**R-83-23 HOME American Rescue Plan (ARP) *Agreement # 410721000-?? -* $0.00**

***CFDA # 14-239***

**SUBRECIPIENT AGREEMENT BY AND BETWEEN**

**PARTICIPATING JURISDICTION OF FORT SMITH AND**

**ENTER AGENCY NAME**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of September, 2023 by and between the **City of Fort Smith, Arkansas,** 623 Garrison Avenue Ste. 331, Fort Smith, AR 72901 (hereinafter referred to as the **PARTICIPATING JURISDICTION**) and **Enter Agency Name**, Enter Address, Fort Smith AR 7290? (Hereinafter referred to as the **SUBRECIPIENT**).

WHEREAS, the PARTICIPATING JURISDICTION of Fort Smith, Arkansas is a “Participating Jurisdiction” under the HOME Investment Partnerships Program (“**HOME**” or “**HOME Program**”) and receives HOME funds from the U.S. Department of Housing and Urban Development (“**HUD**”) under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, 42 USC 12741 et seq., (the “**Act**”) and 24 CFR part 92; and

WHEREAS, the PARTICIPATING JURISDICTION has applied for and received funds from the United States Government under section 3205 of the American Rescue Act of 2021 (P.L. 117-2) (“ARP”) for the HOME Investment Partnerships Program (HOME) to provide homelessness assistance and supportive services; and

WHEREAS, the PARTICIPATING JURISDICTION has determined it will use HOME ARP funds for Supportive Services eligible activities to assist Qualifying Populations; and

WHEREAS, the PARTICIPATING JURISDICTION has identified Riverview Hope Campus DBA Hope Campus as an eligible SUBRECIPIENT capable of administering the HOME ARP Supportive Services activities on behalf of the PARTICIPATING JURISDICTION; and

WHEREAS, the PARTICIPATING JURISDICTION of Fort Smith Board of Directors approved RESOLUTION 83-23 authorizing the award of HOME ARP funds to SUBRECIPIENT for the purpose of establishing and operating the Supportive Services activities; and

NOW THEREFORE, It is agreed by the parties in exchange of the mutual covenants and agreements set forth herein:

**I SCOPE OF SERVICE**

1. The SUBRECIPIENT will be responsible for administering supportive services to the PARTICIPATING JURISDICTION and it’s Qualifying Populations (QP’s) from October 1, 2023 until September 30, 2025, in a manner satisfactory to the PARTICIPATING JURISDICTION and consistent with any standards required as a condition of providing these funds. These activities will assist with the purchase of a passenger van, to include one year’s maintenance, insurance and fuel to serve as transportation for the qualifying populations of Enter Agency Name. Additionally, a van driver / case manager will be hired, purchase food, provide life skills training and credit repair/counseling with budgeting and money management curriculum during the time period specified above. The SUBRECIPIENT certifies that the activities carried out with funds provided under this Agreement will provide supportive services to qualifying populations as described in Notice: CPD-21-10. HOME ARP provides fund for homelessness and supportive services assistance under the statue of Title II of the National Affordable Housing Act of 1990. **Qualifying Populations** are available in **Exhibit “A”** attached to this agreement. The HOME ARP funds must benefit only Qualifying Populations.
2. SUBRECIPIENT shall affirmatively market and provide minority outreach for this program to qualifying populations. The SUBRECIPIENT will provide a marketing plan for outreach to those qualifying to know of the availability of these funds for the activities listed herein. The **marketing plan** will be **Exhibit “B”** attached to this agreement.

C. SUBRECIPIENT shall complete the project, using all funds to eligible, low-income homebuyers by September 30, 2025 after this agreement is executed, unless a time extension is requested by SUBRECIPIENT in writing and granted by the PARTICIPATING JURISDICTION in writing. Any such time extension shall be attached to and made a part of this agreement. **Income Limits are attached to this agreement as Exhibit “C”.**

D. SUBRECIPIENT shall accomplish the supportive services activities by September 30, 2025.

E. *Match Requirements* – There is no match requirement for the HOME ARP funds.

F. *Fees –* The SUBRECIPIENT is prohibited from charging fees for the costs of administering the HOME ARP program.

* **PROJECT FUNDING**

**Enter Agency Name – Program Sources and Supportive Services Uses**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Enter Date** | | | | |
| **Sources** | |  | **Uses** | |
| HOME ARP |  |  | Purchase of a passenger van / taxes |  |
|  |  |  | Van Maintenance |  |
|  |  |  | Van Insurance |  |
|  |  |  | Van Fuel |  |
|  |  |  | Food |  |
|  |  |  | Life Skills |  |
|  |  |  |  |  |
| Total Sources |  |  | Total Uses |  |

1. The PARTICIPATING JURISDICTION of Fort Smith hereby approves HOME ARP Program funding for supportive services to be administered by SUBRECIPIENT in the amount of $130,511.00 from HOME ARP Program funds and $0.00 of HOME Program Income.
2. SUBRECIPIENT shall provide supportive services in conjunction with the HOME ARP Program which shall be administered with the budget identified above.
3. *Requests for Disbursements & Program Income -* SUBRECIPIENT shall ensure HOME ARP funds provided under this agreement will be requested for disbursement only in required amounts and as needed for payment of eligible costs. Payments will be made by the PARTICIPATING JURISDICTION for eligible expenses actually incurred by SUBRECIPIENT, and will not exceed actual cash requirements. The PARTICIPATING JURISDICTION reserves the right to liquidate funds available under this agreement for eligible costs incurred by the PARTICIPATING JURISDICTION on behalf of SUBRECIPIENT to complete the project. PARTICIPATING JURISDICTION and SUBRECIPIENT acknowledge and agree that the design of supportive services activities does not anticipate the receipt of **Program Income** by the SUBRECIPIENT. Notwithstanding, in the event that any Program Income is received by the SUBRECIPIENT, SUBRECIPIENT will promptly remit same to the PARTICIPATING JURISDICTION.
4. *Qualifying Populations income guidelines -* ARP requires that funds be used to primarily benefit individuals and families in the following specified “qualifying populations.” Any individual or family who meets the criteria for these populations is eligible to receive assistance or services funded through HOME-ARP without meeting additional criteria (e.g., additional income criteria). All income calculations to meet income criteria of a qualifying population or required for income determinations in HOME-ARP eligible activities must use the annual income definition in 24 CFR 5.609 in accordance with the requirements of 24 CFR 92.203(a)(1).The SUBRECIPIENT shall determine each individual or family is income eligible by determining the individual or family’s annual income. See Exhibit “C” for income limits.
5. The PARTICIPATING JURISDICTION will not impose preferences among Qualifying Populations or limit eligibility to subpopulations. The SUBRECIPIENT will establish a waiting list for each supportive service. All qualifying individuals or families must have access to apply for placement on the waiting list for a supportive service funded herein. Qualifying individuals must be accepted in chronological order. The SUBRECIPIENT must follow all applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in 24 CFR 5.105(a). This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, section 504 of Rehabilitation Act, HUD’s Equal Access Rule, and the Americans with Disabilities Act, as applicable.
6. The full amount of HOME funds, $130,511.00 from the HOME ARP Program, $0.00 of HOME ARP Program Income and $0.00 HOME ARP Administrative, shall be released as earned by verified performance of activities to be completed under this agreement, as determined by the PARTICIPATING JURISDICTION.
7. It is expressly agreed and understood that the total amount of eligible supportive services with reference to the HOME ARP Program to be qualified and administered by SUBRECIPIENT shall not exceed $130,511.00 from the HOME ARP Program and $0.00 of HOME Program Income.
8. If for any reason, any term of this agreement is breached by SUBRECIPIENT, the PARTICIPATING JURISDICTION may require full repayment of any amounts advanced under this agreement pursuant to Section VIII, Remedies of Default.

**III NOTICES**

Communication and details concerning this agreement shall be directed to the following persons:

City of Fort Smith/PARTICIPATING JURISDICTION SUBRECIPIENT

CDBG and Housing Programs Name, Executive Director

Candyce Gabucci Address

623 Garrison Ave. Fort Smith, AR 7290?

Fort Smith, AR 72902 Phone #

(479)784-2209

The contact persons listed above may be changed upon fifteen (15) days’ written notice to the other party.

**IV SPECIAL CONDITIONS**

The passenger van will have a lien placed on the title in favor of the PARTICIPATING JURISDICTION of Fort Smith for a period of five years from reimbursement and will be removed provided the van is in continuous use for qualifying populations.

**V ADMINISTRATIVE REQUIREMENTS**

A. SUBRECIPIENT shall abide by all applicable federal, state, and local laws, regulations, codes, and ordinances in the performance of all activities required by this agreement, and specifically agrees to adhere to applicable requirements of: HUD Notice: CPD-21-10, 24 CFR 92, Final Rule at [eCFR :: 24 CFR Part 92 -- Home Investment Partnerships Program](https://www.ecfr.gov/current/title-24/subtitle-A/part-92) last amended July 1, 2023 including those described in 24 CFR 92 Subpart “H” with the exception of Environmental Reviews which the SUBRECIPIENT cannot assume and 92.357 the intergovernmental review process does not apply. SUBRECIPIENT shall comply with the **Policies and Procedures for HOME ARP Supportive Services Manual** dated September 14, 2023 throughout the term of this agreement (and any future revisions) which is also available on the website at [www.fortsmithar.gov](http://www.fortsmithar.gov) go to PARTICIPATING JURISDICTION Departments, click on the Community Development Department link then by clicking on the Documents tab and go to the box labeled Partner Documents.

B. *Records and Reports -* The **Policies and Procedures for HOME ARP Supportive Services** describes the reports required for reporting purposes to the U. S. Department of Housing and Urban Development.

C. SUBRECIPIENT shall submit an agency-wide audit which shall include the project funds annually until the project is completed. This audit shall be in accordance with generally accepted accounting principles. SUBRECIPIENT shall provide the PARTICIPATING JURISDICTION with one (1) copy of each annual audit for project duration. Any deficiencies noted in the audit report shall be fully cleared by SUBRECIPIENT within thirty (30) days after receipt of said audit report by the PARTICIPATING JURISDICTION. Failure of SUBRECIPIENT to clear deficiencies noted in the audit report shall be a breach of this agreement and the PARTICIPATING JURISDICTION may exercise any and all of its rights and remedies under Section VIII, Remedies on Default.

D. SUBRECIPIENT shall adhere to the requirement of 2 CFR 200 Subpart E – Cost Principles, 24 CFR Part 84 and applicable administrative requirements of 24 CFR 92.505(b).

E. SUBRECIPIENT shall make available to the PARTICIPATING JURISDICTION at any time during normal business hours all records pertaining to funding and projects covered by this agreement to allow the PARTICIPATING JURISDICTION to conduct monitoring, performance, and compliance reviews and evaluations. Notwithstanding any other provision in this agreement, the PARTICIPATING JURISDICTION will monitor the performance as determined by the PARTICIPATING JURISDICTION and shall determine if the performance constitutes non-compliance with this agreement. If action to correct such substandard performance is not taken by SUBRECIPIENT within a reasonable time-frame to be specified by the PARTICIPATING JURISDICTION in its notice to SUBRECIPIENT, suspension or termination procedures may be initiated as specified in Section VIII or Section IX.

F. SUBRECIPIENT covenants that it presently has no financial interest and will not acquire any interest directly or indirectly, which would conflict in any manner or degree with the performance of services required under this agreement. SUBRECIPIENT further covenants that in the performance of this agreement, no person having such a financial interest shall be employed or retained by SUBRECIPIENT hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, elected official, or appointed official of the PARTICIPATING JURISDICTION, or of any designated public agencies or subrecipients which are receiving funds under the HOME ARP Program. In addition the following Conflict of Interest provisions apply to HOME ARP funds and are described more fully in the **Policies and Procedures for HOME ARP Supportive Services**:

*1. Conflicts of Interest:*

SUBRECIPIENTS engaging in any of the activities defined in Notice: CPD-21-20 shall be subject to the conflicts of interest provisions at 24 CFR 92.356, including but not limited to the conflicts of interest exception process defined in 24 CFR 92.356(d)-(e). Owners and developers of HOME-ARP NCS and HOME-ARP rental housing shall be subject to 24 CFR 92.356(f).

*2. Organizational Conflicts of Interest:*

The provision of any type or amount of HOMEARP TBRA or supportive services may not be conditioned on an individual’s or family's acceptance or occupancy of a shelter or housing unit owned by the PJ; State recipients; the subrecipient; or a parent, affiliate, or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent, affiliate, or subsidiary of the subrecipient, administer financial assistance that includes rental payments, utility deposits, security deposits, or first and last month’s rent provided pursuant to this Notice. All contractors of the PJ, State recipients, or subrecipient must comply with the same requirements that apply to subrecipients under this section.

*3. Written Standards of Conduct:*

PJs, State recipients, and subrecipients must maintain written standards of conduct covering the conflicts of interest and organizational conflicts of interest requirements under this Notice and 2 CFR 200.318. The written standards of conduct must also provide for internal controls and procedures to require a fair and open selection process for awarding HOME-ARP funds pursuant to this Notice. These standards 75 must include provisions on if and how Continuum of Care board members may participate in and/or influence discussions or resulting decisions concerning the competition or selection of an award or other financial benefits made pursuant to the HOME-ARP Notice, including internal controls on when funds may be awarded to the organization that the member represents.

G. SUBRECIPIENT shall ensure that no person will be displaced from his or her dwelling as a direct result of activities assisted with HOME Program funds provided under this agreement.

H. *Affirmative Marketing -* SUBRECIPIENT shall affirmatively market supportive services provided under this agreement to Qualifying Populations in compliance with Public Laws 88-352 and 90-284 and ensure maintenance of documentation of affirmative marketing efforts to such persons. Prior to any funds being disbursed under this agreement, SUBRECIPIENT shall provide an affirmative marketing plan acceptable to the PARTICIPATING JURISDICTION documenting the affirmative marketing efforts to low-income persons planned to be undertaken by SUBRECIPIENT regarding this project. The affirmative marketing plan is attached to and made a part of this agreement as Exhibit “B”.

I. SUBRECIPIENT shall not pay any part of funds received under this agreement for lobbying the Executive or Legislature Branches of the federal, state, or local government.

J. *Environmental -* SUBRECIPIENT shall comply with the provisions of the National Environmental Policy Act of 1969, as applicable to projects funded under this agreement, the Flood Disaster Protection Act of 1973, and the Lead-Based Paint Poisoning Prevention Act and the regulations promulgated thereunder, all as amended. SUBRECIPIENT agrees to assist the PARTICIPATING JURISDICTION to comply with the following regulations insofar as they apply to the Protection Agency regulations pursuant to 40 CFR 50, HUD Environmental Review Procedures specified in 24 CFR 58, as well as all other applicable environmental laws and regulations, all as amended. The PARTICIPATING JURISDICTION shall ensure maintenance of documentation to evidence compliance with environmental statutes and regulations with the assistance of SUBRECIPIENT. Once a homebuyer has qualified for the program and has entered into a Real Estate Contract, a SUBRECIPIENT official will send an email with the address or legal description of the property. The PARTICIPATING JURISDICTION will review the property and send a clearance email message for the case file.

K. SUBRECIPIENT shall establish and ensure the eligibility of individuals and families provided supportive services under this agreement. In addition, SUBRECIPIENT shall ensure maintenance of beneficiary information regarding persons assisted under this agreement, including name, address, social security number, race, sex, income, and whether the assisted person(s) is elderly, female head-of-household, handicapped, American Indian, Hispanic, Caucasian, African American, Alaskan Native, Asian Or Asian/Pacific Islander. SUBRECIPIENT shall ensure the submission of the beneficiary information to the PARTICIPATING JURISDICTION upon request. The information shall be maintained for each housing unit and person(s) or families assisted under this agreement.

K. SUBRECIPIENT shall provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988.

L. SUBRECIPIENT shall ensure compliance with all requirements of the Contract Work Hours and Safety Standards Act, the Copeland Anti-Kickback Act, and all other applicable federal, state, and local laws and regulations pertaining to labor standards. SUBRECIPIENT shall ensure maintenance of adequate records and reports to evidence such compliance.

M. *Fair Housing -* SUBRECIPIENT shall ensure compliance with the requirements of the Fair Housing Act, Executive Order 11246 (Equal Employment Opportunity), as amended by Executive Order 12086, and the regulations issued pursuant thereto, executive Orders 11625, 12432, and 12138, which require affirmative actions to encourage participation by minority and women-owned business enterprises. SUBRECIPIENT shall ensure that the provisions of this paragraph are included in every subcontract entered into by SUBRECIPIENT associated with this agreement and project. SUBRECIPIENT shall ensure maintenance of records and reports to document compliance with fair housing and equal opportunity requirements.

N. *Records Retention -* SUBRECIPIENT will ensure that all records required under this agreement are retained for a period of five (5) years after the applicable required period of affordability. SUBRECIPIENT shall furnish, and cause all its subcontractors to furnish, all reports and information required hereunder, and will permit access to its books, records, and accounts, by the PARTICIPATING JURISDICTION, the Department of Housing and Urban Development or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the statutes, rules, regulations, and provisions stated herein.

O. *OSHA -* SUBRECIPIENT shall ensure that where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained in, or receive services in buildings or surroundings, or under working conditions, which are unsanitary, hazardous, or dangerous to the participants’ health or safety.

P. *Equal Opportunity -* SUBRECIPIENT shall comply with Executive Order 11063, as amended by Executive Order 12259, and shall not discriminate against persons on the basis of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital or familial status with regard to public assistance. SUBRECIPIENT shall maintain records and documentation to evidence compliance with this requirement. SUBRECIPIENT shall take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

Q. *Section 3 Employment Opportunities -* SUBRECIPIENT shall comply with Section 3 of the Housing and Urban Development act of 1968 (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects), and regulations issued pursuant thereto. SUBRECIPIENT shall cause a “Section 3 Clause” to appear in all subcontract agreements executed under this agreement or in connection with this project and shall take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of Section 3 or the regulations promulgated pursuant thereto. SUBRECIPIENT shall not subcontract with any subcontractor where it has notice or knowledge that the later has been found in violation of Section 3 and implementing regulations. Further, SUBRECIPIENT shall not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of Section 3 and implementing regulations.

R. *Civil Rights -* SUBRECIPIENT shall comply with Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of Title 1 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975, along with all applicable regulations associated therewith. SUBRECIPIENT shall include the provisions of this paragraph in every subcontract entered into by SUBRECIPIENT associated with this agreement or this project. This requirement is applicable when a contract or subcontract exceeds $100,000.00.

S. SUBRECIPIENT agrees that funds received under this agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization.

T. *Reversion of Assets -* Upon expiration or termination of this agreement, SUBRECIPIENT shall transfer to the PARTICIPATING JURISDICTION of Fort Smith any HOME funds on hand at the time of said expiration or termination and any accounts receivable attributable to the use of HOME ARP funds.

U. SUBRECIPIENT shall monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. SUBRECIPIENT shall cause the provisions of this agreement to be included in, and made a part of, any subcontract executed in the performance of this agreement.

V. If applicable, the PARTICIPATING JURISDICTION of Fort Smith shall move to the first mortgage position once the current first mortgage is satisfied concerning the property stated in this agreement.

W. SUBRECIPIENT shall ensure that the contractor on this project has an established procedure in place regarding payment and performance bonding and follows such procedure regarding this project. (Not applicable to this project type)

**VI DEBARMENT AND SUSPENSION**

SUBRECIPIENT certifies that its principals:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from covered transactions by any federal department or agency;

B. Have not within a three (3) year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement(s) or receiving stolen property;

C. Are not presently indicted for or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated above, and;

D. Have not within a three (3) year period preceding this agreement had one (1) or more public transactions (Federal, State or local) terminated for cause or default.

**VII REMEDIES ON DEFAULT**

Each of the parties shall have all remedies available under applicable regulations or at law or in equity, including specific performance, to enforce any obligation of any Party to the Agreement. In the event the PARTICIPATING JURISDICTION determines that a breach of this agreement has occurred, the PARTICIPATING JURISDICTION may terminate this Agreement pursuant to 24 CFR 84.86 and 24 CFR 85.43 and recapture or terminate any and all HOME funds allocated under this Agreement. More specifically:

1. If the PARTICIPATING JURISDICTION determines that SUBRECIPIENT has materially failed to comply with any provision of this agreement, or with any rules, statutes, regulations, or ordinances referred to herein, the PARTICIPATING JURISDICTION will notify SUBRECIPIENT in writing and hand-deliver, with written receipt evidencing the date and time of delivery, or send by certified mail, return receipt requested, such Notice of Default to the party designated to receive such Notices in Section V of this agreement. For purposes of this section, the term materially means “an important or essential term of this agreement.”
2. The PARTICIPATING JURISDICTION will allow SUBRECIPIENT the opportunity to demonstrate compliance with the agreement requirements in question. SUBRECIPIENT shall offer evidence of such compliance within a reasonable time frame to be specified by the PARTICIPATING JURISDICTION in the Notice of Default. Substantial compliance shall not constitute compliance with the terms and conditions of this agreement unless the PARTICIPATING JURISDICTION expressly agrees to the substantial compliance in writing.
3. If SUBRECIPIENT fails to demonstrate to the PARTICIPATING JURISDICTION that it has fulfilled the requirement, the PARTICIPATING JURISDICTION may take corrective or remedial action(s) as follows:
   1. Corrective or remedial action will be designed to prevent a continuation of the deficiency, mitigate any adverse effects, and prevent recurrence of the deficiency.
   2. Corrective or remedial action may include:
4. Temporarily withholding cash payments pending correction of the deficiency by SUBRECIPIENT.
5. Specific activities required by the PARTICIPATING JURISDICTION to correct the deficiency and to be accomplished by SUBRECIPIENT in a specified time frame.
6. Canceling or revising activities which may be affected by the performance deficiency and were approved under this agreement.
7. Reprogramming any balance of HOME funds made available under this agreement from deficient activities, or any activity funded under this agreement, to other eligible activities.
8. Suspension of HOME fund disbursements for deficient activities, or any activities funded under this agreement and subsequent termination of this agreement in its entirety.
9. Termination of this agreement in its entirety and require SUBRECIPIENT to repay to the PARTICIPATING JURISDICTION any and all HOME funds advanced under this agreement.
10. Removing SUBRECIPIENT from participation in any future allocation of HOME funds from the PARTICIPATING JURISDICTION.
11. Taking other remedial actions that may be legally available to the PARTICIPATING JURISDICTION.
12. In the event SUBRECIPIENT dissolves the organization, ceases to exist, or becomes unable for any reason to fulfill its obligations under this agreement, the PARTICIPATING JURISDICTION will require SUBRECIPIENT to fully repay to the PARTICIPATING JURISDICTION any and all amounts advanced under this agreement.
13. Notwithstanding any other provision of this agreement, should there be any fraud, misrepresentation, embezzlement, or any other criminal activity associated with this project, the PARTICIPATING JURISDICTION may pursue all legal and equitable remedies available to it against any and all parties associated with this agreement.
14. Any decision regarding corrective, remedial, legal or equitable remedies or actions to be taken regarding this agreement or project shall be at the sole option and discretion of the PARTICIPATING JURISDICTION of Fort Smith. A decision by the PARTICIPATING JURISDICTION to pursue one course of action shall not constitute a waiver of any other course of action the PARTICIPATING JURISDICTION may pursue under this Section IX, Remedies on Default.
15. Pursuant to 24 CFR 92.205(e), should this agreement be terminated before completion of this project, either voluntarily or otherwise, SUBRECIPIENT shall repay any HOME funds invested in the project that is the subject of this agreement to the PARTICIPATING JURISDICTION of Fort Smith’s HOME Investment Trust Fund in accordance with 24 CFR 92.503(b).

**VIII TERMINATION**

1. Pursuant to 24 CFR 84.86 and 24 CFR 85.44, the PARTICIPATING JURISDICTION may terminate this agreement upon thirty (30) days prior written notice to the SUBRECIPIENT contact person indicated in Section V of this agreement. The parties shall agree upon the termination conditions, including the effective date of termination, and in the case of partial termination, the portion of the award to be terminated.
2. SUBRECIPIENT may terminate this agreement upon thirty (30) days’ prior written notice to the PARTICIPATING JURISDICTION contact person indicated in Section V of this agreement. The notice of termination shall set forth the reasons for such termination, the effective date of termination, and in the case of partial termination, the portion of the award to be terminated. However, in the case of partial termination, if the PARTICIPATING JURISDICTION determines that the remaining portion of the funding provided under this agreement will not accomplish the purposes for which the award was made, the PARTICIPATING JURISDICTION may terminate the award in its entirety under paragraph A of this section, Section IX, or 24 CFR 84.86 and 24 CFR 85.44.

**IX MISCELLANEOUS PROVISIONS**

1. The officials who executed this agreement hereby represent and warrant that they have full and complete authority to act on behalf of the PARTICIPATING JURISDICTION and SUBRECIPIENT, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.
2. This agreement shall be executed in the original, and any number of executed copies. Any copy of this agreement so executed shall be deemed an original and shall be deemed authentic for any other use.
3. The parties may amend or modify this agreement at any time, provided that such amendment(s) or modification(s) make specific reference to this agreement, and are executed in writing by a duly authorized representative of both parties. Such amendment(s) or modification(s) shall not invalidate this agreement, nor relieve or release the parties from their obligations under this agreement.
4. The terms and conditions of this agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assignees.
5. Nothing contained in this agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer and employee between the parties. SUBRECIPIENT shall at all times remain an independent contractor with respect to the services to be performed under this agreement.
6. SUBRECIPIENT shall not assign or transfer any interest in this agreement without the prior written approval of the PARTICIPATING JURISDICTION.
7. This agreement shall be construed according to the laws of the State of Arkansas.
8. Should any part, term or provision of this agreement, or portions thereof, be determined by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining portions of provisions shall not be affected thereby.

**X INDEMNITY**

SUBRECIPIENT agrees that it shall indemnify and save harmless the PARTICIPATING JURISDICTION, its officers, agents and employees from:

1. Any claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of this agreement.
2. Any claims or losses resulting to any person or firm injured or damaged by the erroneous, willful or negligent acts or omissions, including disregard of federal, state, and local statutes or regulations, by SUBRECIPIENT, its officers, employees or subcontractors in the performance of this agreement.
3. The obligation to indemnify shall include all legal fees and costs incurred by the PARTICIPATING JURISDICTION, its officers, agents and employees, arising from the matters identified in A. and B.

**XI TERM OF AGREEMENT**

This agreement shall be in full force and effect from the date first written above and shall remain in force for the full period of affordability applicable to the project assisted with HOME funds under this agreement.

**XII INSTRUMENT AS ENTIRE AGREEMENT**

This agreement embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained in the contract; and this contract shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties.

**City of Fort Smith, Arkansas / Participating**

**Jurisdiction** **Enter Subrecipient Name**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Signature

George McGill, Mayor Enter ED Name, Executive Director

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

City Clerk Witness

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Date of Signatures Date of Signatures

71-6003637 00-0000000 Enter #

Federal I.D. Number Federal I.D. Number

07-125-3793 00-000-0000 Enter #

DUNS Number DUNS Number

Approved as to Legal Form:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Jerry Canfield

City Attorney

**WARNING: *18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.***