

**CONTRACT BETWEEN THE AUSTIN HOUSING FINANCE CORPORATON
AND**

**FOR
GO REPAIR! PROGRAM**

This Agreement is made by and between the the Austin Housing Finance Corporation (“Grantee”), a Texas public, non-profit corporation having its principal offices at 1000 East 11th Street, Suite 200, Austin, Texas 78702 and _____ (“Subrecipient”), having offices at:
_____.

WHEREAS, Grantee desires to contract for the services described herein and to assist Subrecipient with the funding for said services and the associated program;

WHEREAS, Subrecipient has agreed to perform its obligations under this Agreement for the benefit of Grantee.

NOW THEREFORE, the parties hereto, for and in consideration of these promises and mutual obligations herein undertaken, do hereby agree as follows:

SECTION 1 PURPOSE OF AGREEMENT

Grantee agrees to contract with Subrecipient and Subrecipient agrees to provide, oversee, administer, and carry out all of the activities and work described in this Agreement. Subrecipient agrees that with respect to any amounts funded under this Agreement the activities and work described in the Statement of Work, as set forth in Exhibit A of this Agreement. Exhibit A sets forth the activities and work to be performed by Subrecipient under this Agreement (“Project”).

SECTION 2 TERM AND TERMINATION

2.1 **Term.** This Agreement shall commence on _____ and terminate on _____.

2.2 **Holdover.** Upon expiration of the initial term or period of extension, Subrecipient agrees to hold over under the terms and conditions of this Agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

2.3 **Right To Assurance.** Whenever one party to the Agreement in good faith has reason to question the other party’s intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

2.4 **Default.** Subrecipient shall be in default under the Agreement if Subrecipient (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under the “Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States

or (d) makes a material misrepresentation in any report or deliverable required to be submitted by Subrecipient to the Grantee.

- 2.5 **Termination For Cause.** In the event of a default by Subrecipient, Grantee shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless Subrecipient, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to Grantee's reasonable satisfaction that such default does not, in fact, exist. Grantee may place Subrecipient on probation for a specified period of time within which Subrecipient must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If Grantee determines Subrecipient has failed to perform satisfactorily during the probation period, Grantee may proceed with suspension. In the event of a default by Subrecipient, Grantee may suspend or debar Subrecipient in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove Subrecipient from the City's vendor list for up to five (5) years and any Offer submitted by Subrecipient may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, Grantee shall be entitled to recover all actual damages, costs, losses and expenses, incurred by Grantee as a result of Subrecipient's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.
- 2.6 **Termination Without Cause.** Grantee shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, Subrecipient shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. Grantee shall pay Subrecipient, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 2.7 **Fraud.** Fraudulent statements by Subrecipient in any report or deliverable required to be submitted by Subrecipient to Grantee shall be grounds for the termination of the Agreement for cause by Grantee and may result in legal action. Notwithstanding anything in this Section to the contrary, in the event Grantee has reason to believe that criminal fraud or such other criminal activity is occurring or has occurred in connection with this Agreement, Subrecipient shall make available to Grantee or applicable funding agency, at a time designed by Grantee, its records, books, documents and other evidence pertinent to the costs, expenses and activities of this Agreement.

SECTION 3 LEGAL AUTHORITY

- 3.1 Subrecipient represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.
- 3.2 The person(s) executing this Agreement on behalf of Subrecipient represents and warrants that they have been fully authorized by Subrecipient to execute this Agreement on its behalf

and to legally bind Subrecipient to all the terms, performances and provisions of this Agreement.

- 3.3 Grantee shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Subrecipient or of the person signing this Agreement to enter into this Agreement. Subrecipient is liable to Grantee for any money it has received from Grantee for performance of the provisions of this Agreement, if Grantee has suspended or terminated this Agreement for the reasons enumerated in this Section 3.

SECTION 4 PERFORMANCE AND COMPLIANCE WITH ALL LAWS

- 4.1 Subrecipient agrees to perform the Project and to produce reports as necessary until completion of the Project in accordance with the terms and conditions of this Agreement.
- 4.2 In the event any conflict should arise between the terms of Subrecipient's proposal for the Project as filed with Grantee and this Agreement, the Agreement shall prevail.
- 4.3 It is expressly understood that Subrecipient's performance shall be in material compliance with all applicable laws, regulations and authorities and that any changes in applicable laws, regulations, or authorities are automatically incorporated herein without specific reference. Without limiting the foregoing and to the extent applicable, Subrecipient agrees to use the funds provided hereunder in strict compliance with the Project requirements which in no way is meant to constitute a complete compilation of all duties imposed upon Subrecipient by law or administrative ruling or to narrow the standards which Subrecipient must follow. Subrecipient shall promptly refund any funds not expended in accordance with the requirements or this Agreement.

SECTION 5 LIABILITY FOR PAYMENT

- 5.1 Notwithstanding any other provision of this Agreement, Grantee's total liability for payment of funds to Subrecipient under this Agreement shall not exceed (\$ _____) of **S.M.A.R.T. Housing Capital Improvement Funds**.
- 5.2 It is expressly understood that Grantee is under no obligation to pay any charges to Subrecipient, which do not result directly from the performance of the Project and are not undertaken at Grantee's written request.
- 5.3 Grantee's liability for payment is based solely upon acceptance of Subrecipient's work as satisfactory and complete, as defined by Grantee, which acceptance will not be unreasonably withheld.
- 5.4 Any indirect costs charged must be consistent with the conditions of this Agreement. In addition, Grantee may require a more detailed budget breakdown than the one contained in Attachment 1, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

- 5.4.1 Method of Compensation. With the submission of original monthly bills together with proper support documentation, for the services described in this Agreement, the Subrecipient will be reimbursed on a monthly basis according to the schedule in Attachment 1.
- 5.4.2 For indirect services. A *pro rata* share of the Subrecipient's allowable monthly expenses for the provision of services.
- 5.4.3 For direct services. The actual direct costs incurred by the Subrecipient for the provision of services provided to low- and moderate-income families during the month.
- 5.5 In the event initial reports as required to be submitted by Subrecipient pursuant to the Statement of Work and Budget are deemed by Grantee to be incomplete or unsatisfactory, Subrecipient agrees to make such revisions or changes as may be required by Grantee and at no additional cost to Grantee.

SECTION 6 MEASURE OF LIABILITY AND PAYMENTS

- 6.1 In consideration of full and satisfactory performance of services hereunder by Subrecipient, Grantee shall make payments to Subrecipient in accordance with the method of payment described in Section 8 based on the budget set forth in Exhibit A, subject to the limitations and provisions set forth in this Agreement.
- 6.2 The Grantee may withhold or set off the entire payment or part of any payment otherwise due Subrecipient to such extent as may be necessary due to:
 - 6.2.1 delivery of defective or non-conforming deliverables by Subrecipient;
 - 6.2.2 third party claims, which are not covered by the insurance which Subrecipient is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - 6.2.3 failure of Subrecipient to pay Subcontractors, or for labor, materials or equipment;
 - 6.2.4 damage to the property of the Grantee or the Grantee's agents, employees or contractors, which is not covered by insurance required to be provided by Subrecipient;
 - 6.2.5 reasonable evidence that Subrecipient's obligations will not be completed within the time specified in the Agreement, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - 6.2.6 failure of Subrecipient to submit proper invoices with all required attachments and supporting documentation; or
 - 6.2.7 failure of Subrecipient to comply with any material provision of the Agreement, its Exhibits, and documents incorporated by reference into this Agreement.

- 6.3 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City of Austin for taxes, and of §2-8-3 of the Austin City Code of 1992, as amended, concerning the right of the City to offset indebtedness owed the City of Austin.
- 6.4 The Grantee's payment obligations are payable only and solely from funds Appropriated and available for the purpose of this Agreement. The absence of Appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to Subrecipient. The Grantee shall provide the Subrecipient written notice of the failure of the Grantee to make an adequate Appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any Appropriation to an amount insufficient to permit the Grantee to pay its obligations under the Agreement.
- 6.5 It is expressly understood and agreed by the parties hereto that Grantee's obligations under this Section 6 are contingent upon the actual receipt of adequate funds to meet Grantee's liabilities under this Agreement. If adequate funds are not available to make payments under this Agreement, Grantee shall notify Subrecipient in writing within a reasonable time, not to exceed thirty (30) calendar days, after such fact has been determined. Grantee may, at its option, either reduce the amount of its liability, as specified in Section 5.1, or terminate this Agreement. If funds eligible for use for purposes of this Agreement are not granted to Grantee or are reduced, Grantee shall not be liable for further payments due to Subrecipient under this Agreement.
- 6.6 Grantee is not liable for the payment of any cost or portion thereof with respect to the Project which:
- 6.6.1 has been paid, reimbursed or is subject to payment or reimbursement, from any other source other than Subrecipient's own funds;
 - 6.6.2 was incurred prior to the beginning date or after the ending date specified in Section 2.1, unless specifically authorized in writing by Grantee;
 - 6.6.3 is not incurred in strict accordance with the terms of this Agreement including all Exhibits attached hereto;
 - 6.6.4 has not been billed to Grantee on or before the earlier of (a) sixty (60) calendar days following billing to Subrecipient by its subcontractors or other third parties, or (b) termination of this Agreement;
 - 6.6.5 is not an allowable cost identified in OMB Circular A-87 or in Section 7 of this Agreement; or
 - 6.6.6 is not an eligible cost identified by local regulations.
- 6.7 Grantee is not liable for any cost or portion thereof which is incurred with respect to any activity of Subrecipient after Grantee has requested that Subrecipient furnish data concerning such action prior to proceeding further, unless and until Subrecipient is thereafter advised by Grantee to proceed.

- 6.8 Grantee shall not be obligated or liable under this Agreement to any party other than Subrecipient for payment of any monies or for provision of any goods or services.
- 6.9 Upon Grantee's approval of Project reports and deliverables, Subrecipient will submit an invoice for payment to Grantee in accordance with the terms and conditions of this Agreement and its Exhibits.
- 6.10 Grantee shall make payment to Subrecipient within a reasonable time, not to exceed thirty (30) calendar days, following receipt of invoice, provided it is complete and accompanied by documentation as required in Section 8.4 of this Agreement. If payment is not timely made for a reason for which the Grantee may withhold payment hereunder, interest shall not accrue until grounds for withholding payment have been resolved.
- 6.11 The making and acceptance of final payment will constitute:
- 6.11.1 a waiver of all claims by the Grantee against Subrecipient, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of Subrecipient to comply with the Agreement or the terms of any warranty specified herein, (4) arising from Subrecipient's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (5) arising under the Grantee's right to audit; and
- 6.11.2 a waiver of all claims by Subrecipient against the Grantee other than those previously asserted in writing and not yet settled.

SECTION 7 ALLOWABLE COSTS

- 7.1 Costs will be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Agreement and in conformance with the standards and provisions of the Statement of Work and Budget.
- 7.2 Approval of Subrecipient's Budget does not constitute prior written approval even though certain items may appear therein. Grantee's prior written authorization is required in order for the following to be considered allowable costs:
- 7.2.1 Any subcontract in an amount greater than \$1,000;
- 7.2.2 Costs or fees for temporary employees or services in an amount greater than \$1,000;
- 7.3 Requests for prior approval are Subrecipient's responsibility and should be made within sufficient time to permit a thorough review by Grantee. Any procurement or purchase which may be approved in writing by Grantee under the terms of this Agreement must be conducted in its entirety in accordance with the provisions of this Agreement, its Exhibits and the Procurement Policies of the Grantee. Such written approval must be received by Subrecipient prior to the commencement of procurement or purchase.
- 7.4 No travel, lodging, and per diem expenses in connection with the Agreement are allowed.

SECTION 8 PAYMENTS TO SUBRECIPIENT

- 8.1 The Subrecipient must maintain a separate numbered bank account for the receipt and disbursement of all funds received under this Agreement and any Project income resulting there from. The Subrecipient further agrees that:
- 8.1.1 Such account shall contain only the funds received pursuant to this Agreement and that no other funds shall be mingled with funds in such account, except funds deemed to be Project income as defined. Subrecipient shall support all checks and withdrawals from said account with itemized documentation of costs under this Agreement.
 - 8.1.2 Such account shall be a joint account with the Grantee having the right at any time to enforce its right to recapture any funds in the account without any notice or other obligation to Subrecipient.
 - 8.1.3 Upon the Subrecipient's written request, and solely within the discretion of Grantee, an alternative accounting mechanism may be permitted, provided such alternative adheres at all times to generally accepted accounting principles.
- 8.2 Grantee shall have the authority to place a lien upon any balance in said account paramount to all other liens, which lien shall secure the repayment of any advance payment made hereunder. Subrecipient agrees to execute any and all security agreements and other documents that Grantee determines necessary to evidence said lien.
- 8.3 Said account shall be maintained, under conditions approved by Grantee, in a financial institution, with Federal deposit insurance coverage and the balance, if any, exceeding the Federal deposit insurance coverage shall be collaterally secured.
- 8.4 Method of Payment
- 8.4.1 Each month Subrecipient shall submit an invoice to Grantee. The invoice shall be hand delivered or mailed to Grantee and received no later than the tenth (10th) calendar day of the month, for services provided in the prior month. Subrecipient shall include with the invoice:
 - 8.4.1.1 cash disbursements and receipts journal;
 - 8.4.1.2 bank reconciliations for all bank accounts described in Section 8 of this Agreement;
 - 8.4.1.3 invoices that support all Project expenditures, as well as employee time sheets and payroll registers as described in attached exhibits; and
 - 8.4.1.4 Project income required to be reported monthly to Grantee.
 - 8.4.2 Subrecipient shall submit as part of the invoice and attachments, in such form as required by Grantee, timesheets for any Subrecipient employee, any affidavits of all bills paid or such other affidavits or reports as may be reasonably required by Grantee to document Grantee liabilities under this Agreement.

- 8.4.3 Upon receipt of and approval by Grantee of each accurate and complete invoice and attachments, Grantee shall promptly pay to Subrecipient an amount equal to Grantee liabilities which have not been previously billed to and subsequently paid by Grantee. However, delinquent billing to Grantee by Subrecipient shall justify delay of payment by Grantee.
- 8.4.4 Subrecipient's financial management system shall provide for an adequate procedure to minimize the time elapsed between Grantee's payment to Subrecipient and Subrecipient's disbursement of funds.
- 8.5 Excess Payment. Subrecipient shall refund to Grantee within thirty (30) calendar days of Grantee's written request, any sum of money which has been paid by Grantee and which Grantee at any time thereafter determines:
- 8.5.1 has resulted in overpayment to Subrecipient; or
- 8.5.2 has not been spent strictly in accordance with the terms of this Agreement; or
- 8.5.3 is not supported by adequate documentation to fully justify the expenditure.
- 8.6 Disallowed Costs.
- 8.6.1 Upon termination of this Agreement for any reason, should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by Grantee or applicable funding agency, Subrecipient will refund such amount to Grantee within thirty (30) calendar days of written notice to Subrecipient specifying the amount disallowed. In the event a refund is not made by Subrecipient to Grantee within such period, Grantee shall take other action as is permitted under this Agreement.
- 8.6.2 Refunds of disallowed costs may not be made from any other funds received from or through Grantee.
- 8.7 Deobligation of Funds. In the event that actual expenditure rates deviate from Subrecipient's provision of a corresponding level of performance, as specified in the Statement of Work and Budget, Grantee hereby reserves the right to reappropriate or recapture any such under-expended funds.
- 8.8 Agreement Closeout. The Agreement closeout package, together with final expenditure report, for the time period covered by the last invoice requesting a drawdown of funds under this Agreement, shall be submitted by Subrecipient to Grantee within ten (10) calendar days following the close of the term of this Agreement, using the format as provided to Subrecipient by Grantee.

SECTION 9 SUBRECIPIENT OBLIGATIONS AND RESPONSIBILITIES

- 9.1 Subrecipient hereby accepts responsibility for the performance of all services contracted hereunder. Grantee will consider Subrecipient's Executive Officer to be Subrecipient's representative responsible for the management of all contractual matters pertaining hereto, unless written notification is received to the contrary, from Subrecipient.

- 9.2 Subrecipient acknowledges that Grantee is the Contract Administrator of this Agreement and responsible for the administration of this Agreement.
- 9.3 All communications between Grantee and Subrecipient with regard to contractual matters will be directed through Grantee Contract Representative and Subrecipient Contract Representative.
- 9.4 Subrecipient shall promptly and completely file all tax returns which are required and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments received by Subrecipient. Subrecipient covenants that no tax liability has been asserted against Subrecipient by the Internal Revenue Service or any other taxing authority for taxes in excess of those already paid and Subrecipient knows of no basis for any such deficiency assessment.
- 9.5 Grantee and any authorized agent shall have the right, at all reasonable hours and without causing any unreasonable interruption to the operations of Subrecipient, to inspect, monitor, and audit all books, accounts, reports, files, records, contracts, and all other papers or property relating to the business of Subrecipient or the use of Project amounts. In addition, Subrecipient shall provide to Grantee such audited financial statements as the Grantee may require in its sole discretion, including but not limited to an annual year-end statement and semiannual statements during the term of this Agreement.

SECTION 10 OWNERSHIP OF PROPERTY

Title of all notes receivable, capital acquisitions, supplies, materials or any other property costing \$1,000.00 or more purchased with funds received under this Agreement and in accordance with the provisions of this Agreement, is vested with Subrecipient and possession of such property shall, upon termination of this Agreement, revert to Grantee unless otherwise provided for by Grantee in writing. Subrecipient further agrees that upon expiration, the Subrecipient shall transfer to the Grantee any funds on hand at the time of Agreement expiration, and any accounts receivable attributable to the use of these funds, as well as any real property under the Subrecipient's control that was acquired or improved in whole or in part with these funds in excess of \$25,000. It is understood by Subrecipient that Grantee shall retain a first lien position on any and all real property purchased with funds under this Agreement, unless otherwise provided for by Grantee. Subrecipient shall take all necessary and reasonable steps to ensure the Grantee a first lien position. Written notification must be given to Grantee within thirty (30) calendar days of delivery of non-expendable property in order for Grantee to effect identification and recording for inventory purposes. Subrecipient shall maintain adequate accountability and control over such property, shall maintain adequate property records and perform an annual physical inventory.

SECTION 11 PROJECT INCOME

- 11.1 For the purposes of this Agreement, Project income includes, but is not limited to, earnings of the Subrecipient realized from activities undertaken in accordance with this Agreement or from Subrecipient's management of funding provided or received hereunder. Such earnings include, but are not limited to, income from interest, usage or rental fees, income produced from Agreement-supported services of individuals or employees or from the use of equipment or facilities of Subrecipient provided as a result of this Agreement, payments from clients or third parties for services rendered by Subrecipient under this Agreement.

- 11.2 Subrecipient shall be allowed to keep all Project income generated under this Agreement, unless subrecipient fails to abide by the following:
- 11.2.1 Subrecipient shall report all Project income received on a monthly basis;
 - 11.2.2 Subrecipient shall show all Project income received as part of any invoice;
 - 11.2.3 Subrecipient shall reduce the amount requested under its invoice by the amount of the Project income received; and
 - 11.2.4 Subrecipient shall spend such Project income prior to expending any other amounts received pursuant to this Agreement, and all program income shall be spent in accordance with this Agreement, the Statement of Work, and the Budget.
- 11.3 Records of the receipt and disposition of Project income must be maintained by Subrecipient in the same manner as required for other Agreement funds, and reported to the Grantee in the format prescribed by the Grantee. The Grantee shall deposit in its Project income account all Project funds remitted by the Subrecipient, and may use the funds for any eligible activity funded within this Agreement.
- 11.4 It is the Subrecipient's responsibility to obtain from the Grantee a prior written determination as to whether or not income arising directly from this Agreement, or the performance of any obligations under this Agreement, is Project income. The Grantee has final authority to make a determination as to whether such income is Project income or not. The Subrecipient is responsible to the Grantee for the repayment of any and all amounts as determined by the Grantee to be Project income unless otherwise approved in writing by the Grantee.
- 11.5 Subrecipient shall include Section 10 in its entirety in all of its subcontracts which involve other income-producing services or activities.

SECTION 12 REPORTS, MEETINGS AND INFORMATION

- 12.1 At such times and in such form as Grantee may require, and upon reasonable advance notice, Subrecipient shall furnish such statements, records, reports, data and information, as Grantee may request and deem pertinent to matters covered by this Agreement. Subrecipient shall provide Grantee with a proposed annual budget, and any proposed amendments to the annual budget, at least thirty (30) calendar days before adoption by Subrecipient, and any Grantee comments received by Subrecipient shall be taken into account in adopting the final annual budget or amendments to the final annual budget. Subrecipient shall be solely responsible for its annual budget and any amendments to it; provided, Grantee must finally approve, in writing, any budget amounts which involve this Agreement. Grantee shall act reasonably in approving or disapproving Subrecipient's budget. Within fifteen (15) calendar days following final adoption of the annual budget or any amendments to the final annual budget, Subrecipient shall provide Grantee a copy of the annual budget or the amendments, as appropriate.
- 12.2 A monthly Performance Report, attached hereto as Attachment 5 and incorporated herein for all purposes, and other reports are incorporated herein for all purposes, shall be submitted to Grantee by Subrecipient for periods ending on the last day of each month, no

later than ten (10) calendar days after the end of each required monthly reporting period. Subrecipient agrees to gather information and data relative to all programmatic and financial reporting as of the beginning date specified in Section 2, and shall make available to Grantee the following original information and material for the applicable monthly period:

- 12.2.1 documents that support all procurements;
 - 12.2.2 subcontracts entered into;
 - 12.2.3 proof of insurance on any property acquired; and
 - 12.2.4 any additional information or material Grantee may reasonably request concerning this Agreement.
- 12.3 Subrecipient shall maintain adequate accountability and control over such property, shall maintain adequate property records in a form acceptable to Grantee, and shall perform a physical inventory upon written request from the Grantee during the term of this Agreement.
- 12.4 Grantee may require Subrecipient to schedule and to participate in periodic monitoring meetings with Grantee.

SECTION 13 AUDIT

Subrecipient agrees to submit to Grantee a complete set of audited financial statements and the auditor's opinion and management letters in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions covering Subrecipient's fiscal year until the end of the term of this Agreement.

- 13.1 Subrecipient shall contract with an independent auditor utilizing a Letter of Engagement. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas.
- 13.2 Subrecipient must provide Grantee with annual audits until this Agreement is terminated, unless waived by Grantee.
- 13.3 The expiration or termination of this Agreement shall in no way relieve Subrecipient of the accomplishment of the above audit requirements in the manner set forth herein.

SECTION 14 CONFIDENTIALITY

In order to complete the obligations of this Agreement, each party may require access to certain confidential information of the other party (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which either party or its licensors consider confidential) (collectively, "Confidential Information") of the disclosing party or its licensors'. Each party acknowledges and agrees that the Confidential Information is the valuable property of the other party and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing party and/or its licensors. Each party (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict

confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the other party or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the receiving party promptly notifies the disclosing party before disclosing such information so as to permit the disclosing party reasonable time to seek an appropriate protective order. Each party agrees to use protective measures no less stringent than a party uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

SECTION 15 MONITORING AND EVALUATION

- 15.1 Grantee and/or applicable funding agency shall monitor Subrecipient's performance under this Agreement.
- 15.2 Subrecipient agrees that Grantee or applicable funding agency shall have the right, at all reasonable hours and without causing any unreasonable interruption to the operations of Subrecipient, to carry out monitoring and evaluation activities to ensure adherence by Subrecipient to the Statement of Work and the provisions of this Agreement, and to ensure that the use of any amounts paid to Subrecipient under this Agreement are for eligible purposes in accordance with the requirements, including the right to inspect and audit all books, accounts, reports, files, records, contracts, and all other papers relating to the Project.
- 15.3 Subrecipient agrees to cooperate with Grantee or applicable funding agency in the development, implementation and maintenance of record-keeping systems and to provide data reasonably determined by Grantee or applicable funding agency to be necessary for Grantee or applicable funding agency to effectively fulfill its monitoring and evaluation responsibilities.
- 15.4 After each monitoring visit, Grantee shall provide Subrecipient with a written report of monitoring findings. For any cost that Grantee or applicable funding agency identifies as questionable in Grantee's written report, Subrecipient agrees it shall, within a reasonable time period mutually agreed upon by the parties to this Agreement, provide a response and any requested documentation.
- 15.5 In the event Grantee or applicable funding agency is not satisfied with Subrecipient's written response and disallows the cost, Grantee may request Subrecipient to refund the amount of the cost. In such case the provisions regarding payment of disallowed cost set forth in Section 8.6 shall govern.
- 15.6 Copies of any monitoring or audit reports by any of Subrecipient's funding or regulatory bodies will, within fifteen (15) calendar days of receipt by Subrecipient be submitted to Grantee. In addition to the audit required by this Agreement, Subrecipient shall provide within fifteen (15) calendar days of receipt by Subrecipient to Grantee such additional audited management letters or financial statements.
- 15.7 Subrecipient agrees to schedule periodic reviews with Grantee of its performance of this Agreement and of financial and operational records.

SECTION 16 **DIRECTOR'S MEETINGS**

Subrecipient shall inform Grantee of the dates and times of meetings of its Board of Directors. Such notice shall be delivered to Grantee in a timely manner to give adequate notice and shall also include an agenda and a brief description of the matters to be discussed. Minutes of meetings of Subrecipient's governing body shall be submitted to Grantee within fifteen (15) calendar days of the meeting date. If Subrecipient utilizes advisory board(s), notices of meetings and formal minutes of advisory board meetings shall be kept and shall remain on file with Subrecipient for Grantee's inspection.

SECTION 17 **PERSONNEL POLICIES**

In the event the number of full-time employees of Subrecipient equals five (5) or more, personnel policies shall be established by Subrecipient in writing and shall be provided to Grantee upon execution of the Agreement. Such personnel policies, taken as a whole, shall be no more liberal than the Grantee's personnel policies, procedures, and practices, including, without limitation, policies with respect to employment, salary and wage rates, working hours and holidays, fringe benefits (health and hospitalization, retirement, etc.), vacation and sick leave privileges, and travel.

SECTION 18 **WORKFORCE**

- 18.1 Subrecipient shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Agreement.
- 18.2 Subrecipient, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on the Grantee's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- 18.3 If the Grantee or the Grantee's representative notifies the Subrecipient that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Subrecipient shall immediately remove such worker from Agreement services, and may not employ such worker again on Agreement services without the Grantee's prior written consent.
- 18.4 Living Wages Benefits
 - 18.4.1 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for Grantee employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for Grantee employees is \$11.00 per hour. This living wage is required for any Subrecipient employee assigned to this Agreement, unless Published Wage Rates were included in the solicitation for these services or other rates such as Davis Bacon apply. In addition, the Grantee may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of services.

18.4.2 Additionally, Grantee provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Subrecipient must provide health insurance with optional family coverage for all Subrecipient employees assigned to this Agreement.

18.4.3 Grantee requires Subrecipients proposing on this Agreement to provide the following information about wages and benefits that will be provided to their employees assigned to this Agreement in the following format:

Status: Full-Time (F), Part-Time (P)

Job Title

Hourly Wage

List type of Company Health Insurance (e.g., medical, dental)

*Worker's Compensation Insurance Coverage *yes, No)*

18.4.4 Proof of the health care plan shall be provided by the Subrecipient prior to award of the Agreement. In addition, an insurance certificate for Worker's Compensation Insurance Coverage must be provided.

18.4.4.1 Subrecipient shall provide a list of all employees providing services under the Agreement, including their name, job title, and hourly rate, prior to execution of the Agreement.

18.4.4.2 Subrecipient shall maintain throughout the term of the Agreement, basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

- (a) employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;
- (b) time and date of week when employee's workweek begins;
- (c) hours worked each day and total hours worked each workweek
- (d) basis on which employee's wages are paid:
- (e) regular hourly pay rate;
- (f) total daily or weekly straight-time earnings'
- (g) total overtime earnings for the workweek;
- (h) all additions to or deductions from the employee's wages;
- (i) total wages paid each pay period;
- (j) date of payment and the pay period covered by the payment

18.4.4.3 Subrecipient shall provide with the first invoice and as requested by Grantee, detailed payroll and employee data including employment information, to verify that such information is being maintained and that employees are being paid the living wage as specified in the Agreement. If the Subrecipient's data is inadequate, Grantee reserves the right to require the Subrecipient to provide external auditor assurance of the Subrecipient's capability to maintain the required employment records.

18.4.4.4 Subrecipient shall submit employee payroll data with each subsequent invoice to verify that employees are paid the Living Wage throughout the term of the Agreement.

18.5 Grantee will periodically review the payroll and employee documentation.

SECTION 19 SUBCONTRACTING

- 19.1 If the Subrecipient identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Subrecipient shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the Grantee (the "Plan"). The Subrecipient shall not initially employ any Subcontractor except as provided in the Subrecipient's Plan. The Subrecipient shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the Grantee in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the Grantee of any Subcontractor shall constitute a waiver of any rights or remedies of the Grantee with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Subrecipient is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Grantee and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- 19.2 Work performed for the Subrecipient by a Subcontractor shall be pursuant to a written contract between the Subrecipient and Subcontractor. The terms of the subcontract may not conflict with the terms of the Agreement, and shall contain provisions that:
- 19.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement.
 - 19.2.2 prohibit the Subcontractor from further subcontracting any portion of the Agreement without the prior written consent of the Grantee and the Subrecipient. The Grantee may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the Grantee;
 - 19.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Subrecipient in sufficient time to enable the Subrecipient to include same with its invoice or application for payment to the Grantee in accordance with the terms of the Agreement;
 - 19.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Subrecipient, with the Grantee being a named insured as its interest shall appear; and
 - 19.2.5 require that the Subcontractor indemnify and hold the Grantee harmless to the same extent as the Subrecipient is required to indemnify the Grantee.
- 19.3 The Subrecipient shall be fully responsible to the Grantee for all acts and omissions of the Subcontractors just as the Subrecipient is responsible for the Subrecipient's own acts and

omissions. Nothing in the Agreement shall create for the benefit of any such Subcontractor any contractual relationship between the Grantee and any such Subcontractor, nor shall it create any obligation on the part of the Grantee to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

- 19.4 The Subrecipient shall pay each Subcontractor its appropriate share of payments made to the Subrecipient not later than ten (10) calendar days after receipt of payment from the Grantee.
- 19.5 All City of Austin procurements are subject to the Austin's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all Grantee contracts.
- 19.6 Grantee has determined that no goals are appropriate for this Agreement. Even though no goals have been established for this Agreement, the Subrecipient is required to comply with the Grantee's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

SECTION 20 EQUAL OPPORTUNITY

- 20.1 **Equal Employment Opportunity.** No Subrecipient or Subrecipient's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to Grantee shall be considered, nor any Purchase Order issued, or any contract awarded by the Grantee unless the Subrecipient has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Subrecipient shall sign and return the Non-Discrimination Certification attached hereto as Exhibit B. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Agreement and the Subrecipient's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- 20.2 In the event of Subrecipient's or its subcontractor's non-compliance with the non-discrimination requirements of this Section 20, this Agreement may be canceled, terminated, or suspended in whole or in part upon written notice by Grantee to Subrecipient, and Subrecipient or its subcontractor may be debarred from further contracts with Grantee and/or applicable agencies.

SECTION 21 REPRESENTATIONS AND WARRANTIES

- 21.1 Subrecipient represents and warrants that:
- 21.1.1 All information, reports and data previously or subsequently requested by Grantee and furnished to Grantee was complete and accurate as of the date shown on the information, data or report, and since that date have not undergone any significant change without written notice to Grantee.
- 21.1.2 Any supporting financial statements previously requested by Grantee, and furnished to Grantee, were complete, accurate and fairly reflect the financial condition of Subrecipient as of the date shown on said report, and the results of the operation for the period covered by the report, and since said date there has

been no material change, adverse or otherwise, in the financial condition of Subrecipient.

21.1.2.1 No litigation or proceedings are presently pending or threatened against Subrecipient that prohibits Subrecipient from carrying out the provisions of this Agreement.

21.1.3 None of the provisions of this Agreement contravenes or is in conflict with the authority under which Subrecipient is doing business or with the provisions of any existing indenture or agreement of Subrecipient.

21.1.4 Subrecipient has the power to enter into this Agreement and accept payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.

21.1.5 If Subrecipient furnished Grantee with Subrecipient's financial statements, none of the assets of Subrecipient is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by Subrecipient to Grantee.

21.1.5.1 Subrecipient is not in default on any obligations, covenants, or conditions contained in any bond, debenture, note, or other evidence of indebtedness or any mortgages or collateral instruments securing the same. Subrecipient also covenants that the making of this Agreement and the consummation of the transaction contemplated herein will not violate any provision of law or result in any breach or constitute a default under any agreement to which Subrecipient is presently a party, or result in the creation of any lien, charge or encumbrance upon any of its property or its assets other than as specifically may be allowed under this Agreement including without limitation Grantee's liens and security interests.

21.1.5.2 As applicable, Subrecipient shall promptly and completely file all tax returns which are required and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments received by Subrecipient. Subrecipient covenants that no tax liability has been asserted against Subrecipient by the Internal Revenue Service or any other taxing authority for taxes in excess of those already paid and Subrecipient knows of no basis for any such deficiency assessment.

21.1.5.3 As applicable, Subrecipient shall submit to Grantee annually paid tax receipts showing that current ad valorem taxes on the real and personal property situated therein have been paid, or an affidavit stating that no current taxes on the property are due.

21.1.5.4 Subrecipient shall submit to Grantee evidence that each insurance policy required by this Agreement is in force and effect and that all premiums have been paid.

- 21.2 Subrecipient shall use the proceeds of this Agreement only for the purposes and in the amounts stated in this Agreement and the Work Statement and Budget.
- 21.3 Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by Subrecipient with the submission of each invoice.

SECTION 22 GRATUITIES

The Grantee may, by written notice to Subrecipient, cancel the Agreement without liability if it is determined by the Grantee that gratuities were offered or given by Subrecipient or any agent or representative of Subrecipient to any officer or employee of the Grantee with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by the Grantee pursuant to this provision, the Grantee shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Subrecipient in providing such gratuities.

SECTION 23 INDEPENDENT CONTRACTOR

The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. Subrecipient's services shall be those of an independent contractor. Subrecipient agrees and understands that the Agreement does not grant any rights or privileges established for employees of the Grantee.

SECTION 24 NEPOTISM

Unless approved by Grantee, Subrecipient shall not employ in any paid capacity any person who is a member of the immediate family of 1) a person who is currently employed by Grantee or Subrecipient; or 2) a member of Grantee or Subrecipient's governing body. The term "member of the immediate family" includes: wife, husband, son, daughter, mother, father, brother, sister, grandfather, grandmother, grandson, granddaughter, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, niece, first cousin, stepparent, stepchild, half-brother, and half-sister. Notwithstanding the foregoing, Subrecipient may employ such person if it obtains a written waiver from Grantee.

SECTION 25 POLITICAL ACTIVITY

None of the performance rendered hereunder shall involve, and no portion of the funds received by the Subrecipient hereunder shall be used for, any political activity (including, but not limited to, an activity to further the election or defeat of any candidate for public office) or any activity undertaken to influence the passage, defeat or final content of legislation.

SECTION 26 SECTARIAN ACTIVITY

None of the performance rendered under this Agreement shall involve, and no portion of the funds received by the Subrecipient under this Agreement shall be used for, any sectarian or religious activity

SECTION 27 NO CONTINGENT FEES

Subrecipient warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by Subrecipient for the purpose of securing business. For breach or violation of this warranty, the Grantee shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to Subrecipient, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 28 INDEMNITY/CLAIMS

28.1 Indemnity.

28.1.1 Definitions:

28.1.1.1 “Indemnified Claims” shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

28.1.1.1.1 damage to or loss of the property of any person (including, but not limited to Grantee, Subrecipient, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

28.1.1.1.2 death, bodily injury, illness, disease, worker’s compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of Grantee, Subrecipient, the Subrecipient’s subcontractors, and third parties),

28.1.1.2 “Fault” shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

28.1.2 THE SUBRECIPIENT SHALL DEFEND (AT THE OPTION OF GRANTEE), INDEMNIFY, AND HOLD GRANTEE, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF SUBRECIPIENT, OR SUBRECIPIENT’S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF SUBRECIPIENT’S OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF GRANTEE OR THE SUBRECIPIENT (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

- 28.2 **Claims.** If any claim, demand, suit, or other action is asserted against Subrecipient which arises under or concerns the Agreement, or which could have a material adverse effect on Subrecipient's ability to perform hereunder, Subrecipient shall give written notice thereof to Grantee within ten (10) calendar days after receipt of notice by Subrecipient. Such notice to Grantee shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to Grantee and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

SECTION 29 RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

All reports, charts, schedules, data stored on computer disk, or other appended documentation to any proposal, content of basic proposal, or contracts and any responses, inquiries, correspondence, and related material prepared or submitted to Grantee by Subrecipient (including, without limitation, Subrecipient's independent professional associates and consultants and subcontractors shall become the property of Grantee upon receipt, whether the Project is completed or not. Any portions of such material claimed by Subrecipient to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code. Upon this Agreement's expiration or termination Grantee may require any or all of these items to be delivered to Grantee upon written notice to Subrecipient.

SECTION 30 COPYRIGHTS AND RIGHTS IN DATA

- 30.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Subrecipient agrees to disclose such patentable subject matter to Grantee. Further, if requested by the Grantee, the Subrecipient agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the Grantee and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the Grantee, to the Grantee upon request by the Grantee.
- 30.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Subrecipient agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Subrecipient for the Grantee and the Grantee shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the Grantee's sole or joint ownership of any such deliverables arising by virtue of the Grantee's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Subrecipient hereby assigns to the Grantee (and agrees to cause each of its employees providing services to the Grantee hereunder to execute, acknowledge, and deliver an assignment to the Grantee of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Subrecipient agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the Grantee hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the Grantee, to the Grantee upon delivery of such deliverables to the Grantee or at such other time as the Grantee may request.

- 30.3 **Additional Assignments.** The Subrecipient further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the Grantee might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the Grantee, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Subrecipient's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the Grantee should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Subrecipient agrees to treat the same as Confidential Information under the terms herein.

SECTION 31 MAINTENANCE OF RECORDS

- 31.1 Subrecipient agrees to maintain records that will provide accurate and complete disclosure of the status of the funds received under this Agreement in accordance with OMB Circular A-128 and any other applicable Federal and state regulations establishing standards for financial management. Subrecipient's record system shall contain sufficient documentation to provide support and justification for each expenditure to allow authorized persons from the Grantee and any other entity authorized by Grantee to determine whether the Project has been carried out in accordance with this Agreement and applicable requirements. Nothing in this Section shall be construed to relieve Subrecipient of fiscal accountability and liability under any other provision of this Agreement or any applicable law. Subrecipient shall include the substance of this provision in all subcontracts, where applicable.
- 31.2 Subrecipient agrees to retain all books, records, documents, reports and written accounting policies and procedures pertaining to the operation of programs and expenditures of funds under this Agreement for the period of time and under the conditions as specified in applicable laws and regulations.
- 31.3 Nothing in the above subsections shall be construed to relieve Subrecipient of responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this Agreement sufficient for Grantee to meet all reporting requirements. At reasonable times, mutually agreed upon by the parties to this Agreement, and as often as Grantee may reasonably deem necessary, Subrecipient shall make available to Grantee, or applicable funding agency, or any of their authorized representatives, at Subrecipient's regular place of business, all of its records related to all matters covered by this Agreement and shall permit Grantee to audit, examine, make excerpts and copies of such records, and to make audits of all contracts, invoices, materials, payrolls, and other data relating to matters covered by this Agreement.

SECTION 32 PUBLICATIONS

All published material and written reports submitted under the Agreement must be originally developed material unless otherwise specifically provided in the Agreement. When material not originally developed is included in a report in any form, the source shall be identified.

- 34.1.9 If insurance policies are not written for amounts specified, the Subrecipient shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 34.1.10 The Grantee shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- 34.1.11 Grantee reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by Grantee based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Subrecipient.
- 34.1.12 The Subrecipient shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.
- 34.1.13 The Subrecipient shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- 34.1.14 The Subrecipient shall endeavor to provide Grantee thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.
- 34.2 **Specific Coverage Requirements.** The Subrecipient shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Subrecipient.
- 34.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.
- 34.2.1.1 Contractual liability coverage for liability assumed under the Agreement and all other Contracts related to the project
- 34.2.1.2 Contractors/Subcontracted Work
- 34.2.1.3 Products/Completed Operations Liability for the duration of the warranty period

5.1.1.1.1 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

5.1.1.1.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage

5.1.1.1.3 The Grantee of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

34.2.2 **Business Automobile Liability Insurance.** The Subrecipient shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

34.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage

34.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage

34.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage

34.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

34.2.3.1 The Subrecipient's policy shall apply to the State of Texas

34.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage

34.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage

34.3 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the Grantee's review and approval.

SECTION 35 BONDING

35.1 Bonds, when required, must be executed on forms furnished by or acceptable to Grantee . Subrecipient shall furnish Grantee proof of an adequate bond prior to the earlier of thirty (30) calendar days from the date Grantee requested the bond or payment of any funds to Subrecipient by Grantee under this Agreement.

35.2 If the surety on any bond furnished by Subrecipient is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of this Agreement, Subrecipient must substitute another bond and surety, both of which must be acceptable to Grantee.

35.3 When Performance Bonds and/or Payment Bonds are required in accordance with the Statement of Work, each bond must be issued in an amount of one hundred percent (100%) of the maximum payment liability set forth in this Agreement, as security for the faithful performance of all Subrecipient's obligations under this Agreement. Performance Bonds and Payment Bonds must be issued by a solvent surety company authorized to do business in the State of Texas, U.S. Treasury listed, and with an A.M. Best rating of A- or better, or otherwise acceptable to Grantee.

SECTION 36 FEE FOR SERVICES

Subrecipient shall not charge any fees in connection with this Agreement.

SECTION 37 ASSIGNMENTS

The Agreement shall be binding upon and enure to the benefit of the Grantee and the Subrecipient and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Subrecipient without the prior written consent of the Grantee. Any attempted assignment or delegation by the Subrecipient shall be void unless made in conformity with this paragraph. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

SECTION 38 CHANGES AND AMENDMENTS

The Agreement can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any Subrecipient invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

SECTION 39 NON-WAIVER OF PROVISIONS

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Subrecipient or the Grantee of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

SECTION 40 SURVIVAL OF AGREEMENT PROVISIONS

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement for any reason.

SECTION 41 NON-SUSPENSION OR DEBARMENT CERTIFICATION

The Grantee is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a contract with the Grantee, the Subrecipient certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

SECTION 42 SEVERABILITY OF PROVISIONS

The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

SECTION 43 DISPUTE RESOLUTION

- 43.1 If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- 43.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the Grantee and the Subrecipient agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Grantee and the Subrecipient will share the costs of mediation equally. Any such costs shall not be paid from granted funds.

SECTION 44 CHOICE OF LAW AND VENUE

The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of Grantee to seek and secure injunctive relief from any competent authority as contemplated herein.

SECTION 45 INTERPRETATION

The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, codes, laws, ordinances or regulations, Grantee as the party ultimately responsible for matters of compliance will have the final authority to render or to secure an interpretation and Subrecipient shall not be liable for relying on such interpretation if such interpretation is in writing and is later found to be incorrect.

SECTION 46 REVERSION OF ASSETS

Upon the expiration or termination of the Agreement, Subrecipient must transfer to Grantee any funds on hand at the time of expiration or notice of termination and any accounts receivable attributable to the use of funds.

SECTION 47 ENTIRE AGREEMENT

This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the parties respecting the subject matter hereof. The terms and conditions set forth in this Agreement constitute the entire agreement between the parties and any oral representations on the part of either party, its representatives or assigns, shall have no force or effect whatsoever. This Agreement shall be binding upon the parties, their successors, and assigns.

SECTION 48 NOTICES

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Grantee and the Subrecipient shall be addressed as follows:

Notice or communication to Subrecipient shall be directed to:

Attn: _____

Austin, Texas 787__

Notice or communication to Grantee, shall be directed to:

Austin Housing Finance Corporation
Attn: Elizabeth A. Spencer, Treasurer
1000 East 11th Street
Austin, Travis County, Texas 78702

or addressed in such other way as either party may from time to time designate in writing dispatched as provided in this Section.

SIGNATURES ON FOLLOWING PAGE

In witness whereof, the parties have caused duly authorized representatives to execute this Agreement on the dates set forth below.

Subrecipient:

By: _____
Signature

Name: _____
Printed Name:

Title: _____

Date: _____

Grantee:
Austin Housing Finance Corporation

By: _____
Signature

Name: Elizabeth A. Spencer
Printed Name

Title: _____

Date: _____

EXHIBITS:

- A – Statement of Work/Description of Project
- B – Non-Discrimination Certificate

DRAFT

EXHIBIT A

Statement of Work

GO Repair! Program

PURPOSE:

The purpose of this Agreement for Fiscal Year 2012-2013 with _____ (“Subrecipient”) is to administer the GO Repair! Program. This program is to alleviate actual risk to life, health or safety for eligible homeowners and their families. GO Repair! is an Austin Housing Finance Corporation (AHFC) housing program.

SECTION I: PROGRAM/PROJECT ASPECTS:

The program is funded by the S.M.A.R.T. Housing Capital Improvement Funds, provided by the City of Austin. Activities under this Agreement are identified and funded in the City of Austin Neighborhood Housing and Community Development (AHFC) 2009-2014 Consolidated Plan.

The program shall target residents who reside within the city limits of Austin and whose household incomes are at or below 80% of the Median Family Income, as amended by HUD. The income limits chart currently in effect is **Attachment 5** to this Statement of Work.

SECTION II: DELIVERABLES

In order for Subrecipient to qualify for the \$_____ made available to Subrecipient during the Agreement period of 5/1/2013 through 09/30/2013, Subrecipient must provide the following deliverable:

- A. Perform or facilitate repairs to a minimum of _____ unduplicated homes. An unduplicated home shall be defined as a home that was reported/counted only once during the Agreement term, regardless of the number of times assistance was provided.
- B. The Subrecipient agrees to meet or exceed the following milestones:

Timeline

By 3 months	25% completed	or	___ homes serviced
By 6 months	50% completed	or	___ homes serviced
By 9 months	75% completed	or	___ homes serviced
By 12 months	100% completed	or	___ homes serviced

and 90% or more of funds must have been requested

SECTION III: PROGRAM/PROJECT BUDGET

- A. Budget and Payment Requests. All of Subrecipient's expenditures shall be in accordance with the Budget, which is **Attachment 1** to this Statement of Work. Transfer of monies from one budget category to another shall be subject to approval by AHFC. Subrecipient shall submit to AHFC an invoice no more than once monthly, unless otherwise approved by AHFC.
- B. The cumulative total for clients served shall be consistent with the Agreement's Statement of Work and budget.

SECTION IV: COMPENSATION

- A. The method of compensation which Subrecipient will utilize is described in Section V of this Statement of Work. The term "invoice" will now be used when referencing a "pay request" or a "request for payment."
- B. AHFC will notify Subrecipient of any costs that have been submitted for reimbursement that may be disallowed pursuant to the Agreement. Upon review of all received monthly reports, and invoices, AHFC will, if applicable, provide written notification regarding the reimbursement items that have been disallowed, along with an explanation for the disallowance and recommendations for making corrections. The invoice will be processed net of the disallowed costs. Subrecipient will have thirty (30) calendar days from the receipt of the written correspondence in which to submit corrections for disallowed costs in order to receive reimbursement.

SECTION V: PAYMENT REQUESTS

Subrecipient shall submit the monthly invoice to AHFC by the 10th calendar day of each month for the prior month's activities along with the complete source documentation supporting both the services reported and the dollar amount being requested for reimbursement.

- A. Subrecipient shall promptly notify AHFC in writing, of any overpayments or necessary adjustments. Reimbursements for any overpayment or under payment and any necessary adjustments shall be made to AHFC, within thirty (30) calendar days following the date of discovery by either party.
- B. AHFC may request additional program or financial information regarding the activity as may be necessary to address specific requests from the City of Austin.

Source Documentation

- A. Client and property eligibility documentation will be maintained for all units subsidized under this program. Documentation shall minimally include:
 - a. Source documentation certifying client income;
 - b. Inspections completed at initial occupancy evidencing minimum property standards have been satisfied;
 - c. Inspections completed after repairs that evidence the property was brought to minimum property standards, after repairs were completed; and
 - d. Before and after photos.

- B. Each invoice should include documentation that supports the expenditures claimed by the Subrecipient, such as:
 - a. Invoices from third parties;
 - b. Receipts from subcontractors;
 - c. Bank statements, check registers;
 - d. Employee time sheets, payroll summaries;
 - e. Number of units serviced to date; and
 - f. Evidence of documented proof of performance (i.e. completed/signed intake forms/applications, log-in sheets, documented reported work performed, etc.)

SECTION VI: REPORTING/DOCUMENTATION REQUIREMENTS

In addition to the reporting requirements set forth in the Agreement, Subrecipient shall also provide the following to AHFC.

- A. Subrecipient shall submit to AHFC, a Monthly Performance Report (**Attachment 7**) detailing the Agreement activities and accomplishments during each reporting month. The performance report shall be submitted to AHFC within ten (10) calendar days after the end of the reporting month.
- B. Subrecipient shall submit to AHFC a monthly demographic report profiling the clients served through this program. The demographic report (**Attachment 8**) shall be submitted in to the AHFC within ten (10) calendar days after the end of the reporting month.
- C. Subrecipient shall submit to AHFC a Contractor/Subcontractor Activity Report (**Attachment 11**) reporting specific activity per the report.
- D. Subrecipient shall ensure that all reporting documents include a count of both unduplicated (first-time) and repeat clients. An unduplicated client count shall be defined as a client who was reported/counted only once during the Agreement term, regardless of the number of times assistance was provided. For the purposes of this Agreement, each unduplicated client reported in the monthly performance and demographic report shall correspond to a client file set up and maintained by Subrecipient. The client file shall minimally contain the following:
 - 1. Name of client;
 - 2. Application date;
 - 3. Residential address and phone number;
 - 4. Income eligibility determination/documentation;
 - 5. Ethnicity or race of head of the household;
 - 6. Gender and age of persons in household;
 - 7. Service(s) provided/additional service(s) rendered during the year; and
 - 8. Support documentation.
- E. Required reports shall include but are not limited to:

1. Monthly Performance;
2. Monthly Demographic;
3. Contractor/Subcontractor Activity Report;
4. Annual Agency Audits;
5. Program Evaluation analysis; and
6. Close-Out Report.

Subrecipient must complete and submit to AHFC for review and approval, a “Project Close-Out Report” (**Attachment 16**), no later than ten (10) calendar days from the end date of this Agreement.

- F. Should a reporting due date land on a Saturday, reporting is due the day before on Friday. Should a reporting due date land on a Sunday, reporting is due the day after on Monday.

SECTION VII: OTHER RELATED REQUIREMENTS

- A. Section 504 Requirements. In order to comply with the Americans with Disabilities Act (ADA) and Section 504 notice requirements, the language stated in **Attachment 17** must be included in all Subrecipient’s documents relating to the Housing Smarts program.

Notices are required to be published in both English and Spanish.

- B. Availability of Services. Regular hours of operation are: 8:00 a.m. to 5:00 p.m., Monday through Friday. The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
2012	
Veteran’s Day	November 12, 2012
Thanksgiving Day	November 22, 2012
Thanksgiving Friday	November 23, 2012
Christmas Eve	December 24, 2012
Christmas Day	December 25, 2012
2013	
New Year’s Day	January 1, 2013
Martin Luther King Day	January 21, 2013
Presidents’ Day	February 18, 2013
Memorial Day	May 27, 2013
Independence Day	July 4, 2013

- C. **Repair Scope**

The repair services provided under this Agreement are limited to the eligible activities outlined in Section II above. The program is not intended by design or obligation to address any other type of repair or service. Should other repairs be warranted, the Subrecipient shall refer the client to the appropriate housing agency or program.

- D. **Applicable Laws and Regulations.**

The Subrecipient shall ensure that all repair activity conducted under this Agreement is completed in accordance with applicable Federal, state, and local rules and regulations. Repairs need not bring the entire housing unit in compliance with the City of Austin Housing Code, but the replacement of major systems shall be completed in accordance with the rehabilitation provisions of the City of Austin Land Development Code.

All repairs shall be completed in accordance with the applicable Lead-Based Paint (LBP) regulations of the U.S. Department of Housing and Urban Development in effect at the time this Agreement is signed. Under the current LBP regulations, Subrecipient should be providing all owners of housing constructed prior to 1978 with the booklet *Protect Your Family from Lead in Your Home* and must document that the owner has received the booklet by having the owner sign an acknowledgement indicating receipt of the publication.

The signed acknowledgement shall be retained in the client file. Subrecipient shall have the option of incorporating the acknowledgement into the Client Intake Form so long as the manner in which the acknowledgement appears on the Client Intake Form meets with AHFC's approval. Repairs or rehabilitation projects in structures built prior to 1978 that will disturb more than six square feet of interior painted surface or twenty square feet of exterior painted surface must be tested for the presence of lead.

E. **Bidding**

The Subrecipient shall ensure that all materials and labor for repairs are secured on an open competitive-bid basis. Contracts must be awarded to the lowest, most responsive bidder.

F. **Inspections**

Payments to subcontractors shall be made by the Subrecipient only after the agency has inspected and certified that all contracted work is complete and in accordance with terms of subrecipient agreement with its subcontractors.

G. **Permits**

Subrecipient shall provide all permits and fees required to complete the job to local codes and regulations, including IBC, OSHA, and County Codes, **Attachment 6**.

H. **Guidelines Manual**.

The Subrecipient shall keep a Manual, which sets forth all policies, guidelines and procedures necessary for the implementation of this program. The manual includes but is not limited to description of eligible repairs, procedures for procurement of subcontracting, inspection and quality control, client grievance procedures, client eligibility determination, and client eligibility verification documentation.

I. **Client Files**

The client file shall minimally contain the following information:

- 1) name
- 2) application date

- 3) residential address and phone number
- 4) eligibility documentation
- 5) family status
- 6) number in family
- 7) signed homeowner consent form
- 8) signed disclosure form confirming receipt of *Protect Your Family from Lead in Your Home*
- 9) support documentation, including assessment, bids, contracts and inspection reports
- 10) type, amount and date(s) of service rendered
- 11) year built of home being assisted
- 12) whether the repair would have triggered safe work practices under impending lead-based paint regulations, had the new regulations been in effect.

J. **Consent Form**

Subrecipient shall prepare a standard consent form that will be used to secure permission from the homeowners allowing work to be done on their property. A copy of the blank consent form to be used shall be submitted to the AHFC prior to the execution date of this Agreement.

Subrecipient shall ensure and secure the homeowner's signature on the Homeowner Consent Form prior to beginning work on any project funded through this Agreement. Signed consent forms shall be maintained as part of each project file. No home repair services may be provided without the owner's consent.

K. **Referrals**

Subrecipient shall coordinate with other organizations working on the same program to avoid duplication of services and maximize the effect of all repair programs. Under no circumstances will the maximum benefit for each household exceed \$15,000. In addition, this assistance does not include any other assistance from the participant organization using its regular programs and funding.

L. **In-House Estimates**

Subrecipient shall require the Sub-Contractor to complete and document an in-house estimate prior to contracting work on any project funded through this Agreement.

M. **Historical Determination**

If during the permit application review process it is found that:

- a.) the structure is designated as a Historic Landmark or
- b.) the property lies within a National Registered Historic District or
- c.) the structure is greater than 50 years old (provided the scope of work would include demolition other than all or part of an interior wall, floor or ceiling)
further review may be required by the Historic Preservation Office.

N. **Unduplicated Client Count & Client Files.** The Subrecipient shall ensure that all reporting documents reflect unduplicated client count. An unduplicated client shall be defined as a client, which was reported only once during the contract term no matter how many times assistance was provided. For the purposes of this contract, each unduplicated

client reported shall correspond to a client file set up by subrecipient. The client file shall minimally contain the following information:

- 13) name
- 14) application date
- 15) residential address and phone number
- 16) eligibility documentation
- 17) family status
- 18) number in family
- 19) signed homeowner consent form
- 20) signed disclosure form confirming receipt of *Protect Your Family from Lead in Your Home*
- 21) support documentation, including assessment, bids, contracts and inspection reports
- 22) type, amount and date(s) of service rendered
- 23) year built of home being assisted
- 24) whether the repair would have triggered safe work practices under impending lead-based paint regulations, had the new regulations been in effect.
- 25) Environmental review documentation

ATTACHMENTS:

1. Budget
2. Medium Family Income Chart (MFI)
3. Income Calculator
4. Performance Report
5. Demographic Report
6. Audit

Exhibit B
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, (“OWNER”)

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER’s Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City’s Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of

reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this _____ day of _____, _____

Subrecipient
Authorized
Signature _____

Title _____