

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE CITY OF CORPUS CHRISTI AND
CORPUS CHRISTI HOUSING AUTHORITY
FOR AN AFFORDABLE HOUSING PROJECT**

This Interlocal Cooperation Agreement for an Affordable Housing Project ("Project Agreement") is entered into between the Corpus Christi Housing Authority ("CCHA"), a political subdivision of the State, and the City of Corpus Christi ("City"), a home-rule municipality.

WHEREAS, the Texas Legislature in Section 4A of Article 5190.6, Vernon's Texas Revised Civil Statutes (Development Corporation Act of 1979), now codified as Subtitle C1, Title 12, Texas Local Government Code, Section 504.0002 et seq, ("the Act") empowered local communities with the ability to adopt an optional local sales and use tax as a means of improving the economic health and prosperity of their citizens;

WHEREAS, on November 5, 2002, residents of the City of Corpus Christi passed Proposition 2, New and Expanded Business Enterprises, which authorized the adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of one-eighth of one percent to be imposed for 15 years;

WHEREAS, in the same election, the residents of the City passed Proposition 2B, Affordable Housing, which authorized the use of a portion of the sales and use tax approved under Proposition 2 for affordable housing, up to \$500,000 annually, so long as there are projects for which the amount can reasonably be used;

WHEREAS, the 1/8 cent sales tax authorized by passage of Proposition 2 and allocated under Proposition 2B for affordable housing was subsequently enacted by the City's City Council ("City Council"), and filed with the State Comptroller of Texas, effective April 1, 2003, to be administered by the Corpus Christi Business and Job Development Corporation's ("Corporation") Board of Directors ("Board");

WHEREAS, in an effort to fund affordable housing projects in an effective manner, the Board determined that it is in the best interests of the residents of the City to awarded affordable housing funds in the amount of \$749,231 to the City. Said funds were approved by Agreement whose term is from October 1, 2014 to until September 30, 2015;

WHEREAS, subsequent to the Board's funding of the City, the Board and thereafter the City Council on January 19, 2015 and January 20, 2015 respectively, amended the Affordable Housing Goals and Strategies to acknowledge and allow for the support of rental housing projects as an affordable housing strategy for the citizens of the City of Corpus Christi;

WHEREAS, CCHA thereafter submitted a proposal to revitalize the 400 unit La Armada II Complex, to include the rehabilitation of 93 rental units, at an estimated cost of approximately \$5,300,000;

WHEREAS, the CCHA plans to submit an Operating Fund Financing Application through the U.S. Department of Housing and Urban Development (HUD) in the amount of \$3,500,000;

WHEREAS, the CCHA plans to utilize HUD Capital Fund Program funding in the amount of \$1,300,000;

WHEREAS, as a funding gap remains, CCHA has submitted a grant application to request from the City local housing funds in the amount of \$500,000;

WHEREAS, the Board and City Council determined that it is in the best interests of the residents of the City of Corpus Christi that a portion of the affordable housing funds previously awarded to the City now be used to fund the CCHA's affordable rental housing request;

WHEREAS, Chapter 791 of the Texas Government Code, as amended authorizes contracts between local governmental agencies to perform governmental functions and services.

In consideration of the covenants, promises, and conditions stated in this Project Agreement, the CCHA and the City agree as follows:

- 1. Project Agreement to Implement Affordable Housing Project.** This Project Agreement between the CCHA and the City is executed to implement the promotion and development of an affordable rental housing project proposed by CCHA. The Project submitted by CCHA, entitled "La Armada II Revitalization Plan" ("Project") is attached to this Project Agreement as Exhibit A, and is incorporated in this Project Agreement by reference.
- 2. Effective Date.** The effective date of this Project Agreement is the latest date on which a party to the Project Agreement executes this Project Agreement. ("Effective Date")
- 3. Expiration Date.** This Project Agreement expires upon project completion. Project shall be complete on or before the date which is 24 months from the beginning date of the construction. Said date to be supplied by CCHA when construction begins.
- 4. Terms of Project Agreement.**
 - a. CCHA has advised that the Project has an estimated cost of approximately \$5,300,000. The CCHA shall provide \$4,800,000 in funds through various federal programs and the City shall provide \$500,000 in affordable housing funds.
 - b. Of the \$500,000 in affordable housing funds to be awarded by the City, \$350,000 will be funded from FY2014-2015 City budget and the remaining balance of \$150,000 will be funded from FY2015-2016 City budget.

c. The \$350,000 in affordable housing funds will be awarded immediately upon execution of this Project Agreement; the \$150,000 will be awarded on October 1, 2015 or as soon as possible after the adoption of the FY 2015-2016 Type A budget, upon the expected future allocation of funds by the Type A Board to the City. The parties recognize that appropriation of the future funds, budget approval, and a decision by the Type A to transfer sufficient funds to the City for affordable housing in FY 2015-2016 are within the sole discretion of the Type A Board. By execution of the Agreement, the City does not represent that these actions will occur. All of these actions are further subject to City Council approval.

The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30 annually, is subject to appropriations and budget approval covering this Agreement as expenditure in said budget; however, it's within the sole discretion of the City Council of the City to determine whether to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

d. CCHA has advised that it will provide \$4,800,000 of the \$5,300,000 project. CCHA funds will include \$3,500,000 from HUD's Operating Fund Financing Program and \$1,300,000 from HUD's Capital Fund Program. Should either the \$3,500,000 from the Operating Fund Program or the \$1,300,000 from the Capital Fund Program be denied by HUD, CCHA will return any and all funding that may have been provided to CCHA by City for said Project within 20 days of being notified that said federal funding was not approved.

e. Should CCHA be awarded all \$5,300,000 in financing, CCHA will:

1. Return the 93 vacant units to service;
2. Update internal plumbing and baths for the remaining 307 units;
3. Update the building facades; and
4. Re-roof the entire complex.

f. At the project's completion, should any of the \$500,000 affordable housing funds not be fully expended on the Project, the CCHA will return the remaining amount to the City for affordable housing.

5. Documentation.

CCHA shall submit a performance report ("Installment Report") to the City at least once before the second funding installment of \$150,000 will be provided, and a complete performance report ("Final Report") within 30 days of the expiration of this Project Agreement. The Installment and Final Reports must contain all relevant details pertaining to how the funds provided under this Project Agreement were expended for the revitalization of the property, including the return of the 93 vacant units to service, the update to the internal plumbing and baths for the remaining 307 units, the update to the building facades and the re-

roofing of the complex and include any supporting documentation, including pictures, which will substantiate the written narrative contained in the reports.

6. Amendments or Modifications.

a. No amendments or modifications to this Project Agreement may be made, nor any provision waived, unless the amendment or modification is made in writing and signed by persons duly authorized to sign agreements on behalf of all parties.

b. The CCHA's Chief Executive Officer and City Manager are authorized to execute minor amendments or modifications to this Project Agreement, by exchange of letters with the CCHA. The minor amendments and modifications may relate to the timing of performance and reporting. However, the minor amendments or modifications may not increase the amounts of money available to the CCHA under this Project Agreement.

7. Severability.

a. If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Project Agreement or the application of this Project Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Project Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment, for it is the definite intent of the parties to this Project Agreement that every section, paragraph, subdivision, clause, provision, phrase, and word of this Project Agreement be given full force and effect for its purpose.

b. To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Project Agreement, then the remainder of this Project Agreement is not affected by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Project Agreement automatically.

8. Compliance with Laws. CCHA shall comply with all applicable Federal, State, and local government laws, rules, regulations, and ordinances which may be relevant to CCHA's performance under this Project Agreement.

9. Jurisdiction and Venue.

a. This Project Agreement is governed by and must be construed under the laws of the State of Texas.

b. All actions brought to enforce compliance with this Project Agreement must be brought in Nueces County, Texas, where this Project Agreement was entered into and must be performed.

10. Acknowledgment and Construction of Ambiguities. The parties expressly agree that each has independently read and does understand this Project Agreement. By CCHA's execution of this Project Agreement, CCHA agrees to be bound by the terms, covenants, and conditions contained in this Project Agreement. Any ambiguities in this Project Agreement may not be construed against the drafter.

11. Indemnity. *CCHA must fully indemnify and hold harmless the City of Corpus Christi, and their officers, employees, and agents (hereinafter, collectively "Indemnitees") from and against any and all liability, damage, loss, claims, demands, expenses, suits, and causes of action of any nature whatsoever on account of injury or damage to person (including, without limitation on the foregoing, premises defects, workers' compensation, and death claims) or property loss or damage of any kind whatsoever which arise out of or are in any manner connected with, or are claimed to arise out of or be in any way connected with, either proximately or remotely, wholly or in part, any activities by CCHA, its officers, employees, agents, members, invitees, or independent contractors with respect to this Project Agreement or the Project that is the subject of this Project Agreement, regardless of whether such injuries, death, or damages are caused, or are claimed to be caused, by the contributory negligence of any of the Indemnitees, but not if caused by the sole negligence of the Indemnitees unmixed with the fault of any other person or entity. CCHA covenants and agrees that if Indemnitees, or any of them, are made a party to any litigation against CCHA or in any litigation commenced by any party other than CCHA relating to this Project Agreement or Project, CCHA shall, upon receipt of reasonable notice regarding commencement of litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend Indemnitees in all actions based thereon with legal counsel satisfactory to Indemnitees, and pay all charges of attorneys and all other costs and expenses of any kind arising from any said liability, damage, loss, demand, claim, or action.*

12. Warranties. CCHA warrants and represents to City the following:

a. CCHA is a duly organized, validly existing, and in good standing under the laws of the State of Texas, has all authority to carry on its business as presently conducted in Corpus Christi, Texas.

b. CCHA has the authority to enter into and perform, and will perform, the terms of this Project Agreement.

c. CCHA has timely filed and will timely file all local, State, and Federal tax reports and returns required by law to be filed and all taxes, assessments, fees, and other governmental charges, including applicable ad valorem taxes, have been timely paid, and will be timely paid, during the term of this Project Agreement.

d. CCHA acknowledges that the funds granted in this Project Agreement must be utilized solely for development and expansion of affordable housing, as described by 42 U.S.C. Section 12745 and by the terms of this Project Agreement.

e. The CCHA agrees to obtain all necessary permits for intended improvements or activities within the scope of funding provided for by this Agreement, which improvements and activities shall be completed within a reasonable period of time.

e. If an audit determines that the funds were not used for authorized purposes, CCHA agrees to reimburse City for the sums of money spent for purposes not authorized by law within 30 days written notice requesting reimbursement.

f. The parties executing this Project Agreement on behalf of CCHA are duly authorized to execute this Project Agreement on behalf of CCHA.

13. Events of Default. The following events constitute a default of this Project Agreement:

a. Failure of CCHA to timely, fully, and completely comply with any one or more of the requirements, obligations, duties, terms, conditions, or warranties of this Project Agreement.

b. The City determines that any representation or warranty on behalf of CCHA contained in this Project Agreement or in any financial statement, certificate, report, proposal, or opinion submitted to the City in connection with this Project Agreement was incorrect or misleading in any material respect when made.

c. Any judgment is assessed against CCHA or any attachment or other levy against the property of CCHA with respect to a claim remains unpaid, undischarged, or not dismissed for a period of 30 days.

d. CCHA makes an assignment for the benefit of creditors.

e. CCHA files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.

f. If taxes on property owned by CCHA become delinquent, and CCHA fails to timely and properly follow the legal procedures for protest or contest.

g. CCHA changes the general character of its business as conducted on or following the date this Project Agreement is approved by the City.

14. Notice of Default. Should the City determine that CCHA is in default under the terms of this Project Agreement; the City shall notify CCHA in writing of the event of default and provide 60 days from the date of the notice ("Cure Period") for CCHA to cure the event of default.

15. Results of Uncured Default. After exhausting good faith attempts to address any default during the Cure Period, and taking into account any extenuating circumstances that might have occurred through no fault of CCHA, as determined by the City, the following actions must be taken for any default that remains uncured after the Cure Period:

a. CCHA shall immediately repay to City, with interest at the interest rate paid by the City on its most recently issued general obligation bonds or the maximum interest permitted by law, whichever is less, from date of expiration of Cure Period until fully paid, all funds not used under terms of this Project Agreement.

b. CCHA shall pay City reasonable attorney fees and costs of court to collect amounts due to City.

c. The City shall have no further obligations to CCHA under this Project Agreement and this Project Agreement shall terminate.

d. The City may not be held liable for any consequential damages.

e. The City may pursue all remedies available under law.

16. No Waiver.

a. No waiver of any covenant or condition, or the breach of any covenant or condition of this Project Agreement, constitutes a waiver of any subsequent breach of the covenant or condition of the Project Agreement.

b. No waiver of any covenant or condition, or the breach of any covenant or condition of this Project Agreement, justifies or authorizes the nonobservance on any other occasion of the covenant or condition or any other covenant or condition of this Project Agreement.

c. Any waiver or indulgence of CCHA's default may not be considered an estoppel against the City.

d. It is expressly understood that if at any time CCHA is in default in any of its conditions or covenants of this Project Agreement, the failure on the part of the City to promptly avail itself of the rights and remedies that the City may have, will not be considered a waiver on the part of the City, but City may at any time avail itself of the rights or remedies or elect to terminate this Project Agreement on account of the default.

17. Liability. The City shall not be responsible or liable for any debts, actions, obligations, negligence or liabilities committed by or incurred by the CCHA, its staff or clientele.

18. Relationship of Parties. In performing this Project Agreement, CCHA and the City shall act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

19. Nonassignment. CCHA may not assign, mortgage, pledge, or transfer this Project Agreement or any interest contained in this Project Agreement without the prior written consent of the City.

20. Notices.

a. Any required written notices shall be sent, certified mail, return receipt requested, addressed as follows:

If to CCHA:

Corpus Christi Housing Authority
ATTN: Executive Officer
3701 Ayers Street
Corpus Christi, Texas 78415

If to City:

City of Corpus Housing and Community Development
Attn: Director
1201 Leopard Street
Corpus Christi, Texas 78401

b. A copy of all notices and correspondence must be sent to the City at the following address:

City of Corpus Christi
Attn.: City Manager
P.O. Box 9277
Corpus Christi, Texas 78469-9277

c. Notice is effective upon deposit in the United States mail in the manner provided in subsection a. of this section.

21. Retain Property. In exchange for this grant for rehabilitation and improvement of CCHAs' real property the CCHA hereby agree that they shall operate the property according to established HUD guidelines for a term of five (5) years. Should CCHA cease operating the property according to established HUD guidelines the premises improved by these grant funds during that five year term the CCHA shall repay the grant amount in full, with interest at the interest rate paid by the City on its most recently

issued general obligation bonds or the maximum interest permitted by law, whichever is less, from the date of disbursement.

22. Financial Records. The CCHA agrees to keep all necessary books and records, including property, personnel and financial records, in connection with the operations and services performed under this Agreement, and shall further document all transactions so that all expenditures may be properly audited. CCHA expressly agrees that funds received by it through this Agreement shall not be used for any purpose outside the scope defined in this Agreement. CCHA, shall retain all project records, books, papers, receipts, and documents for a period of not less than five (5) years after the project terminates and grants the City, at its election, the option of retaining upon completion of the work such records as it might deem appropriate to hold in public custody of the City.

23. Audit. The CCHA agrees that the City or any authorized representative may have access to and the right to examine all records, books, papers, receipts, or documents related to the grant or the CCHA's programs benefited by the grant and the CCHA warrants that all such project records, books, papers and documents will be retained for a period of not less than five (5) years after the project terminates.

24. Non-discrimination.

a. CCHA may not discriminate nor permit discrimination against any person or group of persons on the grounds of race, gender, disability, religion, age, or national origin in any manner prohibited by the laws of the United States or the State of Texas.

b. The City retains the right to take any action the United States or the State of Texas may direct to enforce this non-discrimination covenant.

25. Captions. The captions in this Project Agreement are for convenience only and are not a part of this Project Agreement. The captions do not in any way limit or amplify the terms and provisions of this Project Agreement.


26. Entire Agreement. This Project Agreement and the referenced and incorporated documents constitute the entire agreement between the City and CCHA for the purpose stated. All other agreements, promises, representations, and understandings, oral or otherwise, with reference to the subject matter of this Project Agreement, unless contained in this Project Agreement, are expressly revoked, as the parties intended to provide for a complete understanding, within the provisions of this Project Agreement and its referenced and incorporated documents, of the terms, conditions, promises, and covenants relating to the each party's required performance under this Project Agreement.

(Execution pages follow)

CITY OF CORPUS CHRISTI

**CORPUS CHRISTI HOUSING
AUTHORITY**

Ronald Olson
City Manager



Gary Allsup
President and Chief Executive Officer


Date

2/24/15

Date

ATTEST:

Rebecca Huerta
City Secretary




Priscilla Waller
Chairperson

Date

Feb 24 2015

Date

APPROVED AS TO FORM:

 2-25-15

Buck Brice (Date)
Assistant City Attorney
For City Attorney