

CBDO AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

KNOW ALL BY THESE PRESENTS:

SECTION 1. PARTIES TO AGREEMENT

This agreement is made and entered into by and between the County of Hidalgo – Urban County Program (UCP) and Affordable Homes of South Texas, Inc., a nonprofit corporation organized under the laws of the State of Texas, hereinafter referred to as a Community-Based Development Organization, (CBDO). The parties hereto have severally and collectively agreed and by the execution hereof are bound to the mutual obligations and to the performance and accomplishment of the tasks described herein.

SECTION 2. AGREEMENT PERIOD

This agreement shall commence on the date of execution by the CBDO and the UCP and shall terminate on June, 2028, unless otherwise specifically provided by the terms of this agreement.

SECTION 3. GRANT

UCP agrees to grant CBDO \$1,041,000 utilizing Neighborhood Stabilization Program (NSP3) funds, subject to the conditions of this agreement.

SECTION 4. CBDO PERFORMANCE

- A. Providing homeownership opportunities for fourteen (14) qualified families with a total yearly income between 51%-120% of the AMI.
- B. CBDO shall undertake the following activities dependant upon individual property needs:
 - 1. Redevelopment of Vacant Properties
 - 2. Establish Financing Mechanisms for the purchase and redevelopment of residential properties
- C. CBDO shall perform annual principal residency verifications on all properties that are within their affordability periods.
- D. CBDO shall provide a minimum of eight (8) hours of pre-purchase counseling for qualified homebuyers.
- E. CBDO shall comply with the definition of the new income group noted under §2301(f)(3)(A)(i) and (ii) of the Housing and Economic Recovery Act as “moderate- and middle-income” (LMMI) not to exceed 120% of the area median income (AMI)”.
- F. The project shall be administered in accordance with Exhibit A, Title III – Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes in the “Housing

and Economic Recovery Act of 2008” (Pub. L. 110-289, approved July 20, 2008)(HERA), as amended by the June 19, 2009 “Bridge” Notice (74 FR 29223), Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010)(Dodd-Frank Act) and the Community Development Block Grant (CDBG) program (authorized under Housing Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.) (HCD Act).

CBDO represents and warrants that it is a “Community-Based Development Organization” as described in 24 CFR 570.204 and agrees that it shall comply with all applicable government requirements.

CBDO agrees to acknowledge the sponsorship of the UCP at any event promoting the project or any other project sponsor.

CBDO shall perform all activities in accordance with the CDBG National Objective as listed under 24 CFR 570.208.3; Performance Statement (“Exhibit A”); Budget, (“ Exhibit B”); Applicable Laws and Regulations, (“Exhibit C”); Certifications, (“Exhibit D”); assurances, certifications, and all other statements made by CBDO in its application for the project funded under this agreement; and with all other terms, provisions, and requirements set forth in this agreement.

SECTION 5. UCP OBLIGATIONS

- A. Identification of properties will be performed by the UCP, in conjunction with the approved applicant.
- B. The UCP will be responsible for procuring and requesting inspections and appraisals as each property is identified. An inspection and appraisal will reveal the site specific needs as it relates to the applicable housing standards thus allowing us to determine which of the activities will be performed.
- C. Measure of Liability

In consideration of full and satisfactory performance of the activities referred to in Section 4 of this agreement, UCP shall make payment under the grant for the actual and reasonable costs incurred by CBDO during the agreement period for performance rendered under this agreement by CBDO, subject to the limitations set forth in this Section 5.

1. It is expressly understood and agreed by the parties hereto that UCP’s obligations under this Section 5 are contingent upon the actual receipt of adequate federal funds to meet UCP’s liabilities under this agreement. If adequate funds are not available to make payments under this agreement, UCP shall notify CBDO in writing within a reasonable time after such fact is determined, UCP shall then terminate this agreement and will not be liable for failure to make payments to CBDO under this agreement.
2. UCP shall be liable to grant CBDO money for only those costs incurred by CBDO which are allowed as defined in 24 CFR 570.205, 570.206, costs related to activities within Section 2301(c)(3), of HERA and Section 6 of this agreement.

3. UCP shall not be liable to grant CBDO money for those costs incurred by CBDO which are disallowed costs as listed under Section 2303 and 2304 of HERA. Nor shall the UCP be liable to grant CBDO money for any costs incurred by CBDO, or any portion thereof, which has been paid to CBDO or is subject to payment to CBDO, or has been reimbursed to CBDO or is subject to reimbursement to CBDO by any source other than UCP.
4. UCP shall not be liable to grant CBDO money for any costs incurred by CBDO or for any performances rendered by CBDO which are not strictly in accordance with the terms of this agreement, including terms of Exhibit A, B, C, and D of this agreement.
5. UCP shall not be liable to grant CBDO money for any costs incurred or performances rendered by CBDO before commencement of this agreement or after termination of this agreement.

B. Limit of Liability

Notwithstanding any other provision of this agreement, the total of all payments and other obligations incurred by UCP under this agreement shall not exceed the sum of \$1,041,000.

SECTION 6. DISBURSEMENT OF FUNDS

- A. UCP will provide funds under this agreement in accordance with the requirements of 24 CFR 570.205, 570.206 and costs related to activities within Section 2301(c)(3) of HERA. CBDO may not request disbursement of funds under this agreement until funds are needed for payment of eligible costs and in accordance with the UCP payment disbursement procedures. All work related to a request for disbursement will be inspected prior to disbursement of funds. Funds will be disbursed within thirty (30) days provided all required supporting documentation has been submitted.
- B. It is expressly understood and agreed by the parties hereto that payments under this agreement are contingent upon CBDO's full and satisfactory performance of its obligations under this agreement. UCP reserves the right to recapture unexpended funds provided under this agreement in the event UCP determines that CBDO will be unable to expend funds within the prescribed time as determined by UCP.
- C. UCP shall not be liable to CBDO for any costs incurred or performance rendered by CBDO before commencement or after termination of this agreement.

SECTION 7. ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND PROGRAM INCOME

- A. CBDO must comply with applicable regulations under OMB Circular No. A-122 and 24 CFR Part 84.
- B. CBDO shall maintain records of the receipt, accrual, and disposition of all CBDO Proceeds funds in the same manner as required for in Section 7.A above for all funds under this

agreement. Prior to disposition of its CBDO proceeds, the CBDO shall request, in writing, approval from UCP Director indicating proceeds origination, amount and utilization type (rehab., acquisition, construction, etc.). CBDO shall provide reports of CBDO proceeds on a monthly basis.

- C. All CBDO proceeds shall be retained by the CBDO however must be re-invested by CBDO and applied towards NSP housing initiatives, as listed under section 4.B of this agreement, for low and moderate income individuals and families.

SECTION 8. RETENTION AND ACCESSIBILITY OF RECORDS

- A. CBDO must establish and maintain those records listed under 24 CFR 92.508 and other records as may be determined by UCP.
- B. CBDO shall give the UCP, the Comptroller of the United States, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by CBDO pertaining to this agreement. Such right to access shall continue as long as the records are retained by CBDO. CBDO agrees to maintain such records in an accessible location.
- C. All records pertinent to this agreement shall be retained by CBDO for five years following affordability period the date of termination of this agreement or of submission of the final closeout reports, whichever is later, with the following exceptions:
 - 1. If any litigation, claim or audit is started before the expiration of the five-year period and extends beyond the five-year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved.
 - 2. Records relating to real property acquisition shall be retained for the period of affordability required under 24 CFR 92.254 or 24 CFR 92.252 as applicable, plus five years
 - 3. Records covering displacement and acquisitions must be retained for at least five years after the date by which all person displaced from the property and all person whose property is acquired for the project have received the final payment to which they are entitled in accordance with 24 CFR 92.353.
- D. CBDO shall include the substance of this Section 8 in all subcontracts.
- E. CBDO must provide citizens, public agencies, and other interested parties with reasonable access to records consistent with the Texas Public Information Act, TEXAS GOVERNMENT CODE, Chapter 522.

SECTION 9. REPORTING REQUIREMENTS

- A. CBDO shall submit to UCP such reports on the operation and performance of this agreement as may be required by UCP including but not limited to the reports specified in this Section 9. In addition, CBDO shall provide UCP with all reports necessary for UCP compliance with 24 CFR 92.509 and 24 CFR Part 92, Subpart L and those reports requested by the UCP.

- B. In addition to the limitations on liability otherwise specified in this agreement, it is expressly understood and agreed by the parties hereto that if CBDO fails to submit to UCP in a timely and satisfactory manner any report required by this agreement, UCP may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by CBDO hereunder. If UCP withholds such payments, it shall notify CBDO in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by UCP until such time as the delinquent obligations for which funds are withheld are fulfilled by CBDO.
- C. Acknowledgment of Funding Source. CBDO shall give credit to the UCP as the project-funding source in all presentations, written documents, publicity and advertisements regarding the development.

SECTION 10. MONITORING

The UCP reserves the right to carry out field inspections to ensure compliance with the requirements of this agreement. After each monitoring visit, UCP shall provide CBDO with a written report of the monitor's finding. If the monitoring reports note deficiencies in CBDO's performances under the terms of this agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by CBDO. Failure by CBDO to take action specified in the monitoring report may be cause for suspension or termination of this agreement, as provided in Section 18 and Section 19 of this agreement.

SECTION 11. INDEPENDENT CBDO

- A. It is expressly understood and agreed by the parties hereto that UCP is contracting with CBDO as an independent CBDO, and that CBDO, as such, agrees to hold UCP harmless and to indemnify UCP 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 CBDO under this agreement.
- B. CBDO agrees that it will indemnify the County of Hidalgo and the UCP ("Indemnities") and hold County of Hidalgo and UCP harmless of, from, and against all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments recovered from or asserted against County of Hidalgo and UCP on account of injury or damage to person or property to the extent any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by an act or omission, negligence or misconduct on the part of CBDO or any of its agents, servants, employees, contractors, patrons, guests, licensees, or invitees entering upon the Housing being improved pursuant to this Agreement or when any such injury or damage is the result, proximate or remote, of the violation by CBDO, or any of its agents, servants, employees, contractors, patrons, guests, licensees, or invitees of any law, ordinance or governmental order of any kind, or when any such injury or damage may in any other way arise from or out of the acquisition, rehabilitation, modification, or construction at the Housing herein or out of the use or occupancy of the Housing or the Housing themselves by CBDO, its agents, servants, employees, contractors, patrons, guests, licensees, or invitees, including without limitation, any damages or costs which may occur as a result of the design of the rehabilitation,

modification, or construction of the Housing, the bidding process, actual rehabilitation, modification, or construction of the Housing, administration of the construction contracts by the County of Hidalgo and UCP or its designee, failure of the Housing prior to completion and acceptance of rehabilitation, modification, or construction of the Housing to work as designed, failure of the Contractor or manufacturer to honor its warranties, failure of CBDO to maintain the Housing, or the Housing themselves.

These terms of indemnification shall be effective upon the date of execution of this agreement and whether such injury or damage may result from the sole negligence, contributory negligence, or concurrent negligence of Indemnities; but not if such damage or injury may result from gross negligence or willful misconduct of Indemnities.

CBDO covenants and agrees that, in case the County of Hidalgo and/or UCP shall be made a party to any litigation against CBDO or in any litigation commenced by any party relating to this Agreement and the construction of the Housing contemplated hereunder, CBDO shall and will pay all costs and expenses, including reasonable attorneys' fees and court costs incurred by or imposed upon the County of Hidalgo or UCP by virtue of any such litigation.

CBDO, for and in consideration of UCP participation in this agreement, hereby agrees and covenants that CBDO will never institute any suit or action at law against the County of Hidalgo, UCP, their officers, agents, servants, or employees, (hereinafter referred to as RELEASEES), related to the performance by any party under this Agreement, nor institute, prosecute, or in any way aid in the institution or prosecution of any claim, demand, action or cause of action for damages, costs, expenses or compensation for, related to the performance by any party under this Agreement, whether or not caused by the negligence of Releases.

SECTION 12. SUBCONTRACTS

- A. Except for subcontracts to which the federal labor standards requirements apply, CBDO may not subcontract for performances described in this agreement without obtaining UCP's prior written approval. CBDO shall only subcontract for performances described in this agreement to which the federal labor standards requirements apply after CBDO has submitted a Subcontractor Eligibility form, as specified by UCP, for each such proposed subcontract, and CBDO has obtained UCP's prior written approval, based on the information submitted, of CBDO's intent to enter into such proposed subcontract. CBDO, in subcontracting for any performances described in this agreement, expressly understands that in entering into such subcontracts, UCP is not in any manner liable to CBDO's subcontractor(s).
- B. In no event shall any provision of this Section 12, specifically the requirement that CBDO obtain UCP's prior written approval of a subcontractor's eligibility, be construed as relieving CBDO of the responsibility for ensuring that the performances rendered under all subcontracts are rendered as so as to comply with all of the terms of this agreement, as if such performances rendered were rendered by CBDO. UCP's approval of subcontractor's eligibility under this Section 12 does not constitute adoption, ratification or acceptance of CBDO's or subcontractor's performance hereunder. The act of approval of subcontractor's eligibility under this Section 12 does not waive any right of action which may exist or which may subsequently accrue to UCP under this agreement. UCP retains at all times the right to insist upon CBDO's full compliance with the terms of this agreement.

- C. CBDO shall comply with all applicable federal, state, and local laws, regulations, and ordinances when making procurements under this agreement.
- D. CBDO shall comply with all applicable federal, state, and local laws, regulations and ordinances for the term of this agreement.

SECTION 13. CONFLICT OF INTEREST

UCP shall ensure that no person who (1) is an employee, agent, consultant, officer or elected or appointed official of UCP that receives funds and who exercise or has exercised any functions or responsibilities with respect to activities assisted with funds provided under this agreement or (2) 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 NSP assisted activity, or have an interest in any agreement, subcontract, or contract (or the proceeds thereof) with respect to a NSP assisted activity either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. CBDO shall ensure compliance with applicable provisions under 24 CFR 92.356 and OMB Circular A-110 in the procurement of property and services.

SECTION 14. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Equal Opportunity. CBDO shall ensure that no person shall on the grounds of race, color, religion, sex, age, handicap, 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. In addition, funds provided under this agreement must be made available in accordance with the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) such that:
 - 1. To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with NSP funds provided under this agreement be given to low-income persons residing within the general local government area or metropolitan area or non-metropolitan county in which the project is located; and
 - 2. To the greatest extent feasible, agreements for work to be performed in connection with any such project be awarded to business concerns, including. But not limited to, individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area or non-metropolitan county as the project.

SECTION 15. LEGAL AUTHORITY

- A. CBDO assures and guarantees that CBDO possesses the legal authority to enter into this agreement, receive funds authorized by this agreement, and to perform the services CBDO has obligated itself to perform hereunder.

- B. The person or persons signing and executing this agreement on behalf of CBDO, or representing themselves as signing and executing this agreement on behalf of CBDO, do hereby warrant and guarantee that he, she or they have been duly authorized by CBDO to execute this agreement on behalf of CBDO and to validly and legally bind CBDO to all terms, performances, and provisions herein set forth.
- C. CBDO shall not employ, award contract to, or fund any person that has been debarred, suspended, proposed for debarment, or placed on ineligibility status by the U.S. Department of Housing and Urban Development. In addition, UCP shall have the right to suspend or terminate this agreement if CBDO is debarred, suspended, proposed for debarment, or ineligible from participating in the NSP Program.

SECTION 16. LITIGATION AND CLAIMS

CBDO shall give UCP immediate notice in writing of:

- 1) Any action, including any proceeding before an administrative agency filed against CBDO in connection with this agreement; and
- 2) Any claim against CBDO, the cost and expense of which CBDO may be entitled to be reimbursed by UCP. Except as otherwise directed by UCP, CBDO shall furnish immediately to UCP copies of all pertinent papers received by CBDO with respect to such action or Claim.

SECTION 17. CHANGES AND AMENDMENTS

- A. Except as specifically provided otherwise in this agreement, any alterations, additions, or deletions to the terms of this agreement shall be by amendment hereto in writing and executed by both parties to this agreement.
- B. It is understood and agreed by the parties hereto that any undertakings must be rendered in accordance with Section 4 of this agreement, the regulations promulgated under such Act, the assurances and certifications made to UCP by CBDO, and the assurances and certifications made to the United States Department of Housing and Urban Development by UCP with regard to the operation of the NSP Program. Based on these considerations, and in order to ensure the legal and effective performance of this agreement by both parties, it is agreed by the parties hereto that the performances under this agreement are amended by the provisions of the NSP Program, and any amendments thereto and may further be amended in the following manner: The Department of Housing and Urban Development may from time to time during the period of performance of this agreement issue policy directives which serve to establish, interpret, or clarify performance requirements under this agreement. Such policy directives promulgated in the form of NSP Issuances, shall have the effect of modifying the terms of this agreement and shall be binding upon CBDO, as if written herein, provided however that said policy directives and any amendments shall not alter the terms of this agreement so as to release UCP of any obligation specified in Section 5 of this agreement to reimburse costs incurred by CBDO prior to the effective date of said amendments or policy directives.
- C. Any alterations, additions, or deletions to the terms of this agreement which are required by changes in Federal law or regulations are automatically incorporated into this agreement

without written amendment hereto and shall become effective on the date designated by such law or regulation. The UCP or CBDO may require written changes or amendments to this Agreement when any substantial alterations, additions, or deletions to the terms of this agreement are required by changes in Federal law or regulations.

- D. CBDO has provided an estimated Budget and Project Implementation Schedule based upon the proposed construction listed above, which budget and schedule will be attached hereto and made a part hereof for all purposes as Exhibit B.

SECTION 18. SUSPENSION

In the event CBDO fails to comply with any term of this agreement, UCP may, in accordance with 24 CFR 85.43 and upon written notification to CBDO, suspend this agreement in whole or in part and withhold further payments to CBDO, and prohibit CBDO from incurring additional obligations of funds under this agreement.

SECTION 19. TERMINATION

The UCP may terminate this Agreement, in whole or in part, in accordance with 24 CFR 85.43 and this Section 19. UCP may terminate this agreement for convenience in accordance with 24 CFR 85.44. In the event CBDO materially fails as determined by UCP to comply with any term of this agreement, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, UCP may take one or more of the following actions:

1. Temporarily withhold cash payments pending correction of the deficiency by the CBDO or take more severe enforcement action against CBDO.
2. Disallow all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate the current award for the CBDO program.
4. Withhold further NSP award from CBDO.
5. Take other remedies that may be legally available.

Additionally, this agreement may be cancelled upon thirty-day notice of cancellation upon mutual agreement of the parties.

SECTION 20. AUDIT

- A. Unless otherwise directed by UCP, CBDO shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this agreement, subject of the following conditions and limitations:

1. CBDO shall have an audit and/or financial statement made in accordance with 24 CFR 92.506, 24 CFR Part 85.26 or OMB Circular A-133 and the UCP CBDO Policy for any of its fiscal years included within the agreement period specified in Section 2 of this agreement in which CBDO receives more than \$500,000 in federal financial assistance provided by a federal agency in the form of grants, agreements, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance or direct appropriations, but federal financial assistance does not include direct federal cash assistance to

individuals. The term includes awards of federal financial assistance received directly from federal agencies, or indirectly through other units of state and local government.

2. At the option of CBDO, each audit required by this section may cover either CBDO's entire operations or each department, agency, or establishment of CBDO which received, expended or otherwise administered federal funds.
 3. CBDO may utilize funds budgeted under this agreement, only if indicated under Exhibit B, to pay for that portion of the cost of such audit services properly allocable to the activities funded by UCP under this agreement, provided however that UCP shall not make payment for the cost of such audit services until UCP has received such audit report from CBDO.
 4. Unless otherwise specifically authorized by UCP in writing, CBDO shall submit the report of such audit to UCP within thirty (30) days after completion of the audit, but no later than one (1) year after the end of each federal fiscal period included within the period of this agreement. Audits performed under Subsection A of this Section 20 are subject to review and resolution by UCP or its authorized representative.
 5. As part of its audit, CBDO shall verify expenditures according to the Budget attached as Exhibit B.
- B. Notwithstanding Subsection A of this Section 20, UCP reserves the right to conduct an annual financial and compliance audit of funds received and performances rendered under this agreement. CBDO agrees to permit UCP or its authorized representative to audit CBDO's records and to obtain any documents, materials, or information necessary to facilitate such audit. Should an audit not be required by Subsection A of this Section 20, CBDO shall provide an annual audit to UCP of funds received in performance of this Agreement.
- C. CBDO understands and agrees that it shall be liable to UCP for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this agreement. CBDO further understands and agrees that reimbursement to UCP of such disallowed costs shall be paid by CBDO from funds which were not provided or otherwise made available to CBDO under this agreement.
- D. CBDO shall take necessary action to facilitate the performance of such audit or audits conducted pursuant to this Section 20 as UCP may require of CBDO.
- E. All approved NSP audit reports shall be made available for public inspection within 30 days after completion of the audit.

SECTION 21. ENVIRONMENTAL CLEARANCE REQUIREMENTS

- A. CBDO understands and agrees that by the execution of this agreement UCP shall assume the responsibilities for environmental review, decision making, and other actions in accordance with and to the extent specified in 24 CFR 92.352 and 24 CFR, Part 58. However, if CBDO has staff experience and/or means to perform the environmental review, CBDO may request in writing, from UCP, approval to perform them.

SECTION 22. LABOR STANDARDS

All laborers and mechanics employed in the rehabilitation of a project assisted under this agreement that contains 12 or more dwelling units shall be paid wages at rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C.§276A-5), and contracts involving their employment shall be subject to the applicable provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C.§§327-333). Construction contractors and subcontractors, must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable.

SECTION 23. SPECIAL CONDITIONS

- A. Release of Funds. UCP shall not release any funds for any costs incurred by CBDO under this agreement until UCP has received certification from CBDO that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of and accounting for funds provided under this agreement.
- B. Affordability. Funds provided under this agreement must meet the affordability requirements of the HOME rules for a period of 5 through 15 years (based on the direct NSP subsidy). CBDO agrees to repay all NSP funds governed by this Agreement if the project fails to comply or ceases to comply with the affordability requirements as set forth herein. The affordability requirements must continue to be met throughout the term of the agreement and shall be binding upon the successors, assigns, and transfers of the CBDO as required 24 CFR 92.254. Also, in compliance with 24 CFR 92.254, CBDO shall perform principal residency verifications annually on all properties that are within their affordability periods.
- C. The UCP has adopted a Recapture Policy that serves to address the continued affordability of housing units acquired with NSP funds. Under the CBDO Program, the homeowner must occupy the NSP assisted unit as their principal residence for a period of five (5) through fifteen (15) consecutive years. The UCP will recoup all or a portion of the assistance provided to the homeowner if the homes does not continue to be the principal residence, if the property is sold, if the property is foreclosed upon, or if the client otherwise fails to adhere to program requirements within the affordability time frame. The recapture of NSP funds will be on a pro-rata basis according to the following formula if the “Direct NSP subsidy” assistance is less than \$15,000:
- 1st Year – Repayment of the full amount of assistance provided
 - 2nd Year – Repayment of 80% of the assistance provided
 - 3rd Year – Repayment of 60% of the assistance provided
 - 4th Year – Repayment of 40% of the assistance provided
 - 5th Year – Repayment of 20% of the assistance provided

In those projects where the “Direct NSP subsidy” is \$15,000 up to \$40,000, the UCP will enforce a 10-year affordability with a prorating schedule spread over ten years.

- 1st Year – Repayment of the full amount of assistance provided
- 2nd Year – Repayment of 90% of the assistance provided

- 3rd Year – Repayment of 80% of the assistance provided
- 4th Year – Repayment of 70% of the assistance provided
- 5th Year – Repayment of 60% of the assistance provided
- 6th Year – Repayment of 50% of the assistance provided
- 7th Year – Repayment of 40% of the assistance provided
- 8th Year – Repayment of 30% of the assistance provided
- 9th Year – Repayment of 20% of the assistance provided
- 10th Year – Repayment of 10% of the assistance provided

In those projects where the “Direct NSP subsidy” is over \$40,000, the UCP will enforce a 15-year affordability with a prorating schedule spread over fifteen years.

- 1st Year – Repayment of the full amount of assistance provided
- 2nd Year – Repayment of 93.38% of the assistance provided
- 3rd Year – Repayment of 86.71% of the assistance provided
- 4th Year – Repayment of 80.04% of the assistance provided
- 5th Year – Repayment of 73.37% of the assistance provided
- 6th Year – Repayment of 66.70% of the assistance provided
- 7th Year – Repayment of 60.03% of the assistance provided
- 8th Year – Repayment of 53.36% of the assistance provided
- 9th Year – Repayment of 46.69% of the assistance provided
- 10th Year – Repayment of 40.02% of the assistance provided
- 11th Year – Repayment of 33.35% of the assistance provided
- 12th Year – Repayment of 26.68% of the assistance provided
- 13th Year – Repayment of 20.01% of the assistance provided
- 14th Year – Repayment of 13.34% of the assistance provided
- 15th Year – Repayment of 6.62% of the assistance provided

If net proceeds from the sale or foreclosure are not sufficient to repay the UCP, in accordance with the appropriate schedule above, the UCP will accept the amount of the net sales proceeds as the amount to be recaptured and thereby satisfy all programmatic requirements – as allowed by 24 CFR 92.254(a)(5)(ii)(A).

D. Housing Quality Standards. CBDO shall ensure that all Housing assisted with funds provided under this agreement shall meet the requirements of 24 CFR 92.251.

E. Affirmative Marketing. CBDO shall adopt and submit for UCP’s approval affirmative marketing procedures and requirements, not later than 30 days after the date this agreement is executed. The affirmative marketing procedures and requirements shall include, but need not be limited to, those specified in 24 CFR 92.351. UCP will assess the efforts of the CBDO’s during marketing of the units by use of compliance certification or personal monitoring visit to the project at least annually. Where a CBDO fails to follow the affirmative marketing requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions the UCP may deem necessary. CBDO must provide UCP with an annual assessment of the affirmative marketing program of the development. The assessment must include:

1. Method used to inform the public and potential homebuyers about federal fair housing laws and affirmative marketing policy. CBDO’s advertising vacant units must include

the equal housing opportunity logo or statement. Advertising media may include newspaper, radio, television, brochures, leaflets, or may involve simply a sign in a window. CBDO may wish to use community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, social service centers or medical service centers as resources for this outreach.

2. Records describing actions taken by the CBDO to affirmatively market units and records to assess the results of these actions. CBDO must maintain a file containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letters) to be available for inspection at least annually by UCP.
 3. CBDO shall solicit applications for vacant units from persons in the housing market who are least likely to apply for the rehabilitated housing without benefit of special outreach efforts. In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the rehabilitated building is located shall be considered those least likely to apply.
 4. CBDO shall maintain a listing of all homebuyers residing in each unit through the end of the compliance period. Compliance period is as stated in 24 CFR 92.508(4) and (7)(c)(2), "records must be retained for five years after the project completion date, except for documents imposing recapture restrictions which must be retained for five years after the affordability period terminates."
- F. Reversion of Assets. Upon termination of this Agreement, all funds remaining on hand on the date of termination, and all accounts receivable attributes to the use of funds received under this agreement shall revert to UCP. CBDO shall return these assets to UCP within seven (7) business days after the date of termination.
- G. Enforcement of Agreement. CBDO shall provide UCP with a legally enforceable agreement to enforce the affordability requirements of Subsection B of this Section 23. CBDO shall record said agreement in the real property records of the county where the project is located and return the original document, duly certified as to recordation by the appropriate county official, to the UCP within two business days of closing.
- H. Flood Insurance. Funds provided under this agreement may not be used in connection with acquisition or rehabilitation of a development located in an area identified by the Federal Emergency Agency (FEMA) as having special flood hazards, unless the locality in which the site is located is participating in the National Flood Insurance Program.
- I. Displacement, Relocation, and Acquisition. CBDO must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, business and nonprofit organizations) as a result of a project assisted with funds provided under this agreement. CBDO must comply with the applicable provisions of 24 CFR 92.353.

SECTION 24. INSURANCE

- A. Insurance. CBDO shall have in force throughout the term of this Agreement insurance coverage consistent with the requirement in Exhibit E. A certificate to that effect will be provided to the County of Hidalgo/UCP at least ten (10) days prior to start of construction.

- B. Notice to the UCP. CBDO shall require its insurance policies to provide that the HOME Manager of the UCP shall be given thirty (30) days advance notice by the insurer prior to cancellation, nonrenewal, or material change of the insurance policies required by this Section 24. The insurer shall be subject to approval by the UCP.
- C. Failure to maintain required insurance will be cause for the UCP to take control of the Housing UNITS and will cancel any claim that CBDO may have to the use of the Housing UNITS. CBDO shall provide UCP with certificates of insurance reflecting all coverage required in Exhibit E , and shall, upon request of UCP, promptly provide UCP with copies of the insurance policies.
- D. Right to Re-evaluate and Adjust Limits. The UCP shall retain the right to reevaluate the insurance requirements and adjust the coverage limits upon thirty (30) days written notice. Insurance coverage limits shall not be adjusted more than once a year.

SECTION 25. 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. The attachments enumerated and denominated below are hereby made a part of this agreement, and constitute promised performances by CBDO in accordance with Section 4 of this agreement;
 - 1. Exhibit A, Performance Statement
 - 2. Exhibit B, Budget and Project Implementation Schedule
 - 3. Exhibit C, Applicable Laws and Regulations
 - 4. Exhibit D, Certifications
 - 3. Exhibit E, Insurance Requirements
 - 4. Exhibit F, Affidavit of Standards for Financial Management Systems
 - 5. Exhibit G, Code of Conduct
 - 6. Exhibit H, Conflict of Interest
 - 7. Exhibit I, Excluded Parties List Systems (EPLS) Verification

SECTION 26. JURISDICTION AND VENUE

The laws of the State of Texas shall apply to any dispute arising under this Agreement. For purposes of litigation pursuant to this agreement, venue shall lie in the County of Hidalgo, Texas where this Agreement was entered into and shall be performed.

SECTION 27. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

CBDO 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 CBDO under this agreement. Upon request by UCP, CBDO shall furnish satisfactory proof of its compliance herewith.

SECTION 28. MARKET VOLATILITY AND UNIT PRICE ADJUSTMENTS

Hidalgo County recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increases might affect costs for goods and services contracted on an annual basis. The following procedure may be employed to mediate price volatility:

- A. Requesting Price Adjustment:** Upon written request of the CBDO to the County Purchasing Agent, the County may review evidence of prevailing industry-wide market conditions that warrant an adjustment in bid prices contained in the contract.
- A CBDO must tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the CBDO of the price changes.
 - The CBDO must put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes. Such membership shall be at no cost to the County.
 - The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.
 - No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
 - The County may only grant a price increase if the evidence presented is deemed reliable. Should the County allow a price increase, the approved price change shall be honored for all orders received by the CBDO or contractor after the effective date of such price change. Approved price changes are not applicable to orders already issued and in process at time of price change.
- B. Price Reduction:** CBDO shall notify the County at the time when the CBDO's costs for items and/or supplies reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly. Failure by the CBDO to notify the County of a decrease in costs for items and/or supplies for which the CBDO was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the CBDO the difference between the contract price and the price adjustment.
- C. Timeframe for Adjusted Price Increases:** Price increases are only valid for the quarter in which they are requested and approved. Prices shall return to the original contract price at the beginning of the following quarter unless a CBDO notifies the County in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the CBDO is requesting a different price increase for the following quarter. Such request must be supplemented with sufficient justification to demonstrate that the price increase remains necessary. The County Purchasing Department shall have sole discretion whether to grant the price increase extension. The County too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the CBDO at any time upon written notice from the County to the CBDO