

**RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION**

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS,** Article VI, Section 5(d) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to negotiate with federal agencies on behalf of the Three Affiliated Tribes; and
- WHEREAS,** Article VI, Section 5(1) of the Constitution of the Three Affiliated Tribes authorizes, in part, the Tribal Business Council to adopt resolutions regulating the procedures of tribal agencies; and
- WHEREAS,** The Tribal Business Council recognizes there is a shortage of homes and that tribal members need assistance in obtaining affordable housing in the form of home ownership; and
- WHEREAS,** The Three Affiliated Tribes, Tribal Business Council has been awarded the 1996 Indian HOME Program grant by the U.S. Department of Housing and Urban Development for the purposes of providing incentives to develop and support affordable home ownership; and
- WHEREAS,** The Tribal Business Council wishes to contract for services with the Fort Berthold Housing Authority to implement the Indian HOME Program grant. The Fort Berthold Housing Authority agrees to provide such professional services subject to the terms and conditions outlined in 24 CFR Part 954, et seq.; and
- WHEREAS,** It is the considered judgment of the Tribal Business Council that a Subrecipient Agreement be developed for the purpose of carrying out the intent of the Indian HOME Program grant award; and
- NOW, THEREFORE, BE IT RESOLVED,** The Tribal Business Council of the Three Affiliated Tribes approves the Subrecipient Agreement between the Three Affiliated Tribes and the

SUBRECIPIENT AGREEMENT INDIAN HOME PROGRAM

THIS SUBRECIPIENT AGREEMENT FOR PROFESSIONAL SERVICES (the the FORT BERTHOLD HOUSING AUTHORITY, (hereinafter referred to as **FBHA** or Subrecipient), and the THREE AFFILIATED TRIBES, (hereinafter referred to as "the **Tribe**"), acting by and through its duly elected Chairman, pursuant to Resolution No. 97-055-DSB

The Three Affiliated Tribes wishes to contract for services with the **FBHA** to implement the Indian **HOME** program grant awarded by the U.S. Department of Housing and Urban Development. The **FBHA** agrees to provide such professional services subject to the terms and conditions as outlined in this agreement.

THEREFORE, in consideration of the mutual promises set forth herein, it is mutually agreed between the parties as follows:

Section 1. **Term of Engagement:** The Tribal Business Council of the Three Affiliated Tribes hereby delegates to the **FBHA** the authority to implement the Indian **HOME** program grant, and **FBHA** hereby accepts the **Tribe's** offer. This Agreement shall commence as of the date of the execution hereof and shall continue until the 31st day of December, 199 7, unless terminated by either party pursuant to the terms outlined in this Agreement.

Section 2. **Relationship:** The **FBHA** is a tribally chartered corporation established under the laws of the Three Affiliated Tribes of the Fort Berthold Reservation. The Fort Berthold Housing Authority as a corporation is governed by an independent Board of Commissioners. **FBHA** and the **Tribe** are partners in the development of affordable housing on the Fort Berthold Indian Reservation.

Section 3. **Duties:** Pursuant to the U.S. Department of Housing and Urban Development's Indian **HOME** Program Grants Administrative handbook. **FBHA's** duties as Subrecipient shall be as follows:

A. **Use of HOME funds:** **FBHA** agrees to use the **HOME** grant funds as follows:

1. **Tasks to be Performed:** **FBHA** will employ the requisite technical staff needed to implement and manage the **HOME** grant funds. **FBHA** will assist homebuyers with new construction, renovations and acquisitions. **FBHA** shall comply with the requirements contained in 24 CFR Part 954, et seq. governing the performance of these tasks. The participant selection criteria shall be based upon the following:

FBHA shall comply with the requirements contained in 24 CFR Part 954, et seq. governing the performance of these tasks. The participant selection criteria shall be based upon the following:

- a. Tribal Membership;
- b. Affordability and credit worthiness as determined by the commercial lender(s), (including Section 184 eligibility certification);
- c. The date funding is approved by the Lender and as soon thereafter that the eligible applicant duly executes an Agreement with **FBHA**.
- d. The Committee will review the application process to ensure compliance and to settle all questions, appeals, and disputes.

Upon the completion of the selection criteria, the **FBHA** will begin the new construction, renovation and acquisition of homes, with the **HOME** program funds awarded and the matching funds provided by the **TRIBE**, less fifteen percent (15%), allowable for administrative costs, as provided in 24 CFR 954.304. The completion date of the tasks shall be accomplished by the following dates:

The **FBHA** shall construct, renovate or acquire between four (4) to six (6) homes, as permitted by the budget identified as exhibit A. The completion of these tasks shall be accomplished by December 31, 1997.

The budget for the completion of tasks for fiscal year, 1997, is identified as "Exhibit A", which is attached and incorporated herein.

B. Eligible Activities and Affordability: **FBHA** and the **Tribe** agree to comply with federal laws to provide incentives to develop and support homeownership affordability and to provide payment of reasonable administrative and planning costs as outlined in 24 CFR Parts 954.303 and 954.304.

1. Religious Organizations: **FBHA** and the **Tribe** agree that **HOME** funds may not be provided to primarily religious organizations, such as churches, for any activity including secular activities. In addition **HOME** funds may not be used to rehabilitate or construct housing owned by primarily religious organizations or to assist in acquiring housing. However, **HOME** funds may be used by a secular entity to acquire housing from a religious organization. Also, a religious entity may transfer title to property to a wholly secular entity and the entity may participate in the **HOME** program in accordance with the requirements of this part. The entity may be an existing or newly established entity. The complete housing project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion.

2. Income determinations: The **FBHA** in determining the income of a homeowner for an owner-occupied rehabilitation project, the equity in the homeowner's principal residence is excluded from "Net Family Assets."

3. Eligible project Costs: **FBHA** and the **Tribe** agree to comply with the eligibility project costs requirements as outlined in 24 CFR 954.303, relating to development hard costs, acquisition costs, related soft costs, and relocation.

4. Homeownership: qualification as affordable housing: **FBHA** and the **Tribe** agree to comply with federal requirements as outlined in 24 CFR 954.307, relating to (a) Purchase with or without rehabilitation; and, (b) Rehabilitation not involving purchase.

C. Project Requirements: **FBHA** and the **Tribe** agree to comply with federal law as prescribed in 24 CFR 954.400, and 24 CFR 954.401, Subpart D, relating to per unit subsidy and property standards.

(1) Maximum per-unit subsidy amount: The **FBHA** agrees that the amount of **HOME** funds that may be invested on a per-unit basis in affordable housing may not exceed the total development cost standard for the area, as issued by HUD under 24 CFR 950.220.

(2) Property standards: **FBHA** agrees that housing assisted with **HOME** funds must meet the housing quality standards in 24 C.F.R. 82.109. In addition, housing that is newly constructed or substantially rehabilitated with **HOME** funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The **FBHA** agrees that it shall written standards in place regarding rehabilitation. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. The **FBHA** agrees that it will comply with all other property requirements contained in 24 CFR 954.401(b), et seq.

D. Repayments: **FBHA** and the **Tribe** agrees to comply with the federal laws as outlined in 24 CFR 954.500, relating to **HOME** funds invested are repayable if the housing ceases to qualify as affordable housing before the period of affordably expires. In the event funds are repaid or recaptured as a result of failure to comply with affordability requirements, or for any other reason, the repayment, interest, or other return on the investment of **HOME** funds are to be retained by **FBHA** for additional eligible activities as outlined under the **HOME** grant, pursuant to 24 CFR 954.501(c)(3).

E. Uniform Administrative Requirements: **FBHA** and the **Tribe** agree to comply with applicable uniform administrative requirements as described in 24 CFR 954.502.

F. **Other Federal Requirements:** **FBHA** and the **Tribe** agree to carry out each activity in compliance with the federal regulations as prescribed in 24 CFR 954.4, in particular:

(1) Equal Opportunity: **FBHA** and the with **Tribe** agree to comply and incorporates by reference into this agreement the provisions of 24 CFR 954.4(a), relating to the Equal Opportunity and the Fair Housing Act.

(2) Indian Civil Rights Act: **FBHA** and the **TRIBE** agree that the Indian Civil Rights Act, (25 U.S.C. 1301-1303), applies to any Tribe subject to the jurisdiction of the United States in the exercise of recognized powers of self-government.

(3) Indian Preference: **FBHA** and the **Tribe** agree to comply with the incorporates by reference into this agreement the provisions of 24 CFR 954.4(c), relating to the applicability, use of, and methods of procurement for Indian preference.

(4) Environmental Review: The **Tribe** hereby assumes responsibility for the environmental review, decision-making, and action for each activity that it carries out with **HOME** funds, in accordance with the requirements imposed pursuant to 24 CFR 58. The **FBHA** shall also be responsible for compliance with flood insurance, coastal barrier resource and airport clear zone requirements under 24 CFR 58.6.

(5) Displacement, Relocation and Acquisition: The **FBHA** and **TRIBE** agree to comply with and incorporate by reference into this Agreement the provisions contained in 24 CFR, 954.4(e), relating to the displacement and relocation of families, and the acquisition of property of those displaced and relocated.

(6) Labor: Any contract for the construction of affordable housing with 12 or more units assisted with **HOME** funds must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary pursuant to the Davis-Bacon Act, will be paid to all laborers and mechanics employed in the development of affordable housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (42 CFR, 327-332). The **Tribe** and **FBHA** will comply with regulations issued under these Acts and with other Federal laws and regulations pertaining to labor standards and **HUD** Handbook 1344.1. The **Tribe** and **FBHA** must require certification as to compliance with the provisions of 24 CFR 954.4 (f)(1) before making any payment under the contract.

(a) **Volunteers:** The prevailing wage provisions of paragraph (f)(1) do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(b) **Sweat Equity:** The prevailing wage provisions of paragraph (f)(1) do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership.

(c) **Force Account:** FBHA agrees that if it utilizes its own employees for the new construction, renovation and acquisition of homes that such work is not covered by Davis-Bacon and related Acts. FBHA agrees that if the work is contracted out or part of the work is contracted out, that said work is covered by Davis-Bacon and related Acts.

(7) **Lead-Based Paint:** Housing assisted with HOME funds are subject to the Lead-Based Paint Poisoning Prevention Act. (42 U.S.C. 4821, *et seq.*). FBHA hereby agrees that it shall be responsible for testing and abatement activities concerning lead-based paint.

(8) **Conflict of Interest:** The conflict of interest provisions apply to the procurement of supplies, equipment, construction and services by the Tribe and FBHA. These situations include the acquisition and disposition of real property and the provision of assistance by the Tribe, FBHA, or to individuals, housing developers, and other private entities under eligible activities which authorize such assistance. The FBHA and the Tribe agree that conflicts of interests include any person who is an employee, agent, consultant, officer, or elected or appointed official of the Tribe or FBHA receiving HOME funds.

(a). The general rule is that no persons described hereinabove who have or had any functions or responsibilities with respect to activities assisted under this part, or who are in a position to participate in a decision, or gain inside information about such activities, may obtain a financial interest or benefit from these activities. Further, these persons may not have an interest in any contract, subcontract, or agreement concerning such activities; and these persons may not, during their employment or tenure in office and for one year thereafter have an interest in the proceeds from these activities, either for themselves or for those with whom they have family or business ties. This paragraph does not apply to approved eligible administrative or personnel costs.

(b). The FBHA may grant an exception to the conflict provisions on a case by case basis, when it determines that such an exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the Tribe's program or project. An exception may be considered only after the Tribe has followed the appropriate disclosure provisions of 24 CFR 954.4(h)(4)(A), which is incorporated by reference into this agreement.

(9). **Department and Suspension:** Pursuant to 24 CFR section 954.4(i), FBHA shall require certification that neither it nor its principals is presently debarred, suspended, proposed for department, declared ineligible, or voluntarily excluded from participation from the covered transaction, regarding any proposal submitted in connection with lower tier transactions (such as subcontractors). The FBHA may rely on the certification unless it knows the certification is erroneous.

G. Request for Disbursement of Funds: FBHA and the Tribe agree that to have HOME funds disbursed from HUD will require the signature of the Tribal Council Chairman and

one (1) signature from an authorized **FBHA** Board Member. The **HOME** funds shall then be directly deposited into a **FBHA** account. The **FBHA** may not request disbursement of funds until the funds are needed for payment of eligible costs. The amount of each request shall be limited to the amount needed.

H. **Reversion of Assets:** Upon the expiration of this agreement, **FBHA** must transfer to the **Tribe** any and all **HOME** funds on hand at the time of expiration, including any accounts receivable attributable to the use of **HOME** funds.

I. **Records and Reports:** the following reports and information shall be submitted by **FBHA** to the **Tribes**.

1. Management Reports: **FBHA** shall submit management reports as **HUD** may prescribe.

2. Financial Status Reports: **FBHA** shall submit quarterly financial status reports to the **Tribe**.

3. Annual Performance Report : **FBHA** shall submit an annual performance report on the use of **HOME** funds pursuant to 24 CFR 954. 506(b) which shall be incorporated by reference into this agreement.

J. **Enforcement of the Agreement:** This agreement may be suspended or terminated in accordance with 24 CFR 85.43, if **FBHA** materially fails to comply with any of the provisions of this agreement. This agreement may be terminated for convenience in accordance with 24 CFR 85-44. The Enforcement and Termination for convenience regulations found at 24 CFR Sections 85.43 and 85.44, which shall be incorporated by reference into this Agreement.

K. **Monitoring and Responsibilities:** The **Tribe** shall be responsible for ensuring that **HOME** funds are used in accordance with all **HOME** program requirements. The use of **FBHA** as a subrecipient does not relieve the **Tribe** of this responsibility. The **Tribe** is also responsible for monitoring the performance of **FBHA** and other entities receiving **HOME** funds and assures the compliance with the requirements of 24 CFR Part 92, and for taking appropriate action when performance problems arise.

IN WITNESS WHEREOF, the Tribal Business Council of the **Three Affiliated Tribes** of the Fort Berthold Reservation has caused this Subrecipient Agreement to be executed by its Chairman and the Subrecipient has signed hereto, effective as of the date first written above.


FORT BERTHOLD HOUSING AUTHORITY



TERRY RED FOX, FBHA DIRECTOR

2/19/97
DATE

THREE AFFILIATED TRIBES



RUSSELL MASON, TRIBAL CHAIRMAN

2/13/97
DATE

*original
in legal*

**REVISED THREE AFFILIATED TRIBES FISCAL YEAR 1996
INDIAN HOME GRANT PROGRAM BUDGET**

Administration	\$ 13,349.00
Construction Costs	\$164,631.00
TOTAL	\$177,980.00

BUDGET LINE ITEM JUSTIFICATION

Administration:

15% x \$88,990 = \$ 13,349.00

Construction Costs:

\$75,641.00 - Balance Grant Amount
\$88,990.00 - Tribal Match = \$164,631.00

Fort Berthold Housing Authority for the administration and implementation of the Tribes 1996 Indian HOME Program grant award. (a true and correct photostatic copy of which is attached and incorporated herein).

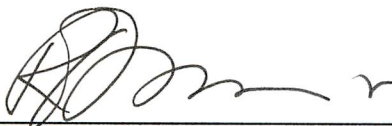
C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 13th day of February, 1997; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 13th day of February, 1997.

Daylon Spotted Bear
Secretary, Tribal Business Council

ATTEST:



Chairman, Tribal Business Council