



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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**SECTION 811 PROJECT RENTAL ASSISTANCE PROGRAM
OWNER PARTICIPATION AGREEMENT**

This Section 811 Project Rental Assistance Program Owner Participation Agreement (the Agreement) is entered into on this _____ day of _____, 20___, by and between _____, a _____ (Owner) and the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (TDHCA) (collectively, the Parties) for participation in the TDHCA Section 811 Project Rental Assistance (PRA) Program with regards to housing units on that certain multifamily rental housing property consisting of a total of _____ units known as _____ (Eligible Multifamily Property) situated on real property located in the City of _____, County of _____, State of Texas.

The Parties enter into this Agreement in conjunction with the commitments made by the applicants of the following TDHCA Multifamily Housing Direct Loan Program Application(s) that were successfully awarded Direct Loan funds and/or a Competitive Housing Tax Credits (HTC) to satisfy the requirements of 10 TAC §11.9(c)(6) or 10 TAC §13.6(6) utilizing the Eligible Multifamily Property as the approved development to provide Section 811 PRA Program units:

Application Number	Program: Direct Loan Funds or Competitive HTC	Proposed Development Name	Number of Section 811 PRA Program Units
Total Section 811 PRA Program Units			

Each applicant for each application referenced above must provide the minimum number of Section 811 PRA Program units for each of their respective developments. The minimum number of Section 811 PRA Program units is generally 10 (ten) and is further specified in the Qualified Allocation Plan (QAP). However, the minimum number can be affected by the Integrated Housing Rule in 10 TAC §1.15 and one of the following depending upon the cycle year: 10 TAC §11.9(c)(6) for the 2019 HTC cycle and 10 TAC §13.6(6) for 2019 multifamily direct loans.

Participating Developments

Development Name	Federal Award ID	Duns NO.	FAIN	CFDA	Federal Award Date and Type	Number of Section 811 PRA Program Units

Section 1
TERM

This Agreement shall be effective on the date executed by the authorized representative for TDHCA and shall remain in full force and end on the date which is thirty (30) years from the date of execution or the expiration date of the Use Agreement, whichever period is longer, unless earlier terminated or amended in accordance with the provisions herein (**Term**).

Section 2
DEFINITIONS

2.1 General. Unless the context clearly indicates otherwise, capitalized terms used shall have the meaning ascribed to them in 10 TAC Chapter 8 (as amended from time to time), the PROJECT RENTAL ASSISTANCE PROGRAM RULE, provided that certain capitalized terms used and not defined herein shall have the meanings ascribed to them in or for the purposes of the Program Requirements.

- A. **“Assisted Units”** means rental units made available to or occupied by an Eligible Tenant in Eligible Multifamily Properties receiving assistance under 42 U.S.C. § 8013(b)(3)(A).
- B. **“Contract Rent”** means the total amount of rent specified in the Rental Assistance Contract (RAC) as payable to the Owner for the Assisted Unit.
- C. **“Cooperative Agreement”** means the Section 811 Project Rental Assistance Program Cooperative Agreement including all exhibits and attachments thereto, by and between TDHCA as “Grantee” and HUD, entered into as a condition to and in consideration of TDHCA’s participation in the Section 811 Project Rental Assistance Program.
- D. **“Eligible Applicant”** Means an Extremely Low-Income Person with Disabilities, between the ages of 18 and 62, and Extremely Low Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and 62 at the time of admission. The Person with a Disability must be eligible for community-based, long-term care services as provided through Medicaid waivers, Medicaid state plan options, comparable

state funded services or other appropriate services related to the type of disability(ies) targeted under the Inter-Agency Partnership Agreement.

- E. **“Eligible Families”** or **“Eligible Family”** shall have the same meaning as “Eligible Tenant.”
- F. **“Eligible Multifamily Property”** or **“Eligible Multifamily Properties”** means any new or existing property owned by a private or public nonprofit, or for-profit entity with at least five (5) housing units and as specifically identified in the first paragraph on page one of this Agreement.
- G. **“Eligible Tenant”** means Eligible Applicants who are being referred to available Assisted Units in accordance with the Inter-Agency Partnership Agreement and for whom community-based, long-term care services are available at time of referral. Such services are voluntary; referral shall not be based on willingness to accept such services. Eligible Tenant also means an Extremely Low-Income Person with a Disability, between the ages of 18 and 62 at the time of referral, and Extremely Low-Income families, which includes at least one Person with a Disability, who is between the ages of 18 and 62 at the time of referral.
- H. **“Extremely Low-Income”** means a household whose annual income does not exceed thirty percent (30%) of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty percent (30%) of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. HUD’s income exclusions, as defined under 24 CFR §5.609 (as amended), apply in determining income eligibility and Eligible Tenant’s rent.
- I. **“HUD”** means the U. S. Department of Housing and Urban Development.
- J. **“Inter-Agency Partnership Agreement”** means the Inter-Agency Partnership Agreement between TDHCA and State Health and Human Services Medicaid Agency(ies) that provides a formal structure for collaboration to participate in TDHCA’s Section 811 Project Rental Assistance Program to develop permanent supportive housing for Extremely Low-Income Persons with Disabilities.
- K. **“Owner”** means the entity that has or will have fee title or leasehold ownership interest in the Eligible Multifamily Property. Additionally, Owner means the entity named as such in the first paragraph on page 1 of this Agreement, its successors and assigns.
- L. **“Owner & Property Management Manual”** means a set of guidelines designed to be an implementation tool for the Program, which allows the Owner and the Owner’s designated property manager to better administer the Program, which also includes adherence to the “Owner Occupancy Requirements” set forth in Section IV of HUD Notice H 2013-24.

- M. **“Participating Developments”** means that the Owner has an ownership interest in the development and has agreed to commit a minimum number of Assisted Units to Eligible Applicants and/or Eligible Families. The development is currently in existence, received a previous award from the TDHCA, and is an Eligible Multifamily Property.
- N. **“Persons with Disability”** or **“Persons with Disabilities”** shall have the same meaning as defined under 42 U.S.C. §8013(k)(2) and 24 CFR §891.305.
- O. **“Program”** means TDHCA’s Section 811 Project Rental Assistance Program under Section 811 of the Cranston-Gonzales National Affordable Housing Act [42 U.S.C. §8013(b)(3)(A)], as amended by the Frank Melville Supportive Housing Investment Act of 2010 (Public Law 111-374) designed to provide permanent supportive housing for Extremely Low-Income persons with disabilities receiving long term supports and services in the community.
- P. **“Program Requirements”** means but is not limited to: (1) this Agreement; (2) Chapter 2306 of the Texas Government Code; (3) the applicable state program rules under Title 10, Part 1 of the Texas Administrative Code; (4) the Owner & Property Management Manual; (5) Part I of the Rental Assistance Contract attached as Exhibit 8 to the Cooperative Agreement; (6) Part II of the Rental Assistance Contract attached as Exhibit 9 to the Cooperative Agreement; (7) the Use Agreement; (8) Program Guidelines attached as Exhibit 5 to the Cooperative Agreement; (9) HUD Notice 2013-24 issued on August 23, 2013; (10) Section 811 of the Cranston-Gonzales National Affordable Housing Act [42 U.S.C. §8013(b)(3)(A)], as amended by the Frank Melville Supportive Housing Act of 2010 [Public Law 111-374]; (11) Consolidated and Further Continuing Appropriations Act of 2012 [Public Law 112-55]; (12) Notice of Funding Availability (NOFA) for Fiscal Year 2012 Section 811 Project Rental Assistance Program published on May 15, 2012 (13) Notice of Funding Availability (NOFA) for Fiscal Years 2013 Section 811 Project Rental Assistance Program published on March 4, 2014, and Technical Corrections to NOFA; and (14) all laws applicable to the Program.
- Q. **“Proposed Development”** means the development proposes to be awarded funds or an allocation as part of a Multifamily direct loan application. The development will not house any of the 811 units under this Agreement.
- R. **“Rental Assistance Contract (RAC)”** means the HUD contract (form HUD-92235-PRA and form HUD-92237-PRA) by and between TDHCA and the Owner of the Eligible Multifamily Property which sets forth additional terms, conditions and duties of the Parties with respect to the Eligible Multifamily Property and the Assisted Units.
- S. **“Rental Assistance Payments”** means the payment made by TDHCA to Owner as provided in the Rental Assistance Contract. Where the Assisted Units are leased to an Eligible Tenant, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Eligible Tenant when the Utility Allowance is greater than the Total Tenant Payment. A vacancy payment may be made to the Owner when an Assisted Units is vacant, in accordance with the RAC and other Program Requirements.

- T. **“Target Population”** means the specific group or groups of Eligible Applicants and Eligible Tenants described in TDHCA’s Inter-Agency Partnership Agreement who are intended to be solely served or to be prioritized under TDHCA’s Program.
- U. **“Tenant Rent”** means the rent as defined in 24 CFR Part 5.
- V. **“Total Tenant Payment”** means the payment as defined in 24 CFR Part 5.
- W. **“Tenant Rental Assistance Certification System”** (TRACS) means the computer system created by HUD that enables Owners to electronically submit their monthly tenant certifications and voucher information.
- X. **“Utility Allowance”** means the Utility Allowance as defined in 24 CFR Part 5.
- Y. **“Use Agreement”** means an agreement by and between TDHCA and Owner in the form prescribed by HUD under Exhibit 10 of the Cooperative Agreement (form HUD-92238-PRA) encumbering the Eligible Multifamily Property with restrictions and guidelines under the Program for operating Assisted Units during a thirty (30) year period, to be recorded in the official public property records in the county where the Eligible Multifamily Property is located.

Section 3

OWNER’S OBLIGATIONS AND LIABILITIES

3.1 Legal Authority

- A. **Contractual Authority.** Owner assures and guarantees TDHCA that Owner possesses the legal authority to enter into this Agreement, to receive funds authorized by this Agreement, and to perform the services Owner has obligated itself to perform under this Agreement.
- B. **Signature Authority.** The person(s) signing and executing this Agreement on behalf of Owner does hereby warrant and guarantee that he/she is duly authorized by Owner to execute this Agreement on behalf of Owner and to validly and legally bind Owner to all the terms, performances, and provisions of this Agreement.

Section 4

TDHCA OBLIGATIONS AND LIABILITIES

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

4.2 TDHCA Point of Contact (TDHCA POC)

- A. Appointment. TDHCA will appoint a staff person as the point of contact responsible for receiving the Program referrals from the referral agents. The current TDHCA POC is **Monica McCarthy** and can be reached at monica.mccarthy@tdhca.state.tx.us. Alternatively, call/contact (provide general contact information.)
- B. Responsibilities. The TDHCA POC will maintain the waiting list for all Assisted Units within Eligible Multifamily Properties. The TDHCA POC is responsible for the various functions detailed in the Inter-Agency Partnership Agreement for the Program and is the main point of contact for Owner.
- C. Changes; New Appointment. Should the TDHCA POC change, TDHCA will make reasonable attempts to notify the Parties of the change in TDHCA POC in accordance with the notice provision in Section 10.15 of this Agreement.

4.3 Affirmative Marketing TDHCA will be responsible for affirmatively marketing the Program to Eligible Applicants and will establish an affirmative fair housing marketing plan for its TDHCA Program which Owner will be required to follow when marketing Assisted Units.

Section 5 **PERFORMANCE**

5.1 Use and Occupancy of Eligible Multifamily Property

- A. Use of Eligible Multifamily Property. During the Term of this Agreement, the Owner will commit to the Program a set aside for Eligible Applicants and make available for occupancy by Eligible Applicants on a continuous basis (10/20/etc) Assisted Units under this Agreement and an additional (10/20/etc) Assisted Units committed by development owners under the TDHCA Multifamily Housing Direct Loan Program Applications identified in the second paragraph of page one of this Agreement, for a total of (20/30/etc) Assisted Units on the Eligible Multifamily Property.
 - 1. Participating Developments will comply with 10 TAC §8.4.
 - 2. The types (*e.g.*, accessible) and the specific number of Assisted Units (*e.g.*, units 101, 201, etc.) will be “floating” (flexible) depending on the needs of the Program and the availability of the Assisted Units on the Eligible Multifamily Property.
- B. Occupancy Requirements.
 - 1. Developments cannot exceed the integration requirements of 10 TAC §1.15 and 10 TAC §8.3(c). The maximum number of units a development can set aside (restrict), or have an occupancy preference for persons with disabilities, including Section 811 PRA units is twenty five percent (25%).

2. Owner is required to follow all applicable Program Requirements including but not limited to 10 TAC §8.7(d) and HUD Notice H 2013-24, *Section 811 Project Rental Assistance (PRA) Occupancy Interim Notice*.

C. Use Agreements. The Owner must execute the Use Agreement, as found in Exhibit 10 of the Cooperative Agreement, in accordance with 10 TAC §8.7(e).

5.2 Tenant Certifications, Reporting and Compliance

A. TRACS & EIV Systems. The Owner shall have appropriate software to access the Tenant Rental Assistance Certification System (TRACS) and the Enterprise Income Verification (EIV) System, in accordance with 10 TAC §8.7(f).

B. Requests for Payment Required. Upon execution of a RAC, the Owner must request establishment of an account and payment request interface in TRACS the later of within 90-calendar days of a tenant's initial move-in date or within 90 calendar days of the RAC being entered into HUD's Multifamily Online Systems.

5.3 Tenant Selection and Screening

A. Target Population. TDHCA will screen Eligible Applicants for compliance with TDHCA's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for TDHCA's Program. The Target Population can be revised with HUD approval.

B. Tenant Selection Plan. Upon the execution of this Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.610 (as amended), to TDHCA for approval. TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements and consistent with TDHCA's Section 811 PRA Participant Selection Plan.

C. Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with 10 TAC §8.7(g). The TDHCA POC must be notified within three calendar days from when an applicant is notified that their application has been denied so that another Eligible Applicant can be referred.

5.4 Rental Assistance Contracts (RAC)

C. Applicability. If requested by TDHCA, the Owner shall enter into a RAC. The Owner shall comply with 10 TAC §8.7(h) regarding Rental Assistance Contracts. When an Owner is sent a RAC by TDHCA, the Owner of the participating Eligible Multifamily Property must return the completed RAC to TDHCA, with original signatures within thirty (30) calendar days. Failure to return the RAC may subject the Owner to administrative penalties under 10 TAC 2.302.

- D. Notice. TDHCA agrees to provide written notice to the Owner if and when it intends to enter into a RAC with the Owner. This notice will serve as the 811 application start date.
- E. Termination. Although TDHCA has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property, to the extent allowed by law.
- F. Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property, to the extent allowed by law:
 - 1. The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;
 - 2. Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and
 - 3. Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406, as amended, regarding Ownership Transfer requests.

5.5 Advertising Materials Upon the execution of this Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

- A. Depictions of the units including floor plans
- B. Brochures
- C. Tenant Selection Criteria
- D. House Rules
- E. Number and size of available units
- F. Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act)
- G. Documentation on access to transportation and commercial facilities
- H. Onsite amenities

5.6 Leasing Activities

- A. Segregation of Assisted Units. The Owner will comply with 10 TAC §8.7(j) and must take actions or adopt procedures to ensure that the Assisted Units are not segregated to

one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

- B. Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.
- C. Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.
- D. Lease Renewals and Changes. The Owner must notify TDHCA of renewals of leases with Eligible Families and any changes to the terms of the lease.

5.7 Construction Standards, Accessibility, Inspections and Monitoring

- A. Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which is a uniform national standard established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703 must be inspected in any physical inspection of the property.
- B. Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.
- C. Accessibility. Owner must ensure that the Eligible Multifamily Property will meet or exceed the accessibility requirements under (1) 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; (2) the Fair Housing Act Design Manual, (3) Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189), as implemented by the U. S. Department of Justice regulations at 28 CFR Parts 35 and 36, and (4) the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

Section 6 **RECORDS AND REPORTING**

6.1 Retention and Accessibility of Records

- A. Retention. Owner shall establish and maintain sufficient records at its regular place of business, as specified by TDHCA and in accordance with Program Requirements, including records that demonstrate that each Eligible Tenant and Eligible Family assisted with funds provided under this Agreement is income eligible in accordance with Program Requirements.

- B. Accessibility. Owner agrees that TDHCA, HUD, the Auditor of the State of Texas, the United States General Accounting Office, the Comptroller of the United States, or any of their duly authorized representatives, shall have the right to access and to examine all books, accounts, records, reports, files, and other papers or property belonging to or in use by Owner pertaining to this Agreement. Owner agrees to maintain such records at its regular place of business.
- C. Open Records. Owner acknowledges that TDHCA is subject to the Texas Public Information Act (Chapter 552 of the Texas Government Code) and Owner agrees that funds received from the TDHCA are subject to the Texas Public Information Act and the exceptions to disclosure as provided under the Texas Public Information Act.

6.2 Reporting Requirements Owner shall submit to TDHCA such reports on the operation and performance of this Agreement as may be required by TDHCA, including but not limited to the reports specified in this section. Owner shall provide TDHCA with all reports necessary for TDHCA's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

Section 7 **AUDITS AND MONITORING**

7.1 Audits, Uniform Administrative Requirements, Cost Principles, and Program Income

- A. Uniform Administrative Requirements. Uniform administrative requirements, cost principles, and audit requirements are set forth in Program Regulations. The expenditure threshold requiring an audit is currently \$750,000 of Federal funds, but may be adjusted in accordance with the Office of Management and Budget regulations.
- B. Audit. TDHCA reserves the right to conduct additional audits of the funds received and performances rendered under this Agreement. Owner agrees to permit TDHCA or its authorized representative to audit Owner's records and to obtain any documents, materials, or information necessary to facilitate such audit in compliance with the requirements of the Single Audit Act.
- C. Program Income. Owner must have sufficient knowledge and experience to identify and account for program income as defined in 24 CFR Part 85 or 2 CFR §200.80, as applicable. All program income including interest earned on any award supported activity (i.e. if it generates program income it has to be accounted for whether it is paid to Owner or TDHCA or is used for a program purposes without pass back to Owner or TDHCA) is subject to the terms and conditions of the original grant and such U. S. Treasury rules as may apply. TDHCA will document receipt of program income, both principal and interest, and how the funds were used.

Section 8

TERMINATION; EVENT OF DEFALUT

8.1 Termination; Release If TDHCA determines, in its sole authority, that due to lack of demand over a period of time for the Eligible Multifamily Property by households interested in participating in the Program, if adequate funding is not available to meet the financial needs of the Assisted Units, or other good cause exists to terminate all or part of the Agreement, TDHCA will notify the Owner that they have been released from some or all of the obligations associated with the Program and, if applicable, file a release of the Use Agreement in the property records.

8.2 Event of Default Any of the following are events of default under this Agreement:

- A. Any material failure by Owner to comply with this Agreement or the Program Requirements.
- B. Any material misrepresentation by Owner at any time which, if known by TDHCA, would have resulted in the Owner not being able to participate in the Program or the Program funds not being disbursed.
- C. If the Owner's corporate structure liquidates, terminates, dissolves, merges, consolidates or fails to maintain good standing in the State of Texas, and such is not cured prior to causing material harm to Owner's ability to perform under the terms of this Agreement or in accordance with the Program Requirements.

8.3 Remedies If an event of default is not remedied by Owner, TDHCA may take any of the following actions:

- A. Terminate this Agreement and may assume Owner's rights and obligations under the RAC.
- B. Temporarily suspend disbursing any Program funds to Owner.
- C. Suspend any Program funds held by Owner.
- D. Impose any special additional requirements or conditions on the Owner.

Section 9

CROSS-CUTTING FEDERAL REQUIREMENTS

Section 9.1 Environmental Laws and Regulations

- A. Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

1. Hazardous Materials Transportation Act (49 U.S.C.A. §1801 *et seq.*);
2. Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 *et seq.*);
3. National Environmental Policy Act (42 U.S.C. §4321 *et seq.*) (NEPA);
4. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 *et seq.*) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);
5. Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 *et seq.*) (RCRA);
6. Toxic Substances Control Act, 15 U.S.C.A. §2601 *et seq.*;
7. Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 *et seq.*);
8. Clean Air Act (42 U.S.C.A. §7401 *et seq.*) (CAA);
9. Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 *et seq.*) (Clean Water Act or CWA);
10. Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;
11. Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);
12. Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);
13. County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);
14. Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);
15. Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and
16. Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

- B. Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 *et seq.*). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

9.2 Lead-Based Paint Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels.

Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

9.3 Limited English Proficiency Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000 Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

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

9.5 Drug-Free Workplace Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, *et seq*) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

9.6 Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity

- A. Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.
- B. Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by TDHCA in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at <http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm>.
- C. Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. §6101 *et seq.*) and its implementing

regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U. S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 *et seq.*), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and it implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 *et seq.*), as implemented by HUD at 24 CFR Part 100-115.

- D. Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.
- E. Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR Part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

9.7 Security of Confidential Information

- A. Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicants' and Eligible Tenants' personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants', Tenants' or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicants' or Tenants' personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.
- B. Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996) the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.

9.8 Prevention of Trafficking Owner and its contractors must comply with Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. §7104 *et seq.*). If Owner or its contractor or subcontractor engages in, or uses labor recruiters, brokers or other agents

who engage in any of the prohibited activities under Section 106(g) of the Trafficking Victims Protection Act of 2000, TDHCA may terminate this Agreement and Owner hereby agrees and acknowledges that upon termination, Owner's rights to any funds shall be terminated.

Section 10 **GENERAL PROVISIONS**

10.1 Dispute Resolution; Conflict Management

- A. **Eligible Tenant Disputes.** The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.
- B. **Agreement Disputes.** In accordance with Section 2306.082 of the Texas Government Code, it is the TDHCA's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Texas Government Code), to assist in the fair and expeditious resolution of internal and external disputes involving the TDHCA and the use of negotiated rulemaking procedures for the adoption of TDHCA rules. As described in Chapter 154 of the Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by TDHCA's ex parte communications policy, TDHCA encourages informal communications between TDHCA staff and the Owner, to exchange information and informally resolve disputes. TDHCA also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage TDHCA in an ADR procedure, the Owner may send a proposal to TDHCA's Dispute Resolution Coordinator. For additional information on TDHCA's ADR policy, see TDHCA's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.
- C. **Conflict Management.** The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

10.2 Faith Based Activities

None of the performances rendered by Owner under this Agreement shall involve, and no direct funds received by Owner under this Agreement shall be used in support of any explicitly religious activity, such as worship, religious instruction, or proselytization. Any explicitly religious activity engaged in by Owner must be separate in time or location from the programs or services supported under this Agreement.

10.3 Political Aid and Legislative Influence Prohibited

- A. None of the funds provided under this Agreement shall be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of the Developer from furnishing to any member of its governing body upon request, or to any other local or state official or employee or to any citizen, information in the hands of the employee or official not considered under law to be confidential information. Any action taken against an employee or official for supplying such information shall subject the person initiating the action to immediate dismissal from employment.
- B. No funds provided under this Agreement may be used directly or indirectly to fund or support candidates for the legislative, executive, or judicial branches of government of the State of Texas or the government of the United States.

10.4 Certification Regarding Lobbying Owner and each of its tiers shall comply with the restrictions on lobbying governed by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) by executing the Certification Regarding Lobbying for Contracts, Grants, Loans and Cooperative Agreements attached hereto as Addendum A and incorporated herein for all relevant purposes.

10.5 Compliance with Federal, State and Local Laws Owners shall comply with all federal, state and local laws, statutes, ordinances, rules, regulations, orders and decrees of any court or administrative body or tribunal related to the activities and performances of Owner under this Agreement including, but not limited to (i) the Program Requirements, (ii) the federal laws under Part B, "Grantee Requirements," of the Program Guidelines attached as Exhibit 5 of the Cooperative Agreement, (iii) Cross-Cutting Federal Requirements in Section 9 of this Agreement, (iv) the Environmental Laws and Regulations in Section 9.1 of this Agreement and (v) the Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity laws in Section 9.6 of this Agreement.

10.6 Litigation and Claims

- A. Notice. Owner shall give TDHCA immediate notice, in writing, of the occurrence of any of the following events:
 - 1. any action, including any proceeding before an administrative agency, filed against Owner in connection with this Agreement; and
 - 2. any claim against Owner, the cost and expense of which Owner may be entitled to be reimbursed by TDHCA.

- B. Copies of Relevant Documents. Except as otherwise directed by TDHCA, Owner shall furnish immediately to TDHCA copies of all pertinent papers received by Owner with respect to such action or claim.

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

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

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

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

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

- A. Any of the following events: (i) catastrophic weather conditions or other extraordinary elements of nature or acts of God; (ii) acts of war (declared or undeclared), (iii) acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; and (iv) quarantines, embargoes and other similar unusual actions of federal, provincial, local or foreign Governmental Authorities; and
- B. The non-performing party is without fault in causing or failing to prevent the occurrence of such event, and such occurrence could not have been circumvented by reasonable precautions and could not have been prevented or circumvented through the use of commercially reasonable alternative sources, workaround plans or other means.

10.12 Changes and Amendments

- A. Except as specifically provided otherwise in this Agreement or in the Program Requirements, any changes, additions, or deletions to the terms of this Agreement shall be in writing and executed by both Parties to this Agreement.
- B. Any changes, additions, or deletions to the terms of this Agreement which are required by changes in federal or state law, or regulations, are automatically incorporated into this

Agreement without the requirement of a written amendment hereto, and shall become effective on the date designated by such law or regulation.

10.13 Counterparts This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

10.14 Facsimile Signatures

- A. Signed signature pages may be transmitted by facsimile or electronic transmission, and any such signature shall have the same legal effect as an original. An executed facsimile or email copy will be sufficient to evidence the Parties' agreement to any amendment, revision or change to this Agreement if it is made on a form provided by the TDHCA. If any party returns a copy by facsimile machine, the signing party intends the copy of its authorized signature printed by the receiving machine to be its original signature. If any party returns a copy by email, the signing party intends the copy of its authorized signature emailed to the receiving email to be its original signature.

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

10.15 Notice

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

1. **As to TDHCA:**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
P. O. Box 13941
Austin, Texas 78711-3941
Attention: Spencer Duran
Telephone: (512) 475-1784
Fax: (512) 475-3935

2. **As to Owner:**

Attention: _____
Telephone: _____
E-mail address: _____

- B. All notices or other communications hereunder shall be deemed given when delivered, mailed by overnight service, or five days after mailing by certified or registered mail, postage prepaid, return receipt requested, addressed to the appropriate Notice Address as defined in the above Subsection A of this Section 10.15.

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

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

10.18 Third Party Rights Nothing in this Agreement shall be construed as creating any right or any third party to enforce any provision of the Agreement, or to assert any claim against HUD or TDHCA.

10.19 Limitation on Abortion Funding Pursuant to Section 6.25 of Article IX of SB 1, 85th Legislature, Regular Session (2017) (General Appropriations Act), to the extent allowed by federal and state law, money appropriated by the General Appropriations Act for state fiscal year 2018 and 2019 may not be distributed to any individual or entity that, during the period for which funds under this General Appropriations Act are appropriated:

- A. Performs an abortion procedure that is not reimbursable under the State’s Medicaid program;
- B. Is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the State’s Medicaid program; or
- C. Is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the State’s Medicaid program. This limitation on funding does not apply to a hospital licensed under Chapter 241 of the Health & Safety Code, a State hospital, a State-owned teaching hospital, a teaching hospital, a residency program accredited for medical education, or an office exempt under Section 254.004(2) of the Health and Safety Code.

By execution of this Agreement, the Owner certifies that the individual or business entity named in this Agreement, as a condition of receipt of any appropriated funds, is not ineligible to receive

funds appropriated under the General Appropriations Act, and that it will not utilize appropriated funds in any way contrary to this Section 10.19 during the Term of this Agreement. Owner further acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

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

TDHCA:

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

By: _____

Name: _____

Its duly authorized officer or representative

Date: _____

OWNER:

(Entity Name)

(Entity Type)

By: _____

Name: _____

Date: _____

Title: _____

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
SECTION 811 PROJECT RENTAL ASSISTANCE PROGRAM**

**ADDENDUM A
Certification Regarding Lobbying for
Contracts, Grants, Loans, and Cooperative Agreements**

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

Statement for Loan Guarantees and Loan Insurance

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

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by Section

1352, Title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

OWNER:

_____ ,
a _____

By: _____, a _____,
its _____

By: _____

Name: _____

Title: _____

Date: _____

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
SECTION 811 PROJECT RENTAL ASSISTANCE PROGRAM**

ADDENDUM B

Certification Regarding Drug-Free Workplace Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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

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

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

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

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

1. _____
2. _____
3. _____
4. _____

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

If it is later determined that Owner knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, TDHCA, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

OWNER:

a _____

By: _____, a _____,
its _____

By: _____

Name: _____

Title: _____

Date: _____