

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT, entered by and between WILLIAMSON COUNTY, TEXAS, a Texas political subdivision (herein called the "COUNTY") and HABITAT FOR HUMANITY OF WILLIAMSON COUNTY, a Texas non-profit corporation (herein called "HABITAT"), (the "Agreement"), to be effective as of the last date of due execution by both parties (the "Effective Date").

WHEREAS, the COUNTY has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the COUNTY wishes to engage HABITAT to assist the COUNTY in utilizing such funds; and

WHEREAS, the funds shall be used to make housing more affordable to low to moderate income families by acquiring the real property necessary for the development of such housing;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein the parties agree as follows:

SECTION I: SCOPE OF SERVICES

1.1. Activities

HABITAT will be responsible for administering a Community Development Block Grant ("CDBG") Year 2009 program known as the Land Acquisition program in a manner satisfactory to the COUNTY and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the CDBG Program:

Program Delivery

Activity 1: Acquisition of at least _____ parcels of real property for the construction of affordable housing for low to moderate income families and the clearance of such real property.

General Administration

The project will be administered by the Executive Director.

1.2 National Objectives

HABITAT certifies that the activities carried out under this Agreement shall meet the national objective to benefit low and moderate income persons by acquiring real property for the purpose of developing affordable housing for low and moderate income families.

1.3. Levels of Accomplishment – Goals and Performance Measures

HABITAT agrees to acquire at least _____ parcels of real property for the development of affordable housing for low and moderate income families within one year of the Effective Date. HABITAT shall not expend more than \$150,000 for the acquisition of such real property, including costs for administrative, professional and other service necessary to acquire such real property. HABITAT shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations" These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

1.4. Performance Monitoring

The COUNTY will monitor the performance of HABITAT against the goals and performance standards required herein. Substandard performance as determined by the COUNTY will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by HABITAT within thirty (30) days after being notified by the COUNTY, contract suspension or termination procedures may be initiated in accordance with Section VII of this Agreement.

SECTION II: TIME OF PERFORMANCE

2.1 Services of HABITAT shall start on the Effective date and shall expire one year from the Effective Date unless extended in writing by HABITAT and COUNTY, except as provided below.

2.2 Notwithstanding Section 2.1, the term of this Agreement shall automatically be extended for as long as HABITAT has control over CDBG funds, including program income, or Real Property, as that term is defined in Section VI, below.

2.3 If the term of this Agreement is extended pursuant to Section 2.2, the term of this Agreement shall expire upon the disposition of the Real Property, or remittance of program income, by HABITAT.

SECTION III: BUDGET

<u>Line Item</u>	<u>Amount</u>
Acquisition of real property	\$150,000

Any indirect costs charged must be consistent with the conditions of Paragraph 8.3(B) of this Agreement. In addition, COUNTY may require a more detailed budget breakdown than the one contained herein, and HABITAT shall provide such supplementary budget information in a timely fashion in the form and content prescribed by COUNTY.

SECTION IV: PAYMENT

It is expressly agreed the total amount to be paid by the COUNTY under this Agreement shall not exceed **\$150,000**. Drawdowns for the payment of eligible expenses shall be made against the line item budgets provided above and incorporated herein and in accordance with performance. Pursuant to 24 CFR § 570.206, expenses for general administrative costs, including, but not limited to, administrative service performed under third party contracts or agreements, such as general legal services, accounting services, and audit services, shall also be paid against the line item budgets provided above and in accordance with performance.

Payments will be contingent upon certification of HABITAT's financial management system in accordance with the standards specified in OMB Circular A-122. Prior to receiving payment pursuant to this Agreement, HABITAT shall submit a request for funds identifying the parcel or parcels of real property that it desires to acquire under this Agreement. Such request shall identify the real property, certify that the acquisition of such property accomplishes the national objective of developing affordable housing for low and moderate income families, and provide such information that the COUNTY may require to determine the reasonable market value of the real property and that the acquisition of such real property shall meet the national objective of developing affordable housing for low and moderate income families.

SECTION V: NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Notices made pursuant to this Agreement shall be directed to the following representatives:

COUNTY:	HABITAT:
Sally Bardwell	Debbie Hoffman Executive Director
Williamson County	Habitat for Humanity of Williamson County
710 Main Street, Ste. 101	P.O. Box 737
Georgetown, Texas 78626	Georgetown TX 78627
Telephone: 512-943-3757	Telephone: 512-863-4344
Fax: 512-943-1662	Fax: 512-864-3147
e-mail: sbardwell@wilco.org	e-mail: debbieh@williamsonhabitat.org

SECTION VI: SPECIAL CONDITIONS

6.1 Determination of Appropriateness

Prior to entering into any contract for the purchase of real property under this agreement, HABITAT shall obtain a determination from the COUNTY that the proposed location and use of such real property is appropriate and complies with the regulations and development plans adopted by the COUNTY.

6.2 Liens

- A. HABITAT agrees that the initial sale to an eligible homebuyer ("Homebuyer") of real property acquired with funding under the terms of this agreement (the "Real Property") shall be subject to the following:
 1. HABITAT shall require the Homebuyer to execute a lien note ("Note") and deed of trust ("Deed of Trust") in favor of COUNTY in the amount of the funds granted to, and expended by HABITAT for the acquisition of Real Property ("Land Value"). The Deed of Trust shall be subordinate to any deed of trust or other lien placed on the Real Property by HABITAT.
 2. The Note shall be a five-year, zero-interest deferred note. If the Homebuyer occupies the home as the Homebuyer's primary residence for five years from the effective date of the Note, COUNTY shall forgive the Note and release the Deed of Trust provided that all payments on the first lien note are current.
 3. HABITAT shall notify COUNTY immediately if it becomes aware that the Homebuyer plans to sell or ceases to occupy the Real Property.

4. If the Real Property is sold during the term of the Note, the balance of the Note is immediately due and payable to COUNTY.
 5. Any funds that qualify as program income pursuant to 24 CFR § 570.500 recovered through the sale of the Real Property prior to the release of the Deed of Trust shall be subject to Section 8.3 of this Agreement.
 6. HABITAT shall provide COUNTY with copies of any delinquency notices sent to Homebuyer during the term of the Note.
- B. HABITAT agrees that at any time prior to the release of the Deed of Trust, in the event of foreclosure of the primary loan from HABITAT to Homebuyer, or receipt of a deed in lieu of foreclosure related to same, or in the event HABITAT exercises a right of first refusal granted to HABITAT by Homebuyer:
1. HABITAT shall provide COUNTY with copies of all notices and legal instruments generated by, or related to, the foreclosure of the primary loan or the exercise of the right of first refusal.
 2. If HABITAT sells the Real Property following a foreclosure, receipt of a deed in lieu of foreclosure, or the exercise of the right of first refusal to another CDBG-eligible applicant within 180 days of such foreclosure or the acquisition of the Real Property through the exercise of the right of first refusal, Habitat shall require the CDBG-eligible applicant to take the foreclosed Real Property subject to the Note and the Deed of Trust. The Note shall continue in full force and effect and such foreclosure and sale shall not require the immediate payment of the Note to the COUNTY. HABITAT shall provide COUNTY with such information regarding the CDBG-eligible buyer of the Real Property as necessary for COUNTY to comply with CDBG reporting requirements.
 3. If HABITAT does not sell the Real Property following a foreclosure, receipt of a deed in lieu of foreclosure, or the exercise of the right of first refusal to another CDBG-eligible applicant within 180 days of such foreclosure, receipt of deed in lieu of foreclosure or the exercise of the right of first refusal, or if HABITAT sells the Real Property to a person not eligible for CDBG participation, the balance of the Note shall be paid immediately to COUNTY from the proceeds of any sale of the Real Property.
 4. Any funds that qualify as program income pursuant to 24 CFR § 570.500 recovered through a sale of the Real Property following the foreclosure process, deed in lieu of foreclosure or the exercise of the right of first refusal shall be subject to Section 8.3 of this Agreement.

- C. HABITAT agrees that the obligations of HABITAT under this Section 6.3 shall survive the expiration or termination of this agreement.

SECTION VII: GENERAL CONDITIONS

7.1. General Compliance

HABITAT agrees to comply with all applicable federal, state and local laws, regulations and policies governing the funds provided under this Agreement, including but not limited to those laws and regulations described in 24 CFR 570, CDBG Regulations Subpart K, provided however that HABITAT, does not assume the COUNTY's environmental responsibilities, if any, described at 24 CFR § 570.604, and does not assume the COUNTY's responsibility, if any, for initiating the review process under the provisions of 24 CFR part 52. HABITAT further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

7.2. Independent Contractor

It is understood and agreed that HABITAT is an independent contractor and shall not be considered an employee of the COUNTY. HABITAT shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The COUNTY shall be exempt from payment of all unemployment compensation, FICA and retirement benefits, as HABITAT is an independent contractor. HABITAT shall not be within protection or coverage of the COUNTY's Workers' Compensation Insurance, Health Insurance, Liability Insurance or any other Insurance that the COUNTY from time to time may have in force and effect.

7.3. Hold Harmless

HABITAT shall indemnify, save harmless and exempt the COUNTY, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney fees and any and all other costs or fees incident to any action done as result of this Agreement and arising out of a willful or negligent act or omission of HABITAT, its officers, agents, servants, volunteers and employees; provided, however, that HABITAT shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of a willful or negligent act or omission of the COUNTY, its officers, agents, servants and employees, or third parties.

7.4. Worker's Compensation

HABITAT shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

7.5. Insurance and Bonding

HABITAT shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the COUNTY.

7.6. Amendments

The terms and conditions of this Agreement, including the attachments listed below, constitute the entire agreement between the parties and supersedes all previous communications, representations, or agreements, either written or oral, with respect to the subject matter hereof. No modification or amendment to this Agreement will be binding on either party unless acknowledged in writing by their duly authorized representatives.

7.7. Suspension or Termination

Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. Partial terminations of the Scope of Service in Paragraph 1.1. above may only be undertaken with the prior written approval of the COUNTY. The award made pursuant to this agreement may be terminated for convenience in accordance with 24 CFR 85.44 by either COUNTY or HABITAT by setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, COUNTY determines that the remaining portion of the award will not accomplish the purpose for which the award was made, COUNTY may terminate the award in its entirety. In the event of any termination for convenience, all finished or unfinished documents, data, reports or other materials prepared by HABITAT under this Agreement shall, at the option of the COUNTY, become property of the COUNTY.

In accordance with 24 CFR § 85.43, the COUNTY may also suspend or terminate this Agreement, in whole or in part, if HABITAT materially fails to comply with any term of this Agreement, which include, but are not limited to the following:

- A. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- B. Failure, for any reason, of HABITAT to fulfill in a timely and proper manner its obligations under this Agreement;
- C. Ineffective or improper use of funds provided under this Agreement; or

- D. Submission by HABITAT to the COUNTY reports that are incorrect or incomplete in any material respect.

The COUNTY may declare HABITAT ineligible for any further participation in COUNTY contracts, in addition to other remedies as provided by law. Should HABITAT fail to cure or correct such defects or failures identified by the COUNTY within the fifteen (15) days after notification of deficiencies, and such breach of contract relates to a violation of federal law or regulations which results in a demand for reimbursement from the Department of Housing and Urban Development (HUD) or its successor, the COUNTY may seek reimbursement of all funds from the COUNTY to HABITAT under this Agreement.

HABITAT shall not be relieved of the liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of this Agreement by HABITAT and the COUNTY may withhold any payments to HABITAT for the purpose as set out and until such time as the exact amount of damages due the COUNTY from the HABITAT is determined. Should the COUNTY become aware of any activity by HABITAT which would jeopardize the COUNTY's position with HUD which would cause a payback of CDBG funds or other COUNTY federal funds then the COUNTY may take appropriate action including injunctive relief against HABITAT to prevent the transaction as aforesaid. The failure of the COUNTY to exercise this right shall in no way constitute a waiver by the COUNTY to demand payment or seek any other relief in law or in equity to which it may be justly entitled.

7.8. Pending Litigation

HABITAT agrees to inform COUNTY about any litigation HABITAT is, or becomes, involved in.

7.9. Background Checks

HABITAT agrees to conduct a criminal background check on all employees working directly with youth.

7.10 Participant Eligibility

HABITAT shall only provide services under this agreement to families that qualify as a "low-and moderate-income household," as that term is defined in 24 CFR § 570.3. HABITAT shall require all families served by HABITAT pursuant to this Agreement to establish that such families are a low-and moderate-income household through the use of documentation such as pay stubs, tax returns, social security statements or other readily verifiable financial documentation. Pursuant to 24 CFR § 570.3, a low-and moderate-income household is a household having an income equal to or less than the Section 8 low-income limit established from time to time by HUD. The current Section 8 income limits are contained in Exhibit "A", attached hereto and incorporated herein for all purposes. HABITAT acknowledges that the Section 8 income limits are subject to amendment from time to time and that the income limits in

place at the time HABITAT receives an application for service determine participant eligibility under this Agreement.

SECTION VIII: ADMINISTRATIVE REQUIREMENTS

8.1. Financial Management

A. Accounting Standards

HABITAT agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Cost Principles

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

8.2. Documentation and Record Keeping

A. Record Keeping

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

1. Records providing a full description of each activity undertaken;
2. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program under 24 CFR Part 570.208;
3. Records required to determine the eligibility of activities under 24 CFR Part 570.201 - 570.206;
4. Financial records as required by 24 CFR Part 570.502, and OMB Circular A-110; and
5. Other records necessary to document compliance with Subpart K of 24 CFR 570.

B. Retention

Records are to be retained for four years from the date of submission of COUNTY's CAPER in which the specific activity is reported for the last time, unless there is litigation, claims, audit, negotiaion, or other actions involving the records, which has started before expiration of the four year period, In such cases, the records must be retained until completion of

the action and resolution of all issues which arise from it or the end of the regular four year period, which ever is longer.

C. Client Data

HABITAT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address and annual household income level as shown in Exhibit "B", attached hereto and incorporated herein. HABITAT must obtain the written approval of the COUNTY prior to considering any other basis for determining eligibility. Such information shall be made available to COUNTY monitors or their designees upon request.

D. Disclosure

HABITAT understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the COUNTY's or HABITAT's responsibilities with respect to services provided under this contract is prohibited by the U.S. Privacy Act of 1974 unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

E. Close-Outs

HABITAT's obligation to the COUNTY shall not end until all closeout requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets, including, but not limited to, the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the COUNTY, and determining custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that HABITAT has control over CDBG funds, including program income.

F. Audits & Inspections

All HABITAT's records with respect to any matters covered by this Agreement shall be made available to the COUNTY, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the COUNTY or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by HABITAT within thirty (30) days after receipt by HABITAT. Failure of HABITAT to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. HABITAT hereby agrees to have an annual agency audit conducted in accordance with current COUNTY policy concerning HABITAT's audits and OMB Circular A-133. HABITAT agrees that the obligations of HABITAT under this Section 8.2(F) shall survive the expiration or termination of this agreement for a period of five (5) years from the expiration of this Agreement pursuant to Section II, or the termination of this Agreement.

8.3. Reporting and Payment Procedures

A. Program Income

HABITAT shall report and remit to the COUNTY quarterly all program income, as defined at 24 CFR 570.500(a), generated by activities carried out with CDBG funds made available under this contract in accordance with the Williamson County Community Development Block Grant Program Income Policy, attached hereto as Exhibit "C".

Any interest earned on cash advances from the U.S. Treasury is not program income and shall be remitted promptly to the COUNTY. Pursuant to 24 CFR 570.500(a)(5) and 24 CFR 570.503(b)(7), program income does not include proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after five (5) years after the expiration of this Agreement. HABITAT agrees that the obligations of HABITAT under this Section 8.3 shall survive the expiration or termination of this agreement and shall continue for a period of five (5) years following the expiration of this Agreement pursuant to Section II, or termination of this Agreement.

B. Indirect Costs

If indirect costs are charged, HABITAT will develop an indirect cost allocation plan for determining the appropriate HABITAT's share of administrative costs and shall submit such plan to the COUNTY for approval.

C. Payment Procedures

The COUNTY will pay to HABITAT funds available under this Agreement based on information submitted by HABITAT and consistent with an approved budget and COUNTY policies concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by HABITAT, and not to exceed actual cash requirements. Payments will be adjusted by the COUNTY in accordance with advance fund and program income balances available under this contract for costs incurred by the COUNTY on the behalf of HABITAT.

D. Progress Reports

HABITAT shall submit regular Quarterly Progress Reports to the COUNTY in the form and, content required by the COUNTY, attached as Exhibit "D". These shall include but not be limited to summary of expenditures, list of beneficiaries and a brief narrative of accomplishments. Beneficiary reports should be submitted on Exhibit "B" attached hereto and incorporated herein unless an alternative report is approved by COUNTY in advance and in writing.

E. Budgets

The COUNTY and HABITAT may agree to revise the budget, provided in Section III above, from time to time in accordance with existing COUNTY policies. Any amendments to the budget must be approved in writing by both the COUNTY and HABITAT.

8.4. Procurement

A. Compliance

HABITAT shall maintain real property inventory records, which clearly identifies any properties purchased, improved or sold using funds provided under this Agreement. Property retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8). All program assets (unexpended advanced funds) shall revert to the COUNTY upon termination of this Agreement. The only authorized expenditures of funds shall be for acquisition and clearance of real property for the construction of affordable housing and related costs as described herein.

B. OMB Standards

HABITAT shall procure materials in accordance with the requirements of Attachment O of OMB Circular A-110, Procurement Standards, as amended, and shall subsequently follow Attachment N, Property Management Standards, as amended, covering utilization and disposal of property. These requirements are referenced in 24 CFR Part 84, titled "Common Rule".

C. Travel

HABITAT shall obtain written approval from the COUNTY for any travel outside the metropolitan area with funds provided under this Agreement. The COUNTY shall determine that such travel is necessary and reasonable according to applicable standards outlined in OMB Circular A87.

8.5. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503 and 570.504, as applicable, which include but are not limited to the following:

A. HABITAT agrees that should it discontinue the services as provided for herein, or upon the expiration or termination of this Agreement, then HABITAT shall transfer to the COUNTY all unexpended CDBG funds or program income on hand at the time of discontinuance or expiration and any accounts receivable attributable to the use of funds under this Agreement within ten (10) days from the time of expiration or termination of this Agreement or the cancellation, or termination of services. The funds remaining will be appropriated to eligible CDBG activities in keeping with the COUNTY's budgetary process.

B. Real property under HABITAT's control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 at least five (5) years after expiration of this Agreement. If HABITAT fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, HABITAT shall pay the COUNTY an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the COUNTY. HABITAT may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

C. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by HABITAT for activities under this Agreement shall be (a) transferred to the COUNTY for the CDBG program or (b) retained after compensating the COUNTY an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

SECTION IX: RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

9.1. HABITAT agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. HABITAT shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. HABITAT also agrees to comply with applicable COUNTY ordinances, resolutions and policies concerning the displacement of persons from their residences.

SECTION X: PERSONNEL & PARTICIPANT CONDITIONS

10.1. Civil Rights

A. Compliance

HABITAT agrees to comply with city and state civil rights acts and ordinances, and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

B. Nondiscrimination

HABITAT will not cause any person to be excluded from participation in, denied the benefits of, or subjected to discrimination under any of the program's activities receiving assistance under this Agreement based on the grounds of race, color, religion, sex, ancestry, national origin or handicap. In order to allow the COUNTY to monitor non-discrimination, HABITAT will at minimum maintain records regarding the race of persons or households assisted under this contract and whether households assisted have a female head of household.

HABITAT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, national origin, or other handicap, age, marital status, or status with regard to public assistance. HABITAT will take affirmative action to ensure all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. HABITAT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

HABITAT agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulation, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act (42 U.S.C. 5301 *et seq.*).

C. Land Covenants

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, HABITAT shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the COUNTY and the United States are beneficiaries of and entitled to enforce such covenants. HABITAT, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

D. Compliance with Section 504

HABITAT agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706) or applicable updates which prohibits discrimination against the handicapped in any federally assisted program. The COUNTY shall provide HABITAT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

10.2. Affirmative Action

A. Approved Plan

HABITAT agrees that it shall be committed to carry out pursuant to the COUNTY's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The COUNTY shall provide Affirmative Action guidelines to HABITAT to assist in the formulation of such program. HABITAT shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

B. Women- and Minority-Owned Businesses (W/MBE)

HABITAT will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. HABITAT may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

C. Access to Records

HABITAT shall furnish and cause each of its own subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the COUNTY, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

D. Notifications

HABITAT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of HABITAT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

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

F. Subcontract Provisions

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

10.3. Employment Restrictions

A. Prohibited Activity

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

B. Labor Standards

HABITAT agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. HABITAT agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. HABITAT shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the COUNTY for review upon request.

HABITAT agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the COUNTY pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve HABITAT of its obligation, if any, to require payment of the higher wage. HABITAT shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirement of this paragraph.

C. "Section 3" Clause

1. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the COUNTY,

HABITAT and any of HABITAT's subcontractors. Failure to fulfill these requirements shall subject the COUNTY, HABITAT and any of HABITAT's subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. HABITAT certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

HABITAT further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

HABITAT further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

HABITAT certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

2. Notifications

HABITAT agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places to employees and applicants for employment or training.

3. Subcontracts

HABITAT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. HABITAT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

10.4. Conduct

A. Assignability

HABITAT shall not assign or transfer any interest in this Agreement without the prior written consent of the COUNTY.

B. Subcontracts

1. Approvals

HABITAT shall not enter into any subcontracts with any agency or individual in the performance of this contract without written consent of the COUNTY prior to the execution of such Agreement.

2. Monitoring of Subcontractors

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

3. Content

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

4. Selection Process

HABITAT shall undertake to ensure that all subcontracts let in the performance of this agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the COUNTY along with documentation concerning the selection process.

C. Hatch Act

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

D. Conflict of Interest

HABITAT understands and agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include, but are not limited to the following:

1. HABITAT shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

2. No employee, officer or agent of HABITAT shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

3. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter.

These conflict of interest provisions apply to “covered persons” which shall include any person who is an employee, agent, consultant, officer, or elected official of the COUNTY, HABITAT or any designated public agencies which are receiving funds under the CDBG Entitlement program.

E. Lobbying

HABITAT hereby certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. It will require that the language of paragraph (4) of this certification be included in the award documents for all subawards at all tiers including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements and that all subrecipients shall certify and disclose accordingly:

4. Lobbying Certification

This certification is a material representation of a fact upon 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.C. 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.

F. Copyright

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

G. Religious Organization

HABITAT agrees that funds provided under this Agreement will not be utilized for inherently religious activities, such as worship, religious instruction, or proselytization; to promote religious interests; or for the benefit of a religious organization as specified in 24 CFR 570.200(j).

**SECTION XI:
ENVIRONMENTAL CONDITIONS**

11.1. Air and Water

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

A. Clean Air Act, 42 U.S.C., 7401, *et seq.*;

B. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as

other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and

C. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

11.2. Flood Disaster Protection

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

11.3. Lead-Based Paint

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

11.4. Historic Preservation

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

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

SECTION XII: SEVERABILITY

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

**SECTION XIII:
SECTION HEADINGS AND SUBHEADINGS**

13.1. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**SECTION XIV:
WAIVER**

14.1. The COUNTY's failure to act with respect to a breach by HABITAT does not waive its right to act with respect to subsequent or similar breaches. The failure of the COUNTY to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

IN WITNESS WHEREOF, this Agreement is executed as of the last date of due execution below.

COUNTY:
Williamson County, Texas

HABITAT:
Habitat for Humanity of Williamson
County

Dan A. Gattis, County Judge

Date: _____

Name: _____
Title: _____
Date: _____

Exhibit A

FY 2011 Income Limits Documentation System

FY 2011 Income Limits Summary

Williamson County, Texas										
FY 2011 Income Limit Area	<u>Median Income</u>	FY 2011 Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
Williamson County	\$74,900	<u>Very Low (50%) Income Limits</u>	\$26,250	\$30,000	\$33,750	\$37,450	\$40,450	\$43,450	\$46,450	\$49,450
		<u>Extremely Low (30%) Income Limits</u>	\$15,750	\$18,000	\$20,250	\$22,450	\$24,250	\$26,050	\$27,850	\$29,650
		<u>Low (80%) Income Limits</u>	\$41,950	\$47,950	\$53,950	\$59,900	\$64,700	\$69,500	\$74,300	\$79,100

EXHIBIT “C”

WILLIAMSON COUNTY **COMMUNITY DEVELOPMENT BLOCK GRANT** **PROGRAM INCOME POLICY**

This policy is implemented to comply with applicable federal, state and local laws, regulations and policies governing the disposition of program income. Applicable laws and regulations include, but are not limited to, Title 24 Code of Federal Regulations, Chapter V, Subchapter C, Part 570, Subpart J and Subpart K.

1. DEFINITIONS:

- 1.1** Program Income means gross income received by the Recipient or Sub-recipient directly generated from the use of CDBG funds.
- 1.2** Recipient means Williamson County, Texas.
- 1.3** Sub-recipient means any entity that receives CDBG funding from the Recipient.
- 1.4** CDBG means a Community Development Block Grant received by the Recipient pursuant to Title 24 Code of Federal Regulations, Chapter V, Subchapter C, Part 570.
- 1.5** Income Report means an accounting and report prepared by the Sub-recipient setting forth the amount of Program Income generated by the Sub-recipient’s activities and the method by which such Program Income was generated.

2. INCOME: Program Income includes, but is not limited to, the following:

- 2.1** Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds, including but not limited to, a pro rata share of mortgage payments, principal and interest, or lease payments received by a Sub-recipient as a result of such sale or long-term lease; such pro rata share being calculated pursuant to Section 5, below.
- 2.2** Gross income from the use or rental of real property owned by the Recipient or by a Sub-recipient that was constructed or improved with CDBG funds, less costs incidental to generation of the income.
- 2.3** Proceeds from the sale of obligations (mortgages) secured by loans made where CDBG funds were used.
- 2.4** Interest earned on program income pending its disposition.

3. DISPOSITION OF INCOME AND REPORTS: Sub-recipients shall:

- 3.1** Remit to Recipient Program Income received by Sub-recipient together with an Income Report on or before the tenth (10th) day of the month following the end of each Recipient fiscal quarter.
- 3.2** Allocate each Income Report to each program year in which funding was received.
- 3.4** Allocate each Income Report to each source generating the income.

- 3.5 Continue the reporting and remittance under this Section until five (5) years from the date funds were last spent in each program year or until five (5) years after the expiration of the relevant agreement between the Recipient and the Subrecipient, whichever is later.

4. **INCOME MORE THAN \$25,000 OR LESS THAN \$25,000:**

- 4.1 Recipient shall have on file appropriate supporting documentation necessary to support the Recipient's determination of the total Program Income generated from all of the activities of the Recipient and all Sub-recipients.
- 4.2 If the annual amount of Program Income does not exceed \$25,000, the Recipient may transfer the funds to the Recipient's General Fund and use the funds as authorized by the Annual Operating Budget, or, at Recipient's option, Recipient may return the funds to the Sub-recipient.
- 4.3 If the total annual amount exceeds \$25,000, then the Program Income will be handled in accordance with regulatory requirements.

5. **CALCULATION OF PROGRAM INCOME:**

- 5.1 The amount of Program Income resulting from a sale of property acquired using CDBG funds by a Sub-recipient is calculated by multiplying the sales price of such property by a fraction, the numerator of which is the amount of CDBG funds used to purchase such property and the denominator of which is the total cost of acquiring and improving the property, including the value of donations applied to the property (the "Sale Income Ratio"). In the event the Sub-recipient will receive partial or periodic payments as a result of a sale of property acquired using CDBG funds, the Program Income derived from each payment is the amount of such partial or periodic payments multiplied by the Sale Income Ratio. Once the Sale Income Ratio has been determined, it shall not change.

5.2 **EXAMPLE:**

Land purchase with CDBG funds	\$40,000
Actual Construction Costs	\$50,000
Value of Donations	<u>\$10,000</u>
Total project cost	\$100,000

The Sale Income Ratio is $\$40,000 \div \$100,000 = 40\%$

The Sale Income Ratio is applied to all dispositions of property concluded prior to five years after the expiration of the relevant agreement between the Recipient and the Subrecipient, including but not limited to:

- sale by the homeowner.
- foreclosure by Sub-recipient and sale to another homeowner.
- the rental or lease payments if Sub-recipient forecloses and rents or leases the property

- any profit realized from any sale of the property
- principal and interest payments received to satisfy the mortgage
- any other event that would create Program Income.

5.3 If real property acquired with CDBG funds is posted for foreclosure, and a third party purchases the property, Program Income from such third-party purchase is the amount of funds in excess of the mortgage balance multiplied by the Sale Income Ratio.

5.4 Program Income resulting from a rental or lease of property by a Sub-recipient that was acquired using CDBG funds is calculated by multiplying the rental or lease payment of such property by a fraction, the numerator of which is the amount of CDBG funds used to purchase such property and the denominator of which is the value of such property (the “Rental Income Ratio”). In the case of personal property, the value is the total purchase price paid by Sub-recipient. In the case of real property, the value of such real property is the total of the amount of CDBG funds used to acquire the real property plus the amount of additional funds expended by a Sub-recipient for the acquisition of such real property or the construction of improvements thereon, plus the value of donations applied to the property.

EXHIBIT "D"

QUARTERLY PROGRESS REPORT

Quarter: _____, 20____

Summary of Expenditures:

- | | | |
|----|----------------------------|--|
| 1. | Name: _____ | Date of Sale: _____ |
| | Address: _____ | Sale Price (Mortgage): _____ |
| | Number in Household: _____ | Program Income Reported for this quarter: \$ _____ |
| 2. | Name: _____ | Date of Sale: _____ |
| | Address: _____ | Sale Price (Mortgage): _____ |
| | Number in Household: _____ | Program income reported for this quarter: \$ _____ |
| 3. | Name: _____ | Date of Sale: _____ |
| | Address: _____ | Sale Price (Mortgage) : _____ |
| | Number in Household: _____ | Program income reported for this quarter: \$ _____ |

Narrative of Accomplishments: _____
