

**CONTRACT FOR
HOME PROGRAMS
Community Housing Development Organization**

Article I. PARTIES

Section 1.01 This HOME Investment Partnerships Program (HOME) Community Housing Development Organization (CHDO) Contract for HOME Programs (the "Contract") is between the **City of Bryan** ("City"), a political subdivision of the State of Texas, and, **ELDER AID, INC.**, ("Recipient"), a Texas Non-Profit Corporation (collectively referred to herein as the "Parties").

Article II. CONTRACT PERIOD

Section 2.01 This Agreement shall commence when executed by all parties and terminate on September 12, 2018, unless extended by agreement of the Parties in writing.

Article III. RECIPIENT PERFORMANCE

Section 3.01 Recipient shall act in the role of Non-Profit Owner and Developer of affordable single-family homebuyer or rental housing in accordance with the HOME INVESTMENT PARTNERSHIPS ACT OF 1990, 42 U.S.C. 12701 ET SEQ. (THE ACT) and the implementing regulations, 24 CFR PART 92, TEXAS LOCAL GOVERNMENT CODE SECTION 373.001 ET SEQ., and the HOME INVESTMENT PARTNERSHIPS PROGRAM RULES. Recipient shall perform all activities in accordance with the terms of the Performance Statement, ("Exhibit A" attached hereto); the Budget, ("Exhibit B" attached hereto); the Project Implementation Schedule, ("Exhibit C" attached hereto); the Applicable Laws and Regulations, ("Exhibit D" attached hereto); the Certifications, ("Exhibit E" attached hereto); the Community Development Services Residential Construction Standards ("Exhibit F" attached hereto), Volunteer Release and Indemnification Agreement ("Exhibit G" attached hereto), the Land Use Restriction Agreement for rental developments ("Exhibit H" attached hereto) the assurances, covenants, warranties, certifications, and all other statements made by Recipient in its application for the project funded under this Agreement; and with all other terms, provisions, and requirements set forth in this Agreement.

Section 3.02 Recipient shall perform all activities in the Performance Statement substantially as submitted by the Developer in the Proposal submitted in response to the City of Bryan Request for Competitive Sealed Proposals RFP #16-057 within two (2) years of date of execution of this Agreement.

Section 3.03 In the event the affordability requirements of 24 CFR Part 92 are not satisfied by Recipient hereunder, Recipient shall bear ultimate responsibility for repayment of HOME funds.

Section 3.04 In the event that there is program income, repayments, and/or recaptured funds, the funds must be used in accordance with the requirements of 24 CFR 92.503, as outlined in the Performance Statement, "Exhibit A".

Section 3.05 Recipient agrees to maintain itself as a CHDO in accordance with Title II of the National Affordable Housing Act (1990), as it may be amended, concerning the HOME Investment Partnership program (HOME) and 24 CFR 92.300.

Section 3.06 **Recipient agrees that all applicants for housing funded under this agreement will be initially qualified and approved by the City of Bryan Community Development Services Department.**

Section 3.07 Recipient Insurance The Recipient agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this contract with the City of Bryan. All parties to this contract hereby agree that the Recipient's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

Recipient must deliver to City of Bryan a certificate(s) of insurance evidencing such policies are in full force and effect within 10 business days of notification of the City of Bryan's intent to award a Contract. No contract shall be effective until the required certificate(s) have been received and approved by the City of Bryan. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within 10 business days **may cause the contract to be rejected.**

The City of Bryan reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

- (a) **Workers' Compensation Insurance & Employers Liability Insurance** – Recipient shall maintain Workers' Compensation insurance for statutory limits and Employers Liability insurance with limits not less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease. Recipient shall provide Waiver of Subrogation in favor of the City of Bryan and its agents, officers, officials, and employees.
- (b) **Commercial General Liability Insurance** - Recipient shall maintain Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City of Bryan. The City of Bryan and its agents, officers, officials, and employees shall be listed as an additional insured.
- (c) **Business Automobile Liability Insurance** - Recipient shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Recipient shall provide Waiver of Subrogation in favor of the City of Bryan and its agents, officers, officials, and employees.
- (d) **Policy Limits** - Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Recipient agrees to endorse City of Bryan and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.
- (e) **Deductibles, Coinsurance Penalties & Self-Insured Retention** – Recipient may maintain reasonable and customary deductibles, subject to approval by the City of Bryan. Recipient shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.
- (f) **Subcontractors** - If the Recipient's insurance does not afford coverage on behalf of any Subcontractor(s) hired by the Recipient, the Subcontractor(s) shall maintain insurance coverage equal to that required of the Recipient. It is the responsibility of the Recipient to assure compliance with this provision. The City of Bryan accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.
- (g) **Acceptability of Insurers** - Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-: VI or better by AM Best Insurance Rating.

- (h) **Evidence of Insurance** – A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City of Bryan within 10 business days by the successful Recipient’s insurance agent or insurance company after contract award. Endorsements must be submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City of Bryan. Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration. Upon request, Recipient shall furnish the City of Bryan with certified copies of all insurance policies. The certificate of insurance and all notices shall be sent to:

City of Bryan
Risk Management
PO Box 1000
Bryan, TX 77805
Emailed to: mquiroga@bryantx.gov

Failure of the City of Bryan to demand evidence of full compliance with these insurance requirements or failure of the City of Bryan to identify a deficiency shall not be construed as a waiver of Recipient’s obligation to maintain such insurance.

- (i) **Notice of Cancellation, Non-renewal, Material Change, Exhaustion of limits** – Recipient must provide minimum 30 days prior written notice to the City of Bryan of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City of Bryan is notified a required insurance coverage will cancel or non-renew during the contract period, the Recipient shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City of Bryan reserves the right to withhold payment to Recipient until coverage is reinstated.
- (j) **Recipient’s Failure to Maintain Insurance** – If the Recipient fails to maintain the required insurance, the City of Bryan shall have the right, but not the obligation, to withhold payment to Recipient until coverage is reinstated or to terminate the Contract.
- (k) **No Representation of Coverage Adequacy** - The requirements as to types and limits, as well as the City of Bryan’s review or acceptance of insurance coverage to be maintained by Recipient, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Recipient under the Contract.

Section 3.08 The Recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts as specified:

- (a) For those contracts or subcontracts which exceed \$50,000, a payment bond on the part of the contractor or subcontractor shall be issued for the protection of the CHDO for 100 percent of the contract or subcontract price.
- (b) For those contracts or subcontracts which exceed \$100,000, a performance bond on the part of the contractor or subcontractor shall be issued for the protection of the City of Bryan in the amount of the contract or subcontract, conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.

Article IV. CITY OBLIGATIONS

Section 4.01 **Measure of Liability**. In consideration of full and satisfactory performance of the activities referred to in Article V of this Agreement, City shall be liable for actual and reasonable costs incurred by Recipient during the Agreement period for performances rendered under this Agreement by Recipient, subject to the limitations set forth in this Article IV.

The Parties agree that City's obligations to meet City's liabilities under Article IV of this Agreement are contingent upon the actual receipt of adequate local and/or federal funds. If adequate funds are not available to make payments under this Agreement, City shall notify Recipient in writing within a reasonable time after such fact is determined. City shall then terminate this Agreement and shall not be liable for failure to make payments to Recipient under this Agreement.

- (a) City shall not be liable to Recipient for any costs incurred by Recipient, or any portion thereof, which have been paid to Recipient or which are subject to payment to Recipient, or which have been reimbursed to Recipient, or are subject to reimbursement to Recipient, by any source other than City or Recipient.
- (b) City shall not be liable to Recipient for any costs incurred by Recipient which are not eligible project costs, as set forth in 24 CFR 92.206(A) and Article VI of this Agreement. Funds provided under this Agreement shall not be used nor shall City be liable for payment of costs associated directly or indirectly incurred because of prohibited activities as defined in 24 CFR 92.214.
- (c) City shall not be liable to Recipient for any costs incurred by Recipient or for any performances rendered by Recipient which are not strictly in accordance with the terms of this Agreement, including the terms of Exhibits A, B, C, D, E F G, and H of this Agreement.
- (d) City shall not be liable for costs incurred or performance rendered by Recipient before commencement or after termination of this Agreement.

Section 4.02 LIMIT OF LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL OF ALL PAYMENTS AND OTHER OBLIGATIONS INCURRED BY CITY UNDER THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED FORTY-FIVE THOUSAND, FOUR HUNDRED EIGHT AND 60/100, (\$45,408.60), FROM THE FY 2016 (HUD GRANT YEAR 2014) AND THIRTY-NINE THOUSAND, THREE HUNDRED THIRTY-NINE AND 30/100 (\$39,339.30) (HUD GRANT YEAR 2015) BUDGET.

Article V. DISBURSEMENT OF FUNDS

Section 5.01 City shall pay costs incurred which it determines are eligible and which are properly submitted under this Agreement in accordance with the requirements of 24 CFR 92.502. Recipient may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount of money needed to pay eligible costs actually incurred, and may not include amounts for prospective or future needs. Reimbursement requests shall contain an itemization of each expense item, and documentation, including paid receipts, invoices, signed draw requests, signed change orders, and canceled checks. Recipient may use up to ten percent (10%) of the grant amount for eligible program delivery expenses but in no case shall program delivery expenses exceed 10% of the project cost or funded amount, whichever is less, as determined by the City. These costs may include but are not limited to: Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups, costs to process and settle financing, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, impact fees, attorney's fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees, staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers. General administrative expenses of the CHDO are not eligible program delivery expenses.

Section 5.02 Any and all Program Income as defined by 24 CFR 84.2 must be disbursed by Recipient prior to requesting a disbursement of funds from the City. CHDO proceeds from the sale of properties developed under this agreement are not to be considered program income but may be retained by the CHDO as allowed under 24 CFR 92.300(a)(2), however, all such proceeds must be used for future HOME-eligible projects within the jurisdictional boundaries of the City of Bryan.

Section 5.03 The Parties agree that City's obligations to make payments under this Agreement are contingent upon Recipient's full and satisfactory performance of its obligations under this Agreement. City reserves the right to recover, recapture or offset funds paid under this Agreement in the event City determines that Recipient will be unable to commit or expend funds within the prescribed time, as determined by City. Recipient agrees to refund to the City all funds that the City in its sole discretion determines to have been used for ineligible and/or unapproved purposes. Such refunds will be made within thirty (30) days of notification by the City of the ineligible expenditure.

Section 5.04 The Parties agree that any right or remedy provided for in this Article V or in any other provision

of this Agreement is cumulative, and shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

Article VI. UNIFORM ADMINISTRATIVE REQUIREMENTS, COSTS PRINCIPLES AND PROGRAM INCOME FOR GOVERNMENT ENTITIES AND NON-PROFITS

Section 6.01 Recipient shall comply with the requirements of 2 CFR Part 200, as now in effect and as may be amended from time to time, and any other applicable regulations, OMB Circulars or federal requirements which may apply either prospectively or retroactively. Pursuant to 24 CFR 92.505, Recipient must comply with the requirements of 2 CFR Part 200, except for the following provisions: §§200.306, 200.307, 200.308 (not applicable to participating jurisdictions), 200.311 (except as provided in §92.257), 200.312, 200.329, 200.333, and 200.334. The provisions of 2 CFR 200.305 apply as modified by §92.502(c). If there is a conflict between definitions in 2 CFR part 200 and 24 CFR part 92, the definitions in 24 CFR part 92 govern.

Article VII. RETENTION AND ACCESSIBILITY OF RECORDS

Section 7.01 Recipient must establish and maintain sufficient records, including those listed under 24 CFR 92.508. The sufficiency of the records will be determined by City.

Section 7.02 Recipient shall give HUD, the Comptroller General of the United States, the City of Bryan Auditor, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by Recipient pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by Recipient. Recipient agrees to maintain such records in a location accessible to the above-named persons and entities.

Section 7.03 All records pertinent to this Agreement shall be retained by Recipient for five calendar years after the date of termination of this Agreement or of submission of the final close-out report, whichever is later, with the following exceptions:

- (a) If any litigation, claim or audit is started before the expiration of the five-year period and extends beyond the five-year period, the records will be maintained until all litigation, claims or audit findings involving the records have been finally resolved, including all legal and administrative appeals.
- (b) Records relating to real property acquisition shall be retained for the period of affordability required under 24 CFR Part 92.
- (c) Records covering displacement and acquisitions must be retained for at least five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with 24 CFR 92.353.

Section 7.04 Recipient shall require the substance of this Article VII to be included in all subcontracts.

Section 7.05 Recipient must provide citizens, public agencies, and other interested parties with reasonable access to records consistent with the TEXAS PUBLIC INFORMATION ACT.

Article VIII. REPORTING REQUIREMENTS

Section 8.01 Recipient shall submit to City such reports on the operation and performance of this Agreement as may be required by City including but not limited to the reports specified in this Article VIII. Recipient shall provide City with all reports necessary for City's compliance with 24 CFR Sections 92.508, 92.509 and 24 CFR SUBPART J or any other applicable statute, law or regulation. Recipient agrees to furnish the City with information on program participants, including: income verifications, race, ethnicity, age, sex, family status, disability status and head-of-household status. Recipient will report any project and/or program delays or modifications and await City approval before proceeding. Recipient will also report any instances of client fraud

or program abuse to the City. Recipient agrees to meet with the City to discuss progress or concerns as the need arises and at the City's request. Recipient also agrees to report on a bi-annual basis to the City on program/project status. This must be a written report of the status on recently completed, ongoing, and pre-approved programs and/or projects and must include information for the reporting period to include the status on: applicant approvals/denials; projects/programs approved; fund disbursements; project bidding information; property sales; contractor/subcontractor utilization to include: race, sex, ethnicity, addresses, social security numbers and amounts billed and paid; use of program income, repayments, and recaptured funds; and other information as specified by the City.

Section 8.02 In addition to the limitations on liability otherwise specified in this Agreement, it is expressly understood and agreed by the Parties hereto that if Recipient fails to submit to City in a timely and satisfactory manner any report required by this Agreement, City may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by Recipient hereunder. If City withholds such payments, it shall notify Recipient in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by City until such time as Recipient fully cures or performs any and all delinquent obligations which are identified as the reason funds are withheld.

Article IX. MONITORING

Section 9.01 The City reserves the right to carry out regular and periodic field inspections to ensure compliance with the requirements of this Agreement. Monitoring inspections may examine sitework, project files, financial records, client files, intake records, or any other information as deemed applicable by the City. After each monitoring visit, City shall provide Recipient with a written report of the monitor's findings. If the monitoring reports note deficiencies in Recipient's performances under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by Recipient. Failure by Recipient to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, as provided in Article XVIII and XIX of this Agreement.

Article X. INDEPENDENT CONTRACTOR

Section 10.01 It is expressly understood and agreed by the Parties hereto that City is contracting with Recipient as an Independent Contractor and not any employee, or agent of City. This Agreement does not establish or constitute a joint venture or enterprise between City and Recipient.

Section 10.02 By entering into this Agreement, City and Recipient do not intend to create a joint enterprise.

Article XI. INDEMNIFICATION

Section 11.01. RECIPIENT AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS CITY, ITS PUBLIC OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEMANDS, JUDGMENTS AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER INCLUDING REASONABLE ATTORNEY FEES, COSTS AND EXPERT FEES, WHICH MAY BE ASSERTED BY ANY THIRD PARTY OCCURRING OR IN ANY WAY INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH THE SERVICES AND WORK TO BE PERFORMED BY RECIPIENT UNDER THIS AGREEMENT.

SECTION 11.02. BY ENTERING INTO THIS AGREEMENT THE CITY DOES NOT WAIVE ITS GOVERNMENTAL IMMUNITY, THE LIMITATIONS AS TO DAMAGES CONTAINED IN THE TEXAS TORT CLAIMS ACT OR CONSENT TO SUIT.

Article XII. SUBCONTRACTS

Section 12.01 Except for subcontracts to which the federal labor standards requirements apply (12 or more units), Recipient may not subcontract for performances of any obligation required or described in this Agreement without obtaining City's prior written approval. Recipient shall only subcontract for performance obligations required or described in this Agreement to which the federal labor standards requirements apply after Recipient has submitted a Subcontractor Eligibility form, as specified by City, for each such proposed subcontract and

Recipient has obtained City's prior written approval, based on the information submitted, of Recipient's intent to enter into such proposed subcontract. Recipient, in subcontracting for the performance of any obligation required as described in this Agreement, expressly understands that in entering into such subcontracts, City is in no way liable to Recipient's subcontractor(s).

Section 12.02 In no event shall any provision of this Article XII, specifically the requirement that Recipient obtain City's prior written approval of a subcontractor's eligibility, be construed as relieving Recipient of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all of the terms of this Agreement, as if such performances rendered were rendered by Recipient. City's approval under Article XII does not constitute adoption, ratification, or acceptance of Recipient's or subcontractor's performance hereunder. City maintains the right to insist upon Recipient's full compliance with the terms of this Agreement, and by the act of approval under Article XII, City does not waive any rights or remedies which, may exist or which may subsequently accrue to City under this Agreement.

Section 12.03 Recipient shall comply with all applicable federal, state, and local laws, regulations, and ordinances for making procurement under this Agreement.

Section 12.04 Recipient shall submit a subcontractor utilization report prior to beginning work and prior to hiring any additional subcontractors.

Section 12.05 Recipient may utilize volunteer labor to accomplish the project, in which case the Recipient is responsible to ensure that the Volunteer Release and Indemnification Agreement (Exhibit G) shall be completed by each volunteer, and the original submitted to the City.

Article XIII. CONFLICT OF INTEREST

Section 13.01 No person who (a) is an employee, agent, consultant, officer or elected or appointed official of City or of any applicant that receives funds and who exercises or has exercised any functions or responsibilities with respect to activities assisted with funds provided under this Agreement or (b) who is in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain a personal or financial interest or benefit from a HOME assisted activity, or have an interest in any contract, subcontract or agreement (or the proceeds thereof) with respect to a HOME assisted activity either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. Recipient shall ensure compliance with applicable provisions under 24 CFR Sections 84.40 - 84.48 and OMB Circular A-110 in the procurement of property and services.

Article XIV. NONDISCRIMINATION AND SECTARIAN ACTIVITY

Section 14.01 Equal Opportunity. Recipient shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, family status, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Agreement. In addition, funds provided under this Agreement must be made available in accordance with the requirements of Section 3 of the HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (**12USC1701u**) that:

- (a) To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with HOME funds provided under this Agreement be given to low-income persons residing within the general local government area in which the project is located; and
- (b) To the greatest extent feasible, contracts for work to be performed in connection with any such project be awarded to business concerns, including, but not limited to, individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area or non-metropolitan City as the project.

Section 14.02 Religious Organizations. Funds provided under this Agreement may not be provided to primarily religious organizations, such as churches, for any activity, including secular activities. In addition, funds provided under this Agreement may not be used to rehabilitate or construct housing owned by primarily religious organizations, such as churches, for any activity, including secular activities. In addition, funds provided under this Agreement may not be used to rehabilitate or construct housing owned by primarily religious organizations or to assist primarily religious organizations in acquiring housing. The completed housing project must be used exclusively by the owner entity for secular purposes and must be available to all persons regardless of religion. There must be no religious or membership criteria for tenants of the property as specified under 24 CFR 92.257.

Article XV. LEGAL AUTHORITY

Section 15.01 Recipient assures and guarantees that Recipient possesses the legal authority to enter into this Agreement, to receive funds authorized by this Agreement, and to perform the services Recipient has obligated itself to perform hereunder.

Section 15.02 The person or persons signing and executing this Agreement on behalf of Recipient, or representing themselves as signing and executing this Agreement on behalf of Recipient, do hereby warrant and guarantee that he, she or they have been duly authorized by Recipient to execute this Agreement on behalf of Recipient and to validly and legally bind Recipient to all terms, performances, and provisions herein set forth.

Section 15.03 Recipient shall not employ, award contract to, or fund any person that has been debarred, suspended, proposed for debarment, or placed on ineligibility status by U.S. Department of Housing and Urban Development. In addition, City shall have the right to suspend or terminate this Agreement if Recipient is debarred, suspended, proposed for debarment, or ineligible to participate in the HOME Program.

Article XVI. LITIGATION AND CLAIMS

Section 16.01 Recipient shall give City immediate notice in writing of a) any action, including any proceeding before an administrative agency, brought or filed against Recipient in connection with this Agreement; and b) any claim against Recipient, the cost and expense of which Recipient may be entitled to be reimbursed by City. Except as otherwise directed by City, Recipient shall furnish immediately to City copies of all documents received by Recipient with respect to such action, proceeding, or claim.

Article XVII. CHANGES AND AMENDMENTS

Section 17.01 Except as specifically provided otherwise in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both the Parties to this Agreement.

Section 17.02 It is understood and agreed by the Parties hereto that any performance under this Agreement must be rendered in accordance with the Act, the regulations promulgated under the Act, the assurances and certifications made to City by Recipient, and the assurances and certifications made to the United States Department of Housing and Urban Development by the City with regard to the operation of the HOME Program.

Section 17.03 Any alterations, 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 written amendment hereto, and shall become effective on the date designated by such law or regulations. All other amendments to the Agreement must be in writing and signed by both Parties, except as provided in paragraphs 17.02 and 17.03.

Article XVIII. SUSPENSION

Section 18.01 In the event Recipient fails to comply with any term of this Agreement, City may, upon written notification to Recipient, suspend this Agreement in whole or in part and withhold further payments to Recipient, and prohibit Recipient from incurring additional obligations of funds under this Agreement.

Article XIX. TERMINATION

Section 19.01 The City may terminate this Agreement in whole or in part, in accordance with 24 CFR 85.43 and this Article or as provided in this Agreement. In the event Recipient materially fails as determined by City, to comply with any term of this Agreement, whether stated in a Federal statute or regulation, an assurance, in a City plan or application, a notice of award, or elsewhere, City may take one or more of the following actions:

- (a) Temporarily withhold cash payments pending correction of the deficiency or default by the Recipient.
- (b) Disallow all or part of the cost of the activity or action not in compliance; and require immediate repayment of such disallowed costs.
- (c) Withhold further HOME awards from Recipient.
- (d) Exercise other rights and remedies that may be legally available as determined by the City to comply with the terms of this Agreement.
- (e) City may terminate this Agreement for convenience in accordance with 24 CFR 85.44.

Article XX. AUDIT

Section 20.01 Unless otherwise directed by City, Recipient shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this Agreement, subject to the following conditions and limitations:

- (a) Recipient shall have an audit made in accordance with 24 CFR 92.506, THE SINGLE AUDIT ACT OF 1984, 31 U.S.C. 7501 et. seq., and OMB Circular No.133, "AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS", for any of its fiscal years included within the Agreement Period, in which Recipient receives more than \$300,000.00 in federal financial assistance provided by a federal agency in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance or direct appropriations, but does not include direct federal cash assistance to individuals. The term includes awards of federal financial assistance received directly from federal agencies, or indirectly through other units of State and local government;
- (b) At the option of Recipient, each audit required by this Article may cover either Recipient's entire operations or each department, agency, or establishment of Recipient which received, expended, or otherwise administered federal funds;
- (c) Unless otherwise specifically authorized by City in writing, Recipient shall submit the complete and final report of such audit to City within thirty (30) days after completion of the audit, but no later than one (1) year after the end of each fiscal period included within the period of this Agreement. Audits performed under Subsection A of this Article XX are subject to review and resolution by City or its authorized representative.
- (d) As part of its audit, Recipient shall verify expenditures according to the Budget attached as Exhibit B.

Section 20.02 Notwithstanding Paragraph 20.01 City reserves the right to conduct an annual financial and compliance audit of funds received and performances rendered under this Agreement. Recipient agrees to permit City or its authorized representative to audit Recipient's records and to obtain any documents, materials, or information necessary to facilitate such audit.

Section 20.03 Recipient understands and agrees that it shall be liable to City for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Agreement. Recipient further understands and agrees that reimbursement to City of such disallowed costs shall be paid by Recipient from funds which were not provided or otherwise made available to Recipient under this Agreement.

Section 20.04 Recipient shall take all necessary actions to facilitate the performance of such audit or audits conducted pursuant to this Article XX as City may require of Recipient.

Section 20.05 All approved HOME audit reports shall be made available for public inspection within 30 days after completion of the audit.

Article XXI. ENVIRONMENTAL CLEARANCE REQUIREMENTS

Section 21.01 Recipient understands and agrees that by the execution of this Agreement, City shall assume the responsibilities for environmental review, decision making, and other action which would otherwise apply to City in accordance with and to the extent specified in 24 CFR, PART 58. In accordance with 24 CFR 58.77(b), Recipient further understands and agrees that City shall handle inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

Section 21.02 **Funds provided under this Agreement, may not be obligated and expended before the actions specified in this Article occur.**

Section 21.03 City shall prepare and maintain a written Environmental Review Record for this project in accordance with 24 CFR PART 58 to ensure compliance with the NATIONAL ENVIRONMENTAL POLICY ACT (NEPA). Recipient must also maintain a copy of the Environmental Review Record in Recipient's project file. City must comply with all other applicable environmental requirements as specified in Exhibit D of this Agreement. City shall document its compliance with such other requirements in its environmental review file.

Article XXII. SPECIAL CONDITIONS

Section 22.01 City shall not release any funds for any costs incurred by Recipient under this Agreement until City has received certification from Recipient that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of and accounting for funds provided under this Agreement. City shall specify the content and form of such certification.

Section 22.02 Affordability. Funds provided under this Agreement must meet the affordability requirement of 24 CFR Part 92 and the HOME rules as applicable. The City shall reduce HOME investment amount to be recaptured on a pro-rata basis for the time the unit is in compliance with 24 CFR 92 and the HOME rules as applicable.

Section 22.03 Repayment. Recipient agrees that all repayments, including all interest and any other return on the investment of HOME funds will be made to City pro-rata. The formula for repayment is the funds received which are subject to repayment divided by the number of months in the period of affordability multiplied by the number of months that a home is not operated in accordance with the affordability requirement.

Section 22.04 Housing Quality Standards. Recipient shall ensure that all housing assisted with funds provided under this Agreement shall meet the requirements of 24 CFR 92.251 for the duration of this Agreement.

Section 22.05 Affirmative Marketing. Should funds from this Agreement be used in the construction of five (5) or more dwelling units, Recipient shall adopt Affirmative Marketing procedures and requirements. The Affirmative Marketing procedures and requirements shall include, but need not be limited to, those specified in 24 CFR 92.351. City will assess the efforts of the Recipient during the marketing of the units by use of compliance certification. Where a Recipient fails to follow the Affirmative Marketing procedures and requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions the City may deem necessary. Recipient must provide City with an annual assessment of the Affirmative Marketing program of the development, if an Affirmative Marketing program is required under this section. The assessment must include:

- (a) Method used to inform the public and potential residents about Federal Fair Housing laws and Affirmative Marketing policy. Recipient's advertising of housing must include the Equal Housing Opportunity logo or statement. Advertising media may include newspaper, radio, television, brochures,

leaflets, or signage. Recipient may wish to use community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, social service centers or medical service centers as resources for this outreach.

- (b) Records describing actions taken by the Recipient to affirmatively market housing and records to assess the results of these actions. Recipient must maintain a file containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letters) to be available for inspection at least annually by City.
- (c) Recipient shall solicit applications for housing from persons in the housing market who are least likely to apply for housing without benefit of special outreach efforts. In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the housing is located shall be considered those least likely to apply.
- (d) Recipient shall maintain a listing of all residents residing in each home through the end of the compliance period.
- (e) The Recipient will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include: Placing qualified small and minority businesses and women's business enterprises on solicitation lists; Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in the preceding paragraph.

Section 22.06 Enforcement of Affordability. For each activity assisted under this Agreement, agreements preserving the required affordability period shall be recorded in the real property records of Brazos County.

- (a) Homebuyer Activities: For homebuyer activities, City shall provide a legally enforceable agreement consisting of a Real Estate Lien Note and Deed of Trust, containing remedies adequate to enforce the affordability requirements of 24 CFR 92.254. The note and deed of trust will have a term of fifteen (15) years. Funds recaptured because housing no longer meets the affordability requirements under 24 CFR 92.254(a)(5) are subject to the requirements of 24 CFR 92.503.
- (b) Rental Activities: For rental activities, City shall provide a legally enforceable Land Use Restriction Agreement (LURA) containing remedies adequate to enforce the affordability requirements of 24 CFR 92.252. The LURA will have a term of twenty (20) years. Funds recaptured because housing no longer meets the affordability requirements under 24 CFR 92.252(e) are subject to the requirements of 24 CFR 92.503.

Section 22.07 Reversion of Assets. Upon termination of this Agreement, all funds remaining on hand on the date of termination and all accounts receivable attributable to the use of funds received under this agreement shall revert to City. Recipient shall return these assets to City within seven (7) days after the date of termination. This section does not refer to CHDO proceeds from the sale of property.

Section 22.08 Flood Hazards. Funds provided under this Agreement may not be used in connection with acquisition, rehabilitation, or construction of a development located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards.

Section 22.09 Fair Housing. Recipient participating in the HOME program shall use affirmative fair housing marketing practices in determining eligibility and concluding all transactions. These requirements apply to all projects of five (5) or more units. Each participating entity must affirmatively further fair housing in accordance with 24 CFR 92.350.

Section 22.10 Displacement, Relocation, and Acquisition. Recipient must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, business and nonprofit organizations) as a result of a project assisted with funds provided under this Agreement. Recipient must comply with the applicable provisions of 24 CFR 92.353.

Section 22.11 Property Standards. Recipient shall ensure that all housing assisted with funds provided under this Agreement (1) shall meet the lead-based paint requirements in 24 CFR 92.355 upon project completion and (2) shall meet the requirements of 24 CFR 92.355 for the duration of this Agreement.

Section 22.12 All documents necessary for the conveyance of real property, pursuant to the Agreement, must be approved, prior to execution, by the City. (i.e. deeds, notes, Deed of Trust, leases, etc.)

Section 22.13 Funding under this Agreement is contingent upon Recipient meeting all terms, conditions of this Agreement.

Section 22.14 This Agreement and the performance hereunder may not be assigned without the express written consent of City.

Section 22.15 This Agreement is binding on Recipient's assigns and successors-in-interest.

Article XXIII. ORAL AND WRITTEN CONTRACTS

Section 23.01 All oral and written contracts between the Parties 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.

Section 23.02 The attachments enumerated and denominated below are hereby made a part of this Agreement, and constitute promised performances by Recipient in accordance with Article III of this Agreement.

- (a) Exhibit A. Performance Statement
- (b) Exhibit B. Budget
- (c) Exhibit C. Project Implementation Schedule
- (d) Exhibit D. Applicable Laws and Regulations
- (e) Exhibit E. Certifications
- (f) Exhibit F. Community Development Services Residential Construction Standards
- (g) Exhibit G. Volunteer Release and Indemnification Agreement
- (h) Exhibit H. Land Use Restriction Agreement (Rental Developments)

Article XXIV. VENUE

Section 24.01 For purposes of litigation pursuant to this Agreement, venue shall lie in Brazos County, Texas.

Article XXV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

Section 25.01 Recipient 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 contractor under this Agreement. Upon request by City, Recipient shall furnish satisfactory proof of its compliance herein.

EXECUTED AND EFFECTIVE on this _____ day of _____, 20__.

ELDER AID, INC., INC.

CITY OF BRYAN

James C. Thomas, Board President

Jason P. Bienski, Mayor

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis Hampton, City Attorney

EXHIBIT A
PERFORMANCE STATEMENT
ELDER AID, INC.

- (1) Award. Recipient is awarded \$84,747.90 from the City of Bryan FY 2016 (HUD Grant Year 2014-2015) Community Development Services Department HOME Investment Partnerships Program funds. These funds must be used for: **Construction of Affordable Housing on the undeveloped property described as Lot 5 , Block 3, Westpark Phase 3, Bryan, Brazos County, Texas, also known as 1015 Bittle Lane. The home constructed shall be of a design approved by the City.**
- (2) Design and Construction.
 - a. Exterior construction shall consist of a minimum of 25% brick or stone veneer, with any remainder being fiber-cement siding. The brick portion will either be on the entire front of the home, or may be applied in wainscot fashion around the complete exterior, with the brick or stone veneer extending from the slab up to a reasonable and aesthetically appropriate height. Recipient shall submit final plans and specifications to the City's Community Development Services Department.
 - b. In addition to meeting minimum code requirements, the following features shall be installed:
 - i. AS SPECIFIED IN RESPONSE TO RFP #16-057
 - ii. Storage structure, garage, or exterior-access storage room with a minimum unobstructed open area of 80 square feet.
 - c. Preconstruction Conference Required: At least ten (10) days prior to applying for a building permit, Recipient shall attend a preconstruction conference with the City of Bryan Community Development Services Department to discuss the following issues:
 - i. Plans and Specifications Preview
 - ii. Press Release and Signage
 - iii. Draw Procedures
- (3) Substantially as in Response to RFP. Uses of funds, design, and construction, and all other elements of the project shall be to accomplish the development and sale or lease of property to income-eligible households, substantially as submitted by the CHDO in the Proposal submitted in response to the City of Bryan Request for Competitive Sealed Proposals RFP #16-057.
- (4) Sale Price: For homebuyer developments, the sale price shall be determined by the CHDO, but the maximum price may not exceed the fair market value of the property as determined by a market appraisal, which shall be contracted for by the CHDO. The minimum sale price shall not be less than fifteen percent (15%) below the appraised value without written agreement of the City.
- (5) Codes. All work must be in compliance with current City of Bryan Building Codes. All required permits must be obtained prior to any work commencing. All required inspections must be performed by the City of Bryan Building Inspectors.
- (6) Easements. Recipient shall dedicate any easements required by City including blanket easements which shall be substituted with as-built easements for all City utilities.

- (7) Recipient must provide written notification of all subcontractors to City on the Subcontractor Utilization Report form with all required subcontractor information, and required information on program participants.
- (8) Completion. The project must be substantially completed within one (1) year of the date of this contract. Upon completion of such construction Recipient must submit a copy of all receipts paid for the work associated with this contract. At that point, the City will have 30 days to make payment on said receipts, not to exceed maximums established in Exhibit B, Budgets.
- (9) Occupancy. Within six (6) months from issuance of the Certificate of Occupancy, said HOME unit must be occupied by an eligible resident. Recipient is not prohibited from conducting background check on credit history or criminal history. Any homeownership units which cannot be sold to an eligible homeowner within 6 months of project completion (date of issuance of the certificate of occupancy) shall be rented to an eligible tenant.
- (10) Recapture, Repayment, Program Income, and Project Proceeds. Income does not constitute program income, recaptured funds, or repayment of funds. However, any program income, recaptured funds, recaptured funds, or repayment of any funds must be immediately returned to the City of Bryan Community Development Services Department - HOME Investment Partnerships Program. The City grants the Recipient the authority for the right to maintain all project proceeds. Any/All program income, recaptured funds, repaid funds, project proceeds, etc., are subject to this contract.

**EXHIBIT B
BUDGET
ELDER AID, INC.**

SOURCES OF FUNDS:

Maximum Proceeds of Grant Under the Contract	\$84,747.90
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USES OF FUNDS:

Eligible Construction Costs	\$76,273.11
Maximum Program Delivery Expense (10% of Proceeds)	\$ 8,474.79

EXHIBIT C

PROJECT IMPLEMENTATION SCHEDULE

CONTRACT START DATE: September 13, 2016

CONTRACT END DATE: September 12, 2018

Construction Phase – Construction for this project is scheduled to begin September 30, 2016 with completion and certificate of occupancy date no later than September 12, 2018. The issuance of a building permit will constitute start of construction.

Marketing and Occupancy – Marketing of the completed project will begin no later than the date of issuance of the Certificate of Occupancy. Placement of a print advertisement in Bryan-College Station Eagle newspaper or a listing in the Bryan College Station Regional Association of Realtors Multiple Listing Service shall constitute the initiation of marketing. Occupancy of the completed project by a qualified homebuyer or renter household shall be within six months of the issuance of the Certificate of Occupancy.

Completion and all Funds Expended: September 12, 2018

EXHIBIT D

THE APPLICABLE LAWS AND REGULATIONS

Recipient shall comply with all federal, state, and local laws and regulations applicable to the activities and performances rendered by Recipient under this contract including but not limited to the laws, and the regulations specified in Section I through VI of this Exhibit D.

I. CIVIL RIGHTS

THE FAIR HOUSING ACT (42 U.S.C. 3601-20) AND IMPLEMENTING REGULATIONS AT 24 CFR PART 100; EXECUTIVE ORDER 11063, AS AMENDED BY EXECUTIVE ORDER 12259 (3 CFR, 1958-1963 COMP., P. 652 AND 3 CFR, 1980 COMP., P. 307) (EQUAL OPPORTUNITY IN HOUSING) AND IMPLEMENTING REGULATIONS AT 24 CFR, PART 107; AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (42 U.S.C. 2000D) (NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS) AND IMPLEMENTING REGULATIONS ISSUED AT 24 CFR, PART 1;

EXECUTIVE ORDER 11063, AS AMENDED BY EXECUTIVE ORDER 12259, AND 24 CFR PART 107, "NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063". THE FAILURE OR REFUSAL OF RECIPIENT TO COMPLY WITH THE REQUIREMENTS OF EXECUTIVE ORDER 11063 OR 24 CFR, PART 107 SHALL BE A PROPER BASIS FOR THE IMPOSITION OF SANCTIONS SPECIFIED IN 24 CFR 107.60;

THE PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF AGE UNDER THE AGE DISCRIMINATION ACT OF 1975 (42 U.S.C. 6101-07) AND IMPLEMENTING REGULATIONS AT 24 CFR, PART 146, AND THE PROHIBITIONS AGAINST DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. 794) AND IMPLEMENTING REGULATIONS AT 24 CFR, PART 8;

THE PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION OR GENDER IDENTITY BY HUD POLICY RULE AS PUBLISHED IN FR-5359.

THE REQUIREMENTS OF EXECUTIVE ORDER 11246 (3 CFR 1964-65, COMP., P. 339) (EQUAL EMPLOYMENT OPPORTUNITY) AND THE IMPLEMENTING REGULATIONS ISSUED AT 41 CFR, CHAPTER 60.

THE REQUIREMENTS OF 24 CFR 92.351 (MINORITY OUTREACH), EXECUTIVE ORDERS 11625 AND 12432 (CONCERNING MINORITY BUSINESS ENTERPRISE), AND 12138 (CONCERNING WOMEN'S BUSINESS ENTERPRISE). CONSISTENT WITH HUD'S RESPONSIBILITIES UNDER THESE ORDERS, RECIPIENT MUST MAKE EFFORTS TO ENCOURAGE THE USE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES IN CONNECTION WITH HOME FUNDED ACTIVITIES. RECIPIENT MUST PRESCRIBE PROCEDURES ACCEPTABLE TO THE CITY TO ESTABLISH ACTIVITIES TO ENSURE THE INCLUSION, TO THE MAXIMUM EXTENT POSSIBLE, OF MINORITIES AND WOMEN, AND ENTITIES OWNED BY MINORITIES AND WOMEN. THE CONTRACTOR / SUBCONTRACTOR WILL BE REQUIRED TO IDENTIFY CONTRACTS WHICH HAVE BEEN BID BY MINORITY OWNED, WOMEN OWNED, AND/OR SMALL DISADVANTAGED BUSINESSES.

THE AGE DISCRIMINATION ACT OF 1975 (42 U.S.C., SECTION 6101 ET SEQ.);

SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C., SECTION 794) AND "NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT", 24 CFR, PART 8.

BY SIGNING THIS CONTRACT, RECIPIENT UNDERSTANDS AND AGREES THAT THE ACTIVITIES FUNDED HEREIN SHALL BE OPERATED IN ACCORDANCE WITH 24 CFR, PART 8; AND THE ARCHITECTURAL BARRIERS ACT OF 1968 (42 U.S.C., SECTION 4151 ET. SEQ.) INCLUDING THE USE OF A TELECOMMUNICATIONS DEVICE FOR DEAF PERSONS (TDDs) OR EQUALLY EFFECTIVE COMMUNICATION SYSTEM.

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968(24 CFR PART 135.38) CHDO'S ARE ENCOURAGED, TO THE GREATEST EXTENT FEASIBLE, TO PROVIDE OPPORTUNITIES FOR TRAINING AND EMPLOYMENT FOR LOWER INCOME RESIDENTS AND BUSINESSES OF THE PROJECT AREA.

PATENT AND COPYRIGHT INFRINGEMENT NOTICE: SERVICE PROVIDER SHALL COMPLY WITH REGULATIONS PERTAINING TO COPYRIGHTS AND RIGHTS IN DATA AND REQUIREMENTS PERTAINING TO PATENT RIGHTS WITH RESPECT TO ANY DISCOVERY OR INVENTION WHICH ARISES OR IS DEVELOPED IN THE COURSE OF OR UNDER SUCH CONTRACT.

II. LEAD-BASED PAINT

TITLE IV OF THE LEAD-BASED PAINT POISONING PREVENTION ACT (42 U.S.C. SEC. 4831).

III. ENVIRONMENTAL STANDARDS

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (42 U.S.C. SEC. 4321 ET. SEQ.) AND 40 CFR PARTS 1500-1508;

THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 (16 U.S.C. SEC. 470 ET. SEQ.) AS AMENDED; PARTICULARLY SECTION 106 (16 U.S.C. SEC. 470F);

EXECUTIVE ORDER 11593, PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT, MAY 13, 1971 (36 FED. REG. 8921), PARTICULARLY SECTION 2(C);

THE RESERVOIR SALVAGE ACT OF 1960 (16 U.S.C. SEC. 469 ET SEQ.). PARTICULARLY SECTION 3 (16 U.S.C. SEC. 469A-1), AS AMENDED BY THE ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974; FLOOD DISASTER PROTECTION ACT OF 1973, (42 U.S.C. SEC. 4001 ET. SEQ.) AS AMENDED, PARTICULARLY SECTIONS 102(A) AND 202(A) (42 U.S.C. SEC. 4012A (A) AND SEC. 4106(A);

EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT, MAY 24, 1977 (42 FED. REG. 26951), PARTICULARLY SECTION 2(A).

EXECUTIVE ORDER 11990 PROTECTION OF WETLANDS, MAY 24, 1977 (42 FED. REG. 26961), PARTICULARLY SECTIONS 2 AND 5.

THE SAFE DRINKING WATER ACT OF 1974, (42 U.S.C. SEC. 201, 300(F) ET SEQ.) AND (21 U.S.C. SEC. 349) AS AMENDED, PARTICULARLY SECTION 1424(E) (42 U.S.C. SEC. 300H-303(E);

THE ENDANGERED SPECIES ACT OF 1973, (16 U.S.C. SEC. 1531 ET. SQ.) AS AMENDED, PARTICULARLY SECTION 7 (16 U.S.C. SEC. 1536);

THE WILD AND SCENIC RIVERS ACT OF 1968, (16 U.S.C. SEC. 1271 ET SEQ.) AS AMENDED, PARTICULARLY SECTION 7(B) AND (C)(16 U.S.C. SEC. 1278(B) AND (C);

THE CLEAN AIR ACT (41 U.S.C. SEC. 7401 ET SEQ.) AS AMENDED, PARTICULARLY SECTION 176(C) AND (D) (42 U.S.C. SEC. 7506(C) AND (D));

FARMLANDS PROTECTION AND POLICY ACT OF 1981, (7 U.S.C. SEC. 4201 ET SEQ.)

24 CFR PART 51, ENVIRONMENTAL CRITERIA AND STANDARDS.

IV. ACQUISITION/RELOCATION

THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (42 U.S.C., SEC. 4601 ET. SEQ.), 49 CFR PART 24, AND 24 CFR SECTION 570.496A (55 FED. REG. 29309 (JULY 18, 1990))

ANTI-DRUG ABUSE ACT OF 1988 (42 U.S.C. 11901 ET. SEQ.) REGARDING TERMINATION OF TENANCIES FOR DRUG RELATED OFFENSES IN ASSISTED HOUSING.

V. LABOR REQUIREMENTS

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, AS AMENDED (40 USC 327-333), COPELAND (ANTI-KICKBACK) ACT (40 USC 276C), FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED (29 USC 201, ET. SEQ.), AND DAVIS-BACON AND RELATED ACTS (40 USC 276(A)-7) **(12 OR MORE UNITS ONLY)**.

EMPLOYMENT OF CERTAIN PERSONS PROHIBITED: NO PERSON UNDER THE AGE OF SIXTEEN YEARS AND NO PERSON WHO, AT THE TIME, IS SERVING SENTENCE IN A PENAL OR CORRECTIONAL INSTITUTION SHALL BE EMPLOYED IN THE WORK OF THIS PROJECT.

H.B. 275, THE TEXAS PROMPT PAYMENT ACT: SERVICE PROVIDER SHALL COMPLY WITH THE TEXAS PROMPT PAYMENT ACT, EFFECTIVE JULY 1, 1986, WHICH IN PART, REQUIRES THE SERVICE PROVIDER TO PAY THEIR SUBCONTRACTORS WITHIN TEN (10) CALENDARS DAYS AFTER THEY RECEIVE PAYMENT FROM THE CITY OF BRYAN.

EXHIBIT E

**CERTIFICATION REGARDING LOBBYING FOR
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

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

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

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

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 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.

Signed: BY: _____
James C. Thomas, Board President
Elder Aid, Inc.

DATE: _____

Exhibit F

CITY OF BRYAN
COMMUNITY DEVELOPMENT SERVICES
RESIDENTIAL CONSTRUCTION STANDARDS

I. **GENERAL**

- a. All standards listed herein that are in conflict with applicable City ordinances and/or building codes, shall be rejected and the applicable development standards shall prevail if more restrictive. All standards listed herein that are in conflict with applicable property deed restrictions, shall be rejected and the applicable property deed restrictions shall prevail if more restrictive.
- b. These Residential Building Development Standards are the City of Bryan's basic minimum standards by which a residential structure may be approved for development.
- c. Any conflict between these standards and the City's codes and ordinances shall be brought to the attention of the Community Development Services Department.

II. **SITE**

- a. Building foundation finished grade shall be formed to a minimum of 6" higher than the highest point of existing topographical gradient within the building footprint. In the cases where a building is constructed partially or completely in a flood plain, applicable national building standards for building in a flood plain shall prevail.
- b. Finished grade around the building perimeter shall be a minimum of 4" below brick ledge or bottom of siding, and all site grading shall be manipulated and sloped to move water away from building foundation, and towards a natural flow drainage area. Site drainage grading shall meet the approval of the City's Drainage Engineer.
- c. All yard area shall be sodded or hydro-seeded with Bermuda grass (native to Brazos Valley area climate) and kept alive and maintained until the house is conveyed to a qualified buyer.
- d. A minimum of one - 2" diameter tree (native to Brazos Valley area climate) shall be placed in the front yard and kept alive and maintained until the house is conveyed to a qualified buyer.
- e. Sanitary sewer, water, gas and rainwater drainage utility service lines shall be buried at minimum bury depths in accordance with applicable City codes and ordinances. Aerial phone, cable and electrical utility service lines shall be installed at heights that comply with City codes and ordinances and shall not interfere with typical equipment common to residential neighborhoods.
- f. Site plantings of trees, bushes and shrubs shall be installed in accordance with applicable City codes and ordinances, and shall not obstruct traffic vision of neighborhood driveways and pedestrians.

- g. If property landscape development is regulated by deed restrictions, deed restrictions shall prevail.

III. FOUNDATION

- a. Foundations shall be constructed in compliance with the most currently adopted City residential building codes and ordinances. However, it is a good practice for an engineer to design foundation plans and details based upon the soil beneath the foundation, and the loads that will be imposed upon the foundation.
- b. Foundation footprints shall be established within the property building set-back lines, unless a variance has been requested and granted by the appropriate City board or commission prior to construction. City staff may not always support a contractor/developer variance request, but reasons regarding staff opposition to the variance shall be explained to the contractor/developer prior to the variance hearing.
- c. Recessed brick ledges shall be installed at all exterior masonry veneer locations. No recessed brick ledge shall be installed in areas where siding is used at the base of the exterior wall.
- d. No block and pad pier and beam-type foundations shall be allowed on new construction homes. Architect and/or engineer-approved drilled pier foundations may be used.

IV. EXTERIOR BUILDING ENVELOPE

- a. Builders are encouraged to incorporate the City of Bryan and Bryan Texas Utilities Green Plus energy rebate program into their home design.
- b. Exterior wall area shall be composed of a minimum of 25% brick, stone or stucco veneer. Remaining exterior wall area shall be composed of Hardie® brand lap siding or an equivalent product in material composition to the Hardie® brand.
- c. Exterior walls shall be rated at R-13 minimum and the attic space shall be rated at R-30 as per City codes.
- d. Windows shall be double insulated, low-E designed windows that comply and are installed in accordance with the currently adopted International Energy Conservation Code, and shall be sized in accordance with the International Residential Code for emergency egress.
- e. Exterior doors shall be six-panel, metal insulated, foam core doors. Front and rear doors may have a half-moon window or other door top window which are out of reach of the door locks for security purposes. A peep-hole shall be installed in front door if a solid front door is selected. All exterior doors shall be weather-stripped, pre-hung units with one of the doors (preferably front) required to be a 3068 door.
- f. Exterior wall sheathing shall be 7/16" OSB or 1/2" plywood, covered with IECC recommended house wrap, spliced, taped and appropriately folded and sealed into exterior wall openings, and all wall penetrations properly sealed.

- g. All pipe penetrations through the exterior walls shall be sleeved with steel pipe or galvanized sleeves the thickness of the penetrated areas, and penetrate as close to the equipment as possible, or as low as possible for proper discharge. No pipes or HVAC line-sets shall run down the brick face to equipment, or covered with a shroud. All gaps between sleeves and pipes shall be filled with latex caulk to match as close as possible the color of the brick grout. Expanding foam may also be used, but foam or caulk shall have smooth finish with sleeve opening NO BEADS OR PROTRUSIONS.
- h. All exterior wall bottom plates shall be wolmanized treated 2" x 4" nominal sized #2 southern yellow pine lumber material. All exterior wall studs shall be #2 kiln-dried southern yellow pine lumber material. Top plates shall be 2" x 4" nominal sized southern yellow pine lumber material. Multi- story homes shall use nominally sized southern pine lumber material and/or engineered laminated products sized to the support load.
- i. Soffits shall be constructed of HardieSoffit® brand perforated soffit, and all exterior brick frieze and trim materials shall be HardieTrim® brand materials (or approved equals).
- j. Roof sheathing shall be 15/32" Georgia Pacific Plytanium® Thermostat® plywood radiant barrier sheathing or an approved equal. Foil face side of the sheathing shall face attic.
- k. Roof sheathing shall be covered with at least 15# roofing felt. Galvanized D-drip edge shall be installed around roof edge perimeter. A ridge vent and a minimum of one wind turbine shall be installed as per manufacturer's recommendations on the roof sheathing prior to felt coverage. All roof pipe and metal vent penetrations shall be appropriately flashed, collared, capped and sealed prior to roof felt coverage. Roof shingles shall be 30-year architectural dimensional shingles with a light, neutral color to reflect heat.
- l. Exterior siding and trim cracks, seams and joints shall be caulked with an exterior 30 year latex caulk, and all exterior paint surfaces shall be primed and painted with a minimum of two coats durable exterior acrylic latex paint carrying a 30 year or more warranty.
- m. Front porches, rear porches and stoops shall be designed to provide ample cover and protection from inclement weather for the occupants opening the exterior doors.
- n. A 15-1/4" x 9-1/4" limestone address block with black numbers shall be installed in a conspicuous location on the front of the house, easily observed from the frontage street if a solid front brick, stone or stucco veneer is used. If siding is used on the front of the structure, a decorative brass address house plate (or approved equal) with minimum of 4" numbers shall be installed, and located as stated above.
- o. A lighted doorbell shall be installed at the front door location.
- p. Exterior decorative lights shall be installed at all exterior door locations and a front and rear 2-way flood light shall be installed under soffit corners to illumine the front, rear and side yards for security. Flood lights shall also be switched at nearest exterior door locations for easy access.

V. INTERIOR

- a. Structure shall be a minimum of 1,000 square feet of conditioned air space, or, upon approval of the City, may be smaller to accommodate lot requirements or the space needs

and affordability requirements of the household, or is an elderly rental under a Land Use Restriction Agreement.

- b. Single Family structures shall be a minimum of 2 bedrooms, 1-1/2 baths except for elderly rental under a Land Use Restriction Agreement may be one-bedroom.
- c. Structure shall have a minimum of a one car garage or carport (unobstructed open space of 10' W x 20' L). In lieu of the garage, a storage structure or storage room may be substituted with a minimum unobstructed open area of 80 square feet and six foot width.
- d. Structure shall be equipped with a name brand HVAC split-system or heat pump, sized in accordance with applicable codes and carrying a minimum of 13 SEER rating.
- e. All interior walls shall be framed with 2" x 4" nominal size Temple® brand #2 southern yellow pine studs (or equal), with wolmanized sole plates and double top plates. Ceiling joists and rafters shall be sized in accordance with City codes and ordinances. Wet walls shall be sized to accommodate piping holes and notches in accordance with City codes and ordinances. Blocking shall be installed securely at all cabinetry and hardware locations.
- f. A folding attic stair or scuttle hole shall be installed in garage or hallway, sized to accommodate the replacement of largest equipment to be serviced in the attic space.
- g. All plumbing faucets and valves shall be builder grade or better, and finish of faucets and valves shall match finish of electrical fixtures and hardware in bathrooms and kitchen areas.
- h. All bedrooms and living room shall be equipped with cable TV and telephone jacks.
- i. Appliance spaces shall be Energy Star-rated, and mechanically fitted to receive either gas or electrical appliances at the stove, oven, water heater, dryer and air handler locations.
- j. An icemaker stop or recessed box shall be supplied to all refrigerator or ice maker locations.
- k. All vent-a-hoods requiring ducts shall be vented through the roof. Charcoal filter, non-vented vent-a-hoods are permissible.
- l. Kitchen sinks shall be a minimum of satin finish, stainless steel double basin, seven inches (7") deep with a one-half (½") horsepower food disposer.
- m. Flooring materials shall be strong and durable products carrying a minimum of 15 year warranty. Flooring products containing recycled materials are preferred. No long shag carpet shall be allowed. Ceramic tile or vinyl flooring is required in all wet areas.
- n. Exterior mounted instantaneous gas water heaters are preferred, but if not used, a well-insulated Energy Star rated 40 gallon tank heater is the required minimum.
- o. Dryers shall be vented out a side wall only...no venting upwards is allowed.
- p. Ceilings shall be a minimum of 8' (designed 9' vaulted, boxed or chamfered ceilings are encouraged).

- q. All bedroom and bathroom doors shall have minimum of KwikSet Valiant (equal or better) privacy knobs, closets shall have passage knobs, and exterior doors shall be keyed alike and equipped with a keyed entry knob and a keyed entry-single cylinder deadbolt lock.
- r. Kitchen counter tops shall be minimum quality of Wilson Art laminated plywood countertops with 4" or rolled backsplash. No pre-formed countertops shall be allowed.
- s. All bath lavatories, vanities, tub/shower and shower units shall be at minimum Lasco Fiberglass units or better.
- t. All kitchen and bath cabinetry units shall be, at minimum, Leedo Oakview units.
- u. Energy Star rated ceiling fans shall be installed in all bedrooms and living area.
- v. Hard-wired smoke detectors, wired in series, shall be installed in accordance to City codes. All smoke detectors shall sound off when one is activated.

EXHIBIT G

VOLUNTEER RELEASE AND INDEMNIFICATION AGREEMENT

I, _____, a volunteer work group member of _____
(Print Name)

Elder Aid, Inc., a Texas, Non-Profit Corporation, will be providing
(Non-Profit Agency)

volunteer labor on the dwelling located at 1015 Bittle Ln, Bryan, Brazos County, Texas.
(Property Address)

I, THE UNDERSIGNED agree to and shall indemnify and hold harmless THE CITY OF BRYAN, its public officials, officers, agents and employees from and against any and all claims, losses, demands, judgments and causes of action of every kind and character including reasonable attorney fees, costs and expert fees, which may be asserted by any third party occurring or in any way incident to, arising out of, or in connection with the services and work to be performed. I understand that the City of Bryan is not responsible for the work being conducted on this project. I understand that the labor may involve a risk of injury to myself or others, and that the City of Bryan is not responsible for those risks nor does the City have any duty to mitigate those risks or make me aware of same. I understand that the City does not waive its governmental immunity, the limitations as to damages contained in the Texas Tort Claims Act or consent to suit. I hereby waive any claim I may have now, or that may arise in the future, against the City of Bryan arising out of or in connection with the services and work to be performed.

Signature of Volunteer Participant

Date

Printed Name of Volunteer Participant

TX Driver's License or ID #
(Required)

Home Address # Street City State Zip

Phone # Email

EXHIBIT H

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

DECLARATION OF LAND USE RESTRICTIVE COVENANTS
LAND USE RESTRICTION AGREEMENT
FOR HOME INVESTMENT PARTNERSHIPS PROGRAM
(Rental Developments)

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS/LAND USE RESTRICTION AGREEMENT FOR THE HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME) (this "Declaration"), is made by and between Elder Aid, Inc., Inc., a Texas nonprofit corporation, (together with any successors and assigns, the "Project Owner") and the City of Bryan, (together with any successor to its rights, duties and obligations, the "City"), (Collectively, the "Parties") and is given by Project Owner as an inducement to the City to allocate HOME funds for the development of affordable rental housing which satisfies the requirements of the City's HOME program pursuant to 24 CFR 92.252.

WITNESSETH:

WHEREAS, the Project Owner is or shall be the Project Owner of a low income rental housing development, known as 1015 Bittle Lane, more particularly described as **Lot Five (5), Block Three (3), Westpark Phase 3, an addition to the City of Bryan, Texas, according to plat thereof recorded in Volume 575, page 289, Deed Records of Brazos County, Texas** (the "Project");

WHEREAS, the City has been designated by the U.S. Department of Housing and Urban Development (HUD) as a Public Jurisdiction for the allocation of HOME funds;

WHEREAS, the Project Owner, Elder Aid, Inc., Inc., a recipient of an allocation of HOME funds for the rehabilitation of the Project in the amount of \$84,747.90,

WHEREAS, the HOME CHDO agreement (the "Agreement"), of September 13, 2016 between the City and Elder Aid, Inc., Inc., authorized the expenditure of HOME funds for the purpose of affordable housing development;

WHEREAS, 24 CFR 92.252 requires that the Project Owner execute, and record in the real property records of the county in which the Project is located this Declaration in order to create certain covenants running with the land for the purpose of regulating and restricting the use and occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Project Owner, under this Declaration, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the Term stated herein, are binding upon all subsequent owners and operators of the Project during such Term, and are not merely personal covenants of the Project Owner.

NOW, THEREFORE, in consideration of the premises set forth above, and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Project Owner and the City agree as follows:

SECTION 1 – DEFINITIONS

(a) Unless the context otherwise requires, and in addition to those terms defined in the recitals set forth above, capitalized terms used in this Declaration shall have the following meanings:

"Affordability Compliance Period" means, the period of twenty (20) consecutive year beginning with the first year of following the execution of this Declaration by all the Parties.

"Area Median Gross Income" means the median gross income of the area in which the Project is located as determined by the Secretary of Housing and Urban Development for purposes of 24 CFR 92.252, including adjustments for family size.

"Council" means the City Council of the City of Bryan.

"Gross Rent" means all amounts paid by a Tenant for rent, determined in a manner consistent with 24 CFR 92.252. If the Tenant pays utilities directly, Gross Rent shall include any utility allowance prescribed by HUD.

"HUD" means the U.S. Department of Housing and Urban Development

"Income" means the income of a Tenant determined in a manner consistent with the requirements of 24 CFR 92.203.

"Low-Income" means, with respect to any Tenant, an income level not exceeding 60% of Area Median Gross Income, adjusted for family size.

"Monitoring Procedures" means those procedures and requirements adopted or imposed by the City, and modified by the City from time to time, for the purpose of discharging its responsibilities pursuant to 24 CFR 92.252 to monitor compliance by the Project Owner and the Project with the provisions of 24 CFR 92.252 and to notify the Project Owner of instances of noncompliance.

"Rent-Restricted" means, with respect to the Project, that the Gross Rent with respect to a Unit in the Project as published by HUD and established by 24 CFR 92.252, which is the lesser of: (1) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or (2) A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit.

"Tenant" means the individual or individuals entitled to occupy a Unit in the Project by lease or other legal relationship with the Project Owner.

"Term" means the length of time this declaration shall remain in effect as set out in Section 5 hereof.

"Unit" means any residential rental unit in the Project consisting of an accommodation containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

(b) Any term or phrase which is used in this Declaration and not defined herein shall have the meaning, if any, assigned thereto in 24 CFR 92.252. Any term or phrase which is defined herein shall, unless the context shall clearly indicate otherwise, be interpreted in a manner consistent with the provisions and requirements of 24 CFR 92.252.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

(a) Following the execution of this Declaration by all parties, the City shall, at its own cost, cause this Declaration and all amendments hereto to be recorded and filed in the Brazos County Real Property Records. Upon recording, the City shall immediately transmit to the Project Owner an executed original of the recorded Declaration stamped by the county to show the date, volume and page numbers of record.

(b) The Project Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the Term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project, encumbering the Project for the Term of this Declaration and binding upon the Project Owner's successors in title and all subsequent owners and operators of the Project Land, and (ii) shall bind the Project Owner (and the benefits shall inure to the City and any past, present or prospective Tenant of the Project) and its respective successors and assigns during the Term of this Declaration. The Project Owner hereby agrees that any and all requirements of 24 CFR 92.252 to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project. For the Term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.

SECTION 3 – PROJECT OWNER REPRESENTATIONS, COVENANTS, AND WARRANTIES

(a) The Project Owner (i) is an authorized and qualified to transact in the City any and all business contemplated by this Declaration; (ii) possesses all requisite power, authority, licenses and permits to own its properties and assets and to conduct its business; and (iii) has all legal right, power and authority to execute and deliver this Declaration.

(b) The execution and performance of this Declaration by the Project Owner (i) will not violate or, as applicable, have not violated, any provision of law, rule or regulation, or any order of any court or other department of the City or governmental body, (ii) will not violate or, as applicable, have not violated, any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which the Project Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Project Owner has, at the time of execution and delivery of this Declaration, good and indefeasible fee simple title to the premises constituting the Project, free and clear of any lien or encumbrance, except those created by any loan documents relating to the Project.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Owner threatened, against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.

(e) The Project constitutes or will constitute, and the Project Owner covenants, that commencing from the date of execution of this Declaration by all the Parties, and continuing throughout the Term of this

Declaration, it shall maintain the Project as, a "Rent Restricted", "Low Income" housing project, as defined in 24 CFR 92.252 and this Declaration.

(f) During the Term of this Declaration, the Project Owner covenants, agrees and warrants that each Low-Income Unit is and will remain suitable for occupancy in accordance with the regulations of 24 CFR 92.251, Property Standards, and 24 CFR 92.401, Housing Quality Standards (HQS), as well as all applicable local health, safety, and building codes.

(g) Subject to the requirements of 24 CFR 92.252 and this Declaration, the Project Owner may sell, transfer or exchange the entire Project or any building in the Project at any time, provided that the Project Owner shall require, as a condition precedent to any such sale, transfer or exchange, that the successor owner and operator assume, in writing, in an Assumption Agreement acceptable to the City, the Project Owner's obligations hereunder and under 24 CFR 92.252, which Assumption Agreement shall be delivered to the City in executed, recordable form prior to any such sale, transfer or exchange. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project. The Project Owner agrees that the City may void any sale, transfer or exchange of the Project if the successor owner and operator fails to execute and deliver an Assumption Agreement or if the Project Owner or the successor owner and operator otherwise acts in contravention of this Section 3(g). This Declaration and the covenants contained herein shall survive and be effective regardless of whether any such successor owner and operator or intended successor owner and operator shall have assumed them pursuant to an executed Assumption Agreement.

(h) The Project Owner agrees to notify the City in writing prior to any sale, transfer or exchange of the Project, or any portion thereof, and to provide to the City the name(s) and address(es) and financial reports, as applicable, of the prospective successor owner and operator of the Project or portion thereof, so the City can determine the economic viability of such prospective successor and such Project or portion thereof, and whether such prospective successor is acceptable as Project Owner. The Project Owner further agrees to notify the City in writing prior to any change in the identity of, or addition of any General Partner or other Principal of the Project Owner, and to provide to the City the name(s), address(es), and financial reports, as applicable, of any successor or additional General Partner or Principal, so the City can determine whether such party is acceptable in such role with the Project Owner.

(i) The Project Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any Unit for any purpose other than rental housing during the Term of this Declaration, unless required by law.

(j) The Project Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.

(k) The Project Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(l) The Project Owner agrees, warrants, and covenants to comply with all law, ordinances, statutes, codes, orders, rules, regulations and decrees of the United States, the State, the City of Bryan and any other Governmental Authority applicable to the Owner of the Project, including, without limitation, the following: the Civil Rights Act of 1964 (42 U.S.C. 2000(d); Executive Order 11-63, as amended by Executive Order 12259; Executive Order 11 246; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Fair Credit Reporting Act (15 U.S.C. 1681

et seq.); Fair Housing Act (42 U.S.C. 3601 et seq.); HUD Policy Rule FR-5359, Equal Access to Housing in HUD Programs, the Americans with Disabilities Act of 1990 (P.L. 101-336; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.); Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11625, 1 2432 and 12138, as amended; the Copeland “Anti-Kickback” Act (18 U.S.C. § 874 et seq.); the Davis-Bacon Act (40 U.S.C. § 276a et seq.); Sections 103 and 107 of the Work Hours and Safety Standards Act. (40 U.S.C. § 327 et seq.); the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4201 et seq.); the Housing and Community Development Act of 1974; the National Environmental Policy Act (42 U.S.C. § 4321 et seq.); (“NEPA”); the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4321 et seq.); the State of Texas Senate Bill 1356; Title 8, and Chapter 92 of the Texas Property Code; Solid Waste Disposal Act TEX. HEALTH & SAFETY CODE Ann. Ch. 361 (Vernon’s 1992); Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act. TEX. HEALTH & SAFETY CODE Ann. Ch. 363 (Vernon’s 1992); County Solid Waste Control Act. TEX. HEALTH & SAFETY CODE Ann. Ch. 364 (Vernon’s 1992); Texas Clean Air Act, TEX. HEALTH AND SAFETY CODE Ann. Ch. 382 (Vernon’s 1992); and Hazardous Communication Act, TEXAS HEALTH AND SAFETY CODE Ann. Ch. 502 (Vernon’s 1992); and such Governmental Requirements as may be from time to time amended or superseded and all of their implementing regulations, as may be amended.

SECTION 4 - INCOME RESTRICTIONS/RENTAL RESTRICTIONS

The Project Owner represents, warrants and covenants throughout the Term of this Declaration and in order to satisfy the requirements of 24 CFR 92.252 that:

(a) (1) The Project will continuously be maintained as both Rent-Restricted and occupied by individuals whose income is 60% or less of Area Median Gross Income and (2) that maximum rent per Unit shall not exceed the maximum High HOME Rent as published by HUD subject to the requirements of Section 4(b) below.

(b) The determination of whether a Tenant is a Low-Income Tenant shall be made by the Project Owner at least annually on the basis of the current income of such Low-Income Tenant. The Project Owner shall utilize forms as permitted from time to time by the City for providing this certification. If, upon any such annual certification, the Tenant who was, at the last annual income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, pursuant to 24 CFR 92.252, the household shall not be required to move, however rent shall be 30 percent of the family's adjusted income. The Project will contain a total of one (1) Unit, which will be designated a Low-Income Unit. During the Term of this Declaration, all (100%) Units at the Project shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants. The Project Owner's failure to ensure that the Project complies with such requirement will cause the City to report such fact to the Project Owner, and may result in the recapture of HOME funds under the Agreement, as well as other enforcement action.

(c) The Project Owner shall not discriminate on the basis of race, color, national origin, religion, sex, (including sexual orientation or gender identity), familial status, or disability in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, and shall not deny admission to any person exclusively on the basis of such person receiving rent assistance payments under a local, state, federal or other housing assistance program, including, but not limited to, Section 8 of the United States Housing Act of 1937 as amended.

(d) The Project Owner acknowledges that whether a Tenant is a Low-Income Tenant is a matter of fact, to be determined in accordance with applicable law, and the Project’s Owner’s determination as to such

matter is not binding upon the City.

- (f) During the Affordability Compliance Period, the Project Owner, notwithstanding anything herein to the contrary, shall not (1) evict or terminate the tenancy of a Tenant of any Low-Income Unit other than for good cause nor (2) increase the gross rent with respect to a Low-Income Unit not otherwise permitted by 24 CFR 92.252, including providing at least thirty (30) days written notice of any rent increase to the Tenant.

SECTION 5 - TERM OF DECLARATION

(a) This Declaration shall become effective with respect to a building in the Project on the first day of the Affordability Compliance Period for such building and shall terminate on the last day of the Affordability Compliance Period, unless this Agreement is earlier terminated pursuant to Section 5(b) hereof (the "Term").

(b) Notwithstanding subsection (a) above, this Declaration shall terminate:

(1) with respect to any building in the Project, on the date such building is acquired by foreclosure (or instrument in lieu of foreclosure), upon the recorded declaration of termination of the party so acquiring the building, unless the City determines that such acquisition is part of an arrangement a purpose of which is to terminate such period. If any party acquiring a building by foreclosure (or instrument in lieu of foreclosure) fails to record a declaration terminating this Declaration, the building shall remain subject to this Declaration; or

(2) following the end of the Affordability Compliance Period, subject to the consent of the City, upon the acquisition of the Project by the Tenants of the Project, a qualified nonprofit organization or a government agency; or

(c) If this Declaration is terminated pursuant to subsection (b) above and notwithstanding anything herein to the contrary, the Tenant of any Low-Income Unit on the date of such termination shall be entitled to occupy such Unit in accordance with the provisions of this Declaration for a period of three years following such termination date, provided, however, that upon a showing of good cause, such Tenant's tenancy may be terminated or such Tenant evicted.

SECTION 6 - ENFORCEMENT, ADMINISTRATION, AND COMPLIANCE

(a) The Project Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of 24 CFR 92.252 or this Declaration. Moreover, the Project Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary in the sole opinion and at the request of the City) to comply fully with 24 CFR 92.252 and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of Housing and Urban Development, from time to time, pertaining to the Project Owner's obligations under 24 CFR 92.252 and affecting the Project.

(b) The Project Owner acknowledges that (i) the primary purpose for requiring compliance by the Project Owner with the restrictions provided in this Declaration is to assure compliance of the Project and by the Project Owner with 24 CFR 92.252, AND BY REASON THEREOF, THE PROJECT OWNER, IN CONSIDERATION FOR RECEIVING THE HOME FUNDING FOR THIS PROJECT, HEREBY AGREES THAT THE CITY AND ANY INDIVIDUAL WHO MEETS THE APPLICABLE INCOME LIMITATION UNDER 24 CFR 92.252 (WHETHER PROSPECTIVE, PRESENT OR FORMER TENANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN

ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE PROJECT OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Project Owner hereby further specifically acknowledges that the beneficiaries of the Project Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. The Project Owner, still further, acknowledges and agrees that any party which brings an action to enforce any requirement of this Declaration, whether by specific performance or otherwise, shall be entitled, if successful, to recover such party's reasonable attorney's fees.

(c) The Project Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the City and all persons interested in Project compliance under 24 CFR 92.252.

(d) The Project Owner acknowledges that the City shall monitor the Project Owner's and the Project's compliance with the requirements of 24 CFR 92.252, and (ii) to notify the Project Owner of any noncompliance which is found. The Project Owner agrees (I) to maintain records that substantiate and document such compliance, and (II) to take all actions required by the City to assist or cooperate in monitoring such compliance.

(e) The Project Owner agrees that the City may enforce all state and federal law through this Declaration, and utilize for such purposes any and all remedies available to the City, including but not limited to administrative or judicial action, appointment of trustee or receiver, or assume the management and operations of the Project.

(f) The Project Owner agrees the City may, at reasonable times and upon adequate notice at any time during the construction, rehabilitation, or operation of the Project, enter and inspect the Project to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

(g) The Project Owner agrees the City may, at reasonable times and upon adequate notice, examine all books and records, and request and receive from the Project Owner one or more reports, relating to the ownership, operations, capitalization, reserve funds, income, expenses and other financial and regulatory matters of the Project or the Project Owner.

(h) The Project Owner agrees that the City may at any time order it and/or its managing agent or Project manager to do whatever is necessary to comply with or refrain from violating an applicable law, ordinance, or term of an agreement regarding the Project, and that the City may file and prosecute a complaint against a managing agent, Project manager, or the Project Owner for a violation of any applicable law or ordinance. The Project Owner acknowledges and agrees that, in the event that the Project Owner is found to have violated an applicable law, ordinance, or term of an agreement regarding the Project, the City shall have the right, among other remedies and without limitation, to limit or deny participation by the Project Owner in any of the programs operated or administered by the City.

(i) Upon a determination by the City that the Project Owner has failed to maintain the Project in good and habitable condition and suitable for occupancy as hereinabove required, the Project Owner agrees, upon the City's direction, to establish a reserve for replacement and repairs to the Project in such initial amount and with such monthly deposits as the City may direct. Such reserve shall be held for the benefit of the Project Owner and the Project by such party as the City shall direct, and disbursements shall be made there from only upon direction of or approval by the City.

(j) As a result of any material inaccuracy in any of the representations and warranties contained in this Declaration, or as a result of any action or inaction by the Project Owner, including claims by third parties, the Project Owner agrees to INDEMNIFY AND HOLD HARMLESS THE CITY OF BRYAN, ITS PUBLIC OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEMANDS, JUDGMENTS AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER INCLUDING REASONABLE ATTORNEY FEES, COSTS AND EXPERT FEES, WHICH MAY BE ASSERTED BY ANY THIRD PARTY OCCURRING OR IN ANY WAY INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH THE SERVICES AND WORK TO BE PERFORMED. THE CITY OF BRYAN DOES NOT WAIVE ITS GOVERNMENTAL IMMUNITY, THE LIMITATIONS AS TO DAMAGES CONTAINED IN THE TEXAS TORT CLAIMS ACT OR CONSENT TO SUIT.

(k) The Project Owner agrees that should any claims, demands, suits or other legal proceedings be made or instituted by any person against the City which arise out of any of the matters relating to this Declaration, Project Owner will cooperate fully with the City in the defense or other disposition thereof.

(l) The Project Owner agrees that no person who (a) is an employee, agent, consultant, officer or elected or appointed official of the City or of the Project Owner or any applicant that receives funds and who exercises or has exercised any functions or responsibilities with respect to activities assisted with funds provided under this Agreement or (b) who is in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain a personal or financial interest or benefit from a HOME assisted activity, or have an interest in any contract, subcontract or agreement (or the proceeds thereof) with respect to a HOME Investment Partnerships Program assisted activity either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. The City's officers, employees or agents shall neither solicit not accept gratuities, favors or anything of monetary value from contractors or potential contractors.

SECTION 7 - MISCELLANEOUS

(a) Severability. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

(b) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, delivered by hand, or delivered by any other method permitted by law, to the Parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the City:

City of Bryan, Community Development Services Department
405 W. 28th St.
Bryan, Texas 77803

To the Project Owner:

Elder Aid, Inc., Inc.
307 Main St., Ste 202
City, TX 77803

CITY OF BRYAN

Jason P. Bienski, Mayor

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ____ day of _____, 20____, by Jason P. Bienski, as Mayor of the City of Bryan, a Texas municipal corporation, on its behalf.

Notary Public in and for the State of Texas