Addendum C or an explanation of why it cannot provide said certification shall disqualify Administrator from participation under this Agreement. The certification or explanation will be considered in connection with the Department's determination whether to continue with this Agreement. Administrator shall provide immediate written notice to Department if at any time Administrator learns that the certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Administrator further agrees by executing this Agreement that it will include the certification provision titled "Certification Regarding Debarment, Suspension and Other Responsibility Matters" "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusive-Subcontracts," as set out in Addendum C, without modification, and this language under this Section 10.14, in all its subcontracts.

Section 10.15 Assignment

This Agreement is entered into by Department and between Administrator only. Accordingly, it is not assignable by Administrator without the prior written consent and agreement of the Department, which consent may be withheld in its sole discretion.

Section 10.16 Severability

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be and remain in full force and effect and construed so as best to effectuate the intent of the Parties.

Section 10.17 Time is of the Essence

Time is of the essence with respect to Administrator's compliance with all agreements, terms and under this Agreement.

Section 10.18 Force Majeure

A. If the obligations, including construction of the improvements, are delayed by the following, an equitable adjustment will be made for delay or failure to perform hereunder:

(1) Any of the following events: (i) catastrophic weather conditions or other extraordinary elements of nature or acts of God; (ii) acts of war (declared or undeclared), (iii) acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; and (iv) disease pandemics, quarantines, embargoes and other similar unusual actions of federal, provincial, local or foreign Governmental Authorities; and

(2) The non-performing party is without fault in causing or failing to prevent the occurrence of such event, and such occurrence could not have been circumvented by reasonable precautions and could not have been prevented or circumvented through the use of commercially reasonable alternative sources, workaround plans or other means.

Section 10.19 Counterparts and Facsimile Signatures

This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile or other electronic transmission, and any such signature shall have the same legal effect as an original. If any party returns a copy by facsimile machine or electronic transmission, the signing party intends the copy of its authorized signature printed by the receiving machine or electronic transmission to be its original signature.

Section 10.20 Notice

A. If notice is provided concerning this Agreement, notice may be given at the following (herein referred to as "**Notice Address**"):

As to Department:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
P. O. Box 13941
Austin, Texas 78711-3941
Attention: HOME Program
Telephone: (512) 463-8921
Fax: (512) 475-0220
e-mail address: HOME@tdhca.state.tx.us

As to Administrator:

City of Slaton
130 S 9th St
Slaton, TX 793644192
Attention: Mike Lamberson, City Administrator
Telephone: (806) 828-2000
e-mail address: mlamberson@cityofslaton.com

B. All notices or other communications hereunder shall be deemed given when delivered, mailed by overnight service, or five (5) calendar days after mailing by certified or registered mail, postage prepaid, return receipt requested, addressed to the appropriate Notice Address as defined in the above Subsection A of this Section 10.20.

Section 10.21 Number; Gender

Unless the context requires otherwise, the words of the masculine gender shall include the feminine, and singular words shall include the plural.

Section 10.22 Alternative Dispute Resolution

In accordance with Section 2306.082 of the State Act, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("**ADR**") under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Texas Government Code), to assist in the fair and expeditious resolution of internal and external disputes involving the Department and the use of negotiated rulemaking procedures for the adoption of Department rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by Department's ex parte communications policy, Department encourages informal communications between Department staff and the Administrator, to exchange information and informally resolve disputes. Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Administrator would like to engage Department in an ADR procedure, the Administrator may send a proposal to Department's Dispute Resolution Coordinator. For additional information on Department's ADR policy, see Department's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

Section 10.23 <u>Limitation on Abortion Funding</u>

A. Pursuant to Chapter 2272 of the Texas Government Code, to the extent allowed by federal and state law, the Department may not enter into this Agreement with an "abortion provider" or an "affiliate" of an abortion provider, as said terms are defined thereunder, if funds under this Agreement are appropriated from state or local tax revenue.

B. By execution of this Agreement, the Administrator hereby certifies that, as a condition of receipt of any funds under this Agreement from state or local tax revenue, it is eligible to receive said funds, and that it will not utilize said funds in any way contrary to this Section 10.23 during the Term.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the dates written below to be effective on the latter date of execution by the authorized representative of the Department.

DEPARTMENT:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas

DocuSigned by:

By: Abigail Versyp

D9F043DB64A044F...

Its duly authorized officer or representative

Date: 4/16/2021 | 9:55:09 AM CDT

ADMINISTRATOR:

CITY OF SLATON,
a political subdivision of the State of Texas

DocuSigned by:

By: Mike Lamberson

05B6F17058A74EF...

Mike Lamberson, City Administrator

Date: 4/16/2021 | 10:17:32 AM EDT

TEXAS DEPARTMENT OF HOUSING COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM ("**HOME**")
RESERVATION SYSTEM PARTICIPANT AGREEMENT

ADMINISTRATOR AGREEMENT #**2020-0051**
WITH
CITY OF SLATON,
a political subdivision of the State of Texas

EXHIBIT A
HOUSEHOLD COMMITMENT CONTRACT TEMPLATE

TEXAS DEPARTMENT OF HOUSING COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM
HOUSEHOLD COMMITMENT CONTRACT FOR [HRA /CFDC/TBRA/HANC]

WITH
[__________________],
[__________________]

CFDA 14.239 HOME INVESTMENT PARTNERSHIPS PROGRAM
Awarding Federal Agency: U.S. Department of Housing and Urban Development
Award Number: M- -SG-48-0100
Federal Award Year: 20
Pass Through Entity: Texas Department of Housing and Community Affairs
HUD Entity Type:
Unique Entity Identifier Number:
Single Family HOME Program Rule Adoption Date:

This HOME HOUSEHOLD COMMITMENT CONTRACT FOR [HRA /CFD/TBRA/HANC] ("**Contract**") is made and entered into by and between [__________________], [__________________] ("**Administrator**") and **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas ("**Department**") herein collectively referred to as "**Parties**" in connection with the HOME Investment Partnerships Program Reservation System and Reservation System Participant Agreement # [___________] executed by the Department and Administrator ("**Administrator Agreement**").

RECITALS

WHEREAS, Administrator wishes to make a Commitment of Funds to Qualified Household, as defined in Article I of this Contract, in accordance with and subject to all provisions of (1) the

Administrator Agreement, as amended from time to time, (2) the HOME Investment Partnerships Act of 1990 (42 U.S.C. 12721-12839) (the "**Federal Act**"), (3) applicable Federal and CPD Notices issued by HUD, (4) implementing regulations at 24. CFR Part 92, (5) Chapter 2306 of the Texas Government Code ("**State Act**"), (6) 10 TAC Chapter 20 ("**Single Family Programs Umbrella Rule**") in effect at the time of the execution of this Contract, (7) 10 TAC Chapter 23 ("**Single Family HOME Program Rule**") in effect at the time of the execution of this Contract, and (8) "Application and Application Submission Procedures Manual" as defined in the Administrator Agreement, (collectively, "**Program Requirements**");

WHEREAS, Administrator agrees and acknowledges that this Contract serves as a supplement to the Administrator Agreement and, by execution hereof, shall be subject to all terms and conditions of Administrator Agreement, as may be amended from time to time, unless otherwise specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, including the Recitals, which are contractual in nature, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, hereby agree as follows:

ARTICLE I
QUALIFIED HOUSEHOLD

Administrator has reviewed the income and all other documentation necessary for the household of [_____________] and [____________] ("**Qualified Household**"). Administrator has verified that the Qualified Household meets the Program Requirements and the requirements of the Administrator Agreement, as may be amended from time to time.

ARTICLE II
CONTRACT TERM

Section 2.1 Contract Term

FOR HRA, CFD, and HANC

A. This Contract shall be effective on the latter of the date executed by an authorized representative of the Department and the Administrator and shall remain in full force and effect for twelve (12) **months** after the effective date ("**Contract Term**"), unless earlier terminated or amended in accordance with the provisions herein.

OR FOR TBRA

A. This Contract shall be effective and authorize payment of the subsidy beginning on the first effective date of the rental coupon contract executed by the Administrator and the Qualified Household and shall remain in full force and effect until the end date of the rental coupon contract executed by the Administrator and the Qualified Household ("**Contract Term"**), unless earlier terminated or amended in accordance with the provisions herein. This Contract Term shall never exceed twenty-four (24) months.

B. Without limitation, this Contract shall be subject to the terms and conditions of the Administrator Agreement, as may be amended from time to time, and Program Requirements for the entire Contract Term regardless of the Term of Administrator Agreement.

ARTICLE III
COMMITMENT OF FUNDS

Section 3.1 HOME Funds

FOR CFD, HANC, and HRA

A. The Department shall make a Commitment of Funds to Administrator in an amount not to exceed [_________________] **AND NO/100 DOLLARS ($[_________________])** in Project funds and [_________________] **AND NO/100 DOLLARS ([_________________])** in soft costs for [the acquisition and New Construction and Reconstruction and Refinancing] of the housing unit located at [________________] which [is owned or will be purchased] by Qualified Household and occupied as their primary residence in accordance with the Program Requirements.

OR FOR TBRA

The Department shall make a Commitment of Funds under the HOME Tenant-Based Rental Assistance Program to Administrator in an amount not to exceed [_________________] **AND NO/100 DOLLARS ([_________________])** in Project funds and [_________________] **AND NO/100 DOLLARS ([_________________])** in soft costs in accordance with the Program Requirements.

B. To the extent that funds are available, the Commitment of Funds shall be made in the Reservation System under the following set-aside:

☐ **Homeowner Reconstruction Assistance ("HRA") Set-Aside [Contract #]** (10 TAC §§23.30-32)

☐ **Contract for Deed (CFD) Set-Aside [Contract #]** (10 TAC §§23.40-42)

☐ **Tenant-Based Rental Assistance (TBRA") Set-Aside [Contract #]** (10 TAC §§23.50-52)

☐ **Homebuyer Assistance with New Construction ("HANC") Set-Aside [Contract #]** (10 TAC §§23.70-72)

☐ **Single-Family Programs for Persons with Disabilities ("PWD") Set-Aside** including the following Activities:

☐ TBRA **[Contract #]** (10 TAC §§23.60-62)

☐ HRA **[Contract #]** (10 TAC §§23.30-32)

☐ **Disaster Set-Aside** including the following activities:

☐ TBRA **[Contract #]** (10 TAC §§23.60-62)

☐ HRA **[Contract #]** (10 TAC §§23.30-32)

C. Notwithstanding any other provision of this Contract to the contrary, the total of all payments and other obligations incurred by Department under this Contract shall not exceed the amounts set forth in Subsection A of this Section 3.1.

D. Department's obligations under this Contract are contingent upon the actual receipt and availability by Department of adequate HOME federal funds. If sufficient funds are not available to fund this Contract, Department shall notify Administrator in writing within a reasonable time after such fact is determined and the Administrator shall immediately notify the Qualified Household. Department may then terminate this Contract and will not be liable for the failure to make any payment to Administrator under this Contract.

Section 3.2 Compliance with Federal, State, and Local Law

A. Unless otherwise noted, Administrator shall comply with the Single Family Programs Umbrella Rule and the Single Family HOME Program Rule in effect at the time the Administrator applied for HOME funds.

B. Should the Federal or State Act change so that compliance with the applicable Single Family Programs Umbrella Rule and the Single Family HOME Program Rule is not possible, the Administrator shall comply with the applicable changes to the Federal and State Acts.

C. Commitments resulting from Reservations submitted under an RSP agreement will be subject to the provisions of Single Family HOME Program Rule in effect as of the date of submission of the Reservation by the Administrator.

ARTICLE IV
LOAN/GRANT DOCUMENTS

Section 4.1 Qualified Household Grants

In the event Administrator qualifies a Qualified Household for a grant under the Program Requirements based upon a Qualified Household's information in the program application, Administrator agrees to the following:

A. Administrator will prepare the Grant Documents (as defined in the Administrator's Agreement) for the Qualified Household.

B. The Qualified Household shall execute the applicable Grant Documents (as defined in the Administrator's Agreement) for an amount in accordance with Section 3.1 of this Contract and the Program Requirements.

Section 4.2 **Qualified Household Loans**

In the event Administrator qualifies a Qualified Household for a residential mortgage loan ("**Qualified Household Mortgage Loan**") under the Program Requirements based upon a Qualified Household's information in the program application, Administrator agrees to the following:

A. Administrator will require a Qualified Household to complete the loan application supplement to the program application, hereinafter referred to as "loan application".

B. Administrator will take the loan application of a Qualified Household applicant for a Qualified Household Mortgage Loan, originate the Qualified Household Mortgage Loan, and conduct loan closings of the Qualified Household Mortgage Loan in accordance with the Section 5.3 of the Administrator's Agreement, the Mortgage Loan Disclosure Regulations, all applicable state and federal laws and regulations regarding the origination and closing of residential mortgage loans.

C. Administrator's failure to originate Qualified Household Mortgage Loans or conduct loan closings in accordance with all applicable state and federal laws and regulations will be deemed an event of default under this Contract.

D. Administrator expressly acknowledges that compliance with state and federal laws and regulations regarding residential mortgage loan origination, residential mortgage disclosures and residential mortgage loan closing is Administrator's responsibility, and the fact that Administrator or anyone acting on Administrator's behalf, either takes a residential mortgage loan application and submits it to the Department or prepares and delivers a mortgage disclosure to the Qualified Household and that the Department proceeds with closing of a loan does not in any manner constitute a finding, conclusion, or representation by the Department that the Administrator is in compliance with or exempt from such legal requirements.

ARTICLE V
AMENDMENTS

Section 5.1 **Changes, Amendments and Extensions**

Except as specifically provided otherwise in this Contract, the Single Family Programs Umbrella Rule or the Single Family HOME Program Rule, any changes, additions, or deletions to the terms of this Contract shall be in writing and executed by both Parties to this Contract in accordance with Section 20.14 of the Single Family Programs Umbrella Rule and shall comply with the extension requirements of Subchapter B of the Single Family HOME Program Rule.

Section 5.2 Changes and Amendments Required by Law

Any changes, additions, or deletions to the terms of this Contract which are required by changes in federal or state law, or regulations, are automatically incorporated into this Contract and shall become effective on the date designated by such law or regulation without the requirement of a written amendment hereto. Said changes, additions, or deletions referenced under this Subsection B of Section 4.1 may be further evidenced in a written amendment.

Section 5.3 Modifications to Qualified Household Mortgage Loan Documents

If any amendment to this Contract affects the Qualified Household Mortgage Loan documents, the documents may be modified accordingly in accordance with Section 20.14 of the Single Family Umbrella Program Rules.

Section 5.4 Facsimile Signatures

A facsimile or electronic copy executed by both Parties will be sufficient to evidence the Parties agreement to any amendment, revision or change to this Contract. If any Party returns this copy by facsimile machine or electronic transmission, the signing party intends the copy of its authorized signature printed by the receiving machine or the electronic transmission, to be its original signature.

IN WITNESS WHEREOF, each of the Parties has executed this Contract as of the dates written below.

DEPARTMENT:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas

By: ______________________________________
Its duly authorized officer or representative

Date:________________________________

ADMINISTRATOR:

CITY OF SLATON,
a political subdivision of the State of Texas

By: ______________________________________
Mike Lamberson, City Administrator

Date: ________________________________

TEXAS DEPARTMENT OF HOUSING COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM ("**HOME**")
RESERVATION SYSTEM PARTICIPANT AGREEMENT

ADMINISTRATOR AGREEMENT #**2020-0051**
WITH
CITY OF SLATON,
a political subdivision of the State of Texas

ADDENDUM A
CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

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

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

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

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

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

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of its knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

ADMINISTRATOR:

CITY OF SLATON, a political subdivision of the State of Texas

DocuSigned by:

By: Mike Lamberson

Mike Lamberson, City Administrator

Date: 4/16/2021 | 10:17:32 AM EDT

TEXAS DEPARTMENT OF HOUSING COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM ("**HOME**")
RESERVATION SYSTEM PARTICIPANT AGREEMENT

ADMINISTRATOR AGREEMENT #2020-0051
WITH
CITY OF SLATON,
a political subdivision of the State of Texas

ADDENDUM B

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

The undersigned certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Place(s) of Performance [site(s) for the performance of work done in connection with the specific grant] (include street address, city, county, state, zip code):

1. **130 S 9th St Slaton, 79364-4192**________________________
2. ____
3. ____
4. ____

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). If Administrator does not identify the workplaces at the time of application, or upon award, if there is no application, the Administrator must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the Administrator's drug-free workplace requirements.

This certification is a material representation of fact upon which reliance is placed when the Department awards the grant. If it is later determined that Administrator knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, Department, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

ADMINISTRATOR:

CITY OF SLATON,
a political subdivision of the State of Texas

DocuSigned by:

By: Mike Lamberson ______________________________
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Mike Lamberson, City Administrator

Date: 4/16/2021 | 10:17:32 AM EDT ______________________________

TEXAS DEPARTMENT OF HOUSING COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM ("**HOME**")
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ADDENDUM C
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

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

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

(1) Is in connection with this award;
(2) Reached its final disposition during the most recent five year period; and
(3) Is one of the following:

i. A criminal proceeding that resulted in a conviction, as defined below;
ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;
iii. An administrative proceeding, as defined below, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damage in excess of $100,000; or
iv. Any other criminal, civil, or administrative proceeding if:

1. It could have led to an outcome described in this section (e) paragraph (3) items (i) – (iii) of this award term and condition;
2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

(4) For purposes of section (e) of this certification the following definitions apply:

i. An ”administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. A “conviction”, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

Where the undersigned Administrator is unable to certify to any of the statements in this certification, such Administrator shall attach an explanation of why it cannot provide said certification to this Agreement.

The undersigned Administrator further agrees and certifies that it will include the below clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Subcontracts/Lower Tier Covered Transaction,” without modification, in all subcontracts and in all solicitations for subcontracts:

“CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – SUBCONTRACTS/ LOWER TIER COVERED TRANSACTIONS

(1) The prospective lower tier participant/subcontractor certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant/subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

LOWER TIER PARTICIPANT/ SUBCONTRACTOR:

Entity Name, Entity Type

By: ______________________________
Signature Authority Name, Title

Date: ___________________________"

This certification is a material representation of fact upon which reliance is placed when the Department awards the grant. If it is later determined that Administrator knowingly rendered an erroneous certification, in addition to any other remedies available to the Federal Government, the Department may terminate this Agreement for cause or default.

ADMINISTRATOR:

CITY OF SLATON,
a political subdivision of the State of Texas

By: DocuSigned by: Mike Lamberson 0596F17058A74EE
Mike Lamberson, City Administrator

Date: 4/16/2021 | 10:17:32 AM EDT