

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

COMMUNITY FOR PERMANENT  
SUPPORTED HOUSING, CYNTHIA  
CURTIS, MARY HUBBARD, IRENE  
NIEMOTKA, MARGARET (“PEGGY”)  
SHADDUCK, and KELLY WATERMAN,

Plaintiffs,

v.

HOUSING AUTHORITY OF THE CITY OF  
DALLAS, TEXAS,

Defendant.

**Case No. 3:18-cv-2030**

**COMPLAINT**

**JURY DEMAND**

**NATURE OF THE ACTION**

1. Plaintiffs Cynthia Curtis, Mary Hubbard, Irene Niemotka, Margaret (“Peggy”) Shadduck, and Kelly Waterman (“Individual Plaintiffs”)—mothers of adult children with intellectual and developmental disabilities (“I/DDs”)—and Plaintiff the non-profit corporation Community for Permanent Supported Housing (“CPSH”) bring this civil rights litigation to redress the violation by Defendant the Housing Authority of the City of Dallas (“DHA”) of the rights of adults with I/DDs to have meaningful access to DHA’s rental subsidy program and to live independently in integrated settings in the community.

2. Project-based vouchers (“PBVs”) are a type of “Section 8” housing voucher, the colloquial term for vouchers authorized by Section 8 of the United States Housing Act of 1937. Unlike the more common Section 8 tenant-based vouchers (now known formally as Housing Choice Vouchers), project-based rental subsidies attach to specific properties and subsidize the rental of those properties to people who meet income and other criteria. Defendant operates its

PBV program in a manner that excludes people with I/DDs, and refuses to modify its PBV policies that cause this exclusion in order to provide an equal opportunity for adults with I/DDs to participate in the program. Defendant's policies violate Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* ("Title II"); Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("Section 504"); the Fair Housing Act of 1968, as amended, 42 U.S.C. §§ 3601 *et seq.*; and the Texas Fair Housing Act, Tex. Prop. Code § 301.025.

3. Well over 100,000 people with I/DDs live in the North Texas counties of Collin, Dallas, Denton, Ellis, Kaufman, Rockwall, and Tarrant. About 75% of adults with I/DDs continue to live with their families, even as their parents age and become increasingly infirm, due to the lack of affordable housing with support services. As DHA itself has said publicly, two-thirds of these adults with I/DDs "may be at risk of institutionalization or homelessness," because they have nowhere else to live once their parents no longer can care for them.<sup>1</sup> Living with family also deprives many adults with I/DDs of the independence and social and other developmental opportunities needed to reach their greatest potential and lead the happiest, most fulfilling lives possible. Most adults with I/DDs in North Texas who are unable to live with their families have been housed in State-operated institutions, nursing facilities, intermediate care facilities for people with intellectual disabilities ("ICF/IDs"), group homes, and foster care homes. For many if not most adults with I/DDs, none of these arrangements provide the opportunity to live independently in the most community-integrated setting appropriate to their needs and in a stable, long-term living environment.

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<sup>1</sup> DHA, *Request for Proposals for Section 8 Project Based Voucher (PBV) Assistance – Availability of 50 PBVs for Neighborhood Housing Pilot Program of Permanent Supportive Housing for Persons with Intellectual or Development Disabilities* (July 31, 2016) ("RFP"), at 2 (attached as Exhibit 1)

4. The most integrated setting appropriate to the needs of many people with I/DDs is living in a community-based, single-family home with peers. DHA could provide—and, as described below, once proposed to provide—just such a setting through a PBV program that makes it feasible for parents to rent single-family homes to their adult children with I/DDs. Parents could find nearby houses in which their adult children could live independently with others who have IDD in a family-like environment; friends with disabilities could become roommates; compatible families could work together to ensure that the supportive staffing and other components of the housing environment are well-suited for their children; and, by eventually creating a trust to own the house, parents could ensure that the housing will be there for their children after their incapacity or death.

5. Although individuals with I/DDs have a diminished ability to manage some tasks of daily life and often require support throughout their lifetimes, many can live with a substantial degree of independence as long as that support is present. Such needs cannot be met in Defendant's other programs because of occupancy and programmatic restrictions that make it difficult for three or four adults with I/DDs to live together, supported by a live-in caregiver. Thus, DHA—which offers an assortment of affordable housing options for other adults in its service area—does not provide adults with I/DDs the benefits of its programs.

6. DHA could easily remedy this exclusion. In July 2016, DHA announced it would provide up to 50 PBVs to help create permanent supportive housing for adults with I/DDs, pursuant to a request for proposals (the "Neighborhood Housing RFP") for housing. These PBV vouchers would have allowed parents to, for example, buy a nearby residential house that their child with I/DDs could live in along with two or more other adults with I/DDs and a live-in aide. The owners would be responsible for finding other residents meeting DHA criteria (*e.g.*,

based on income and disability), and would receive the value of the voucher each month to help them pay for the mortgage, maintenance, and other associated costs.

7. As DHA explained when it announced the Neighborhood Housing program: “This model endeavors to provide opportunities for companionship and socialization instead of loneliness; safety and protection against crime; supervision with activities of daily living; and privacy and autonomy within a family lifestyle . . . .”<sup>2</sup>

8. A PBV regulation promulgated by the U.S. Department of Housing and Urban Development (“HUD”) generally does not permit PBVs to be used to benefit a tenant who is related to the residence’s owner, but it explicitly provides that DHA may approve such assistance as a reasonable accommodation for a person with a disability. 24 C.F.R. § 983.251(a)(4). When announcing the Neighborhood Housing program, DHA acknowledged that a parent and child with an I/DD could be owner and resident as a reasonable accommodation.<sup>3</sup> Indeed, that was the intended and expected (indeed, paradigmatic) use of the program all along.

9. As expected, most of the proposals submitted to DHA were from parents of adults with I/DDs. These submissions proposed to use single-family homes owned by the applicants as PBV-supported housing for up to three adults with I/DDs, including the owner’s own adult child and other adults with I/DDs living in the home. The Individual Plaintiffs either were among those who immediately sought the benefit of the Neighborhood Housing program at that time or would have done so shortly thereafter if it were made available.

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<sup>2</sup> RFP at 3-4.

<sup>3</sup> RFP at 5; DHA, Addendum 1 – Pre-Proposal Conference Questions and Answers (Sept. 11, 2016), at Q/A 1.

10. Defendant did not go forward with approving applications and then making reasonable accommodations for those who need them to live in the newly designated PBV properties. Instead, in April 2017, Defendant cancelled the Neighborhood Housing RFP, which has been its only offering suitable for the kind of housing and supports needed by many adults with I/DDs, including the Individual Plaintiffs' children.

11. Defendant stated that cancellation of the Neighborhood Housing RFP was based upon its ironclad, no-exceptions-permitted rule against allowing a PBV recipient to house a family member with a disability—the precise arrangement that most program applicants wanted and needed. DHA has maintained the rule since then. This unjustified rule creates an insurmountable obstacle for people with I/DDs and other disabilities and their families seeking to participate in DHA housing programs.

12. Because Defendant cancelled the Neighborhood Housing RFP, as many as 50 single-family homes that could have been made suitable for adults with I/DDs were not. This affects more than 100 adults with I/DDs—including the adult children of the Individual Plaintiffs and many others who are constituents or clients of CPSH—who remain in institutional settings now or are at continued risk of institutionalization or homelessness depending on their parents' health. And institutionalization denies people with I/DDs altogether the immeasurable benefits of integration with the broader community.

13. Plaintiff CPSH has devoted considerable resources to attempting—unsuccessfully—to persuade DHA to reverse its unlawful acts. It also has had to devote resources to educating its constituency and the public about the program's cancellation and to finding other affordable housing opportunities for adults with I/DDs.

14. Plaintiffs Curtis, Hubbard, Niemotka, Shaddock and Waterman attempted to avail themselves of DHA's PBV program in 2016—through their own applications or another family's—and/or would apply if the program is restored. Their children's short- and long-term housing situations have been significantly limited by the cancellation of the Neighborhood Housing program. Their children have been deprived of an opportunity to live in the most integrated setting appropriate to their needs, and Individual Plaintiffs have been deprived of PBV funds that would have covered a portion of their mortgages and other carrying costs of housing residents with I/DDs. None of the other programs offered by DHA meet the needs of Plaintiffs' children, and so DHA's action deprives them altogether of the benefits of DHA's PBV offerings.

15. Plaintiff CPSH has been injured by being forced to divert substantial resources to counteract DHA's unlawful conduct and by the frustration of its mission.

16. There is no valid basis for Defendant's continued failure to offer PBVs that allow for family ownership where necessary to meet the housing needs of people with I/DDs. That failure violates Title II and Section 504 by denying the Individual Plaintiffs' children and others with I/DDs the opportunity to receive the benefits of DHA's services and programs in integrated, community-based settings. It also unlawfully denies the Individual Plaintiffs the ability to obtain housing with PBVs or otherwise equally benefit from DHA's programs. Defendant's rule against allowing family ownership is also unlawful because it constitutes an eligibility criterion that disqualifies or tends to disqualify people with disabilities and those associated with them.

17. DHA's actions also violate federal and state fair housing laws, which require it to provide reasonable accommodations to program rules for people with disabilities and bar it from limiting housing-related benefits because of a resident's or potential resident's disabilities.

18. Plaintiffs bring this action to redress Defendant's discriminatory and unlawful conduct and the harm they have suffered and will continue to suffer as a direct result of that conduct absent judicial relief.

### **PARTIES**

19. Plaintiff Community for Permanent Supported Housing is a non-profit corporation located in Plano, Texas. Its mission is to work with families, the government, service providers, and other community partners to create safe, affordable housing for adults with I/DDs in North Texas, including in Collin, Dallas, Denton, Ellis, Kaufman, Rockwall, and Tarrant Counties. Since its founding in 2011, CPSH has served as a forceful advocate for individuals with I/DDs and their families, connecting them with information, services, and resources. Robin LeoGrande is the co-founder and president of CPSH.

20. Plaintiff Peggy Shadduck lives with her 26-year-old son Greg in Richardson, Texas. Greg has pervasive developmental disorder. Ms. Shadduck, who is Greg's legal guardian, has been searching for a way for Greg to live more independently, but cannot locate an appropriate, affordable living option in an integrated environment that meets her son's disability-related needs without financial assistance.

21. Plaintiff Kelly Waterman lives with her 22-year-old daughter Sara in Dallas, Texas. Sara has Down syndrome. Ms. Waterman is Sara's legal guardian. Ms. Waterman has been searching for a way for Sara to live independently but cannot locate an appropriate, affordable living option in an integrated environment that meets her Sara's disability-related needs without financial assistance.

22. Plaintiff Irene Niemotka lives with her 36-year-old daughter Michele in Plano, Texas. Ms. Niemotka is Michele's legal guardian. Ms. Niemotka has been searching for

opportunities for Michele, who has 18P-Syndrome, to live independently, but she cannot afford to support Michele in an integrated environment that meets Michele's disability-related needs without a subsidy.

23. Plaintiff Mary Hubbard lives in Wylie, Texas. Her 35-year old daughter Jessica has pervasive developmental disorder. Ms. Hubbard is Jessica's legal guardian. Using a tenant-based voucher from DHA, Jessica lives in an apartment with a live-in caregiver, but the arrangement is not working well. Ms. Hubbard has been searching for a way for Jessica to live independently with others who have IDD, but without financial assistance she cannot afford to support Jessica in an integrated environment that meets Jessica's disability-related needs.

24. Plaintiff Cynthia Curtis lives with her 41-year old daughter Krystal in Garland, Texas. Ms. Curtis is Krystal's legal guardian. Ms. Curtis, a single mother, has been searching for opportunities for Krystal, who was born with developmental and cognitive delays and has been diagnosed as a person with an I/DD, to live independently, but she cannot afford to place Krystal in an integrated environment that meets Krystal's disability-related needs without a subsidy.

25. The Individual Plaintiffs' adult children with I/DDs would benefit significantly from community-based living with peers, and for each of them an arrangement such as was contemplated in DHA's withdrawn program—living in a single-family home that is owned by a relative of one of the occupants, with one or more other adults with I/DDs—would provide them with the opportunity to reside in the least restrictive, most-integrated setting which is appropriate for them, given their disabilities. Each would qualify to receive housing benefits under such a program.

26. Defendant Housing Authority for the City of Dallas is an independent authority of the Dallas City government. DHA is responsible for providing quality affordable housing to low-

to moderate-income Dallas area residents. DHA operates rental assistance programs in seven counties in the Dallas area. It administers the PBV program as part of its Housing Choice Voucher Program. At all times relevant to this litigation, DHA has been a “public entity” within the meaning of Title II, and therefore subject to the obligations of that statute. Furthermore, at all times relevant to this litigation, DHA has been a recipient of federal funds, and thus subject to the obligations imposed by Section 504.

### **JURISDICTION AND VENUE**

27. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 because the claims alleged herein arise under the laws of the United States, and pursuant to 42 U.S.C. § 3613. This Court has pendent jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367.

28. Venue is proper in this district under 28 U.S.C. § 1391(b) because Plaintiffs and Defendant are residents of the District and the challenged conduct primarily occurred within the District.

### **STATUTORY AND REGULATORY BACKGROUND**

29. Each of the three federal statutes at issue here—Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act—provides wide-ranging protections for individuals with disabilities. Some of these protections are overlapping, particularly those of Section 504 and Title II of the ADA, and collectively these statutes bar DHA’s discriminatory conduct in multiple ways. As the ADA’s statutory language states, Congress’s intent was “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1).

30. Title II provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services,

programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Section 504 and its implementing regulations state the same with respect to entities that (like the DHA) accept HUD funding. 24 C.F.R. § 8.4(a). The Fair Housing Act, meanwhile, bars disability discrimination “in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling,” 42 U.S.C. § 3604(f)(2), and further makes it unlawful to “make unavailable or deny” a dwelling because of disability, *id.* § 3604(f)(1).

31. Thus, under all three of these laws, disability cannot cause exclusion from, or denial of the benefits of, DHA’s services and programs that make affordable housing available. To comply, DHA must ensure that each of its programs, when viewed in its entirety, is readily accessible to people with disabilities. 24 C.F.R. § 8.24.

32. Each of the three laws requires DHA, to avoid such prohibited exclusion, denial of benefits, or other discrimination, to make reasonable modifications to its policies, practices, or procedures. *See* 28 C.F.R. § 35.130(b)(7); 24 C.F.R. § 8.33; 42 U.S.C. § 3604(f)(3)(B). DHA must make such modifications to avoid discriminatory results unless it can demonstrate that doing so would fundamentally alter the nature of its service, program, or activity. *Id.*

33. Title II and Section 504 also bar DHA from imposing eligibility criteria that tend to screen out classes of people with disabilities, or that prevent them from fully and equally enjoying DHA’s services. 28 C.F.R. § 35.130(b)(8); 24 C.F.R. § 8.4(b)(4). DHA can only use eligibility criteria with such discriminatory effects if they are necessary for the provision of the service or program at issue. *Id.*

34. Similarly, Title II and Section 504 bar DHA from administering its programs in a manner that substantially impairs or defeats those programs' objectives with respect to people with disabilities. 28 C.F.R. § 35.130(b)(3); 24 C.F.R. § 8.4(b)(4).

35. Finally, Title II and Section 504 both require DHA to administer its programs such that people with disabilities can get their benefits “in the most integrated setting appropriate to the[ir] needs.” 28 C.F.R. § 35.130(d); 24 C.F.R. § 8.4(d). As Congress found in passing the ADA, “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2). Accordingly, the preamble to the “integration regulation” implementing Title II explains that “the most integrated setting” is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible . . . .” 28 C.F.R. § 35.130(d), App. B.

36. In 1999, in a landmark decision addressing the unnecessary institutionalization of people with disabilities, the U.S. Supreme Court affirmed in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), that offering public services only in ways that lead to unjustified segregation is a form of disability discrimination prohibited by Title II of the Americans with Disabilities Act. *Olmstead* has inspired increased efforts across the country to assist individuals to move to the most integrated, community-based settings possible and to avoid the risk of unwanted and unnecessary institutionalization.

37. In 2013, HUD issued a policy statement<sup>4</sup> encouraging housing providers that it funds (and that are, thus, subject to Section 504's obligations) to support *Olmstead*

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<sup>4</sup> Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, 2013, available at <https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF>.

implementation by increasing integrated housing opportunities. The statement explicitly recognizes that HUD-funded programs, including the Section 8 PBV program, are appropriate resources to fund affordable community-based housing for people with disabilities.<sup>5</sup>

### **FACTUAL BACKGROUND**

#### **I. DHA Could Readily Provide Needed Housing Opportunities for People with I/DDs Through Its PBV Program But Does Not**

38. More than 100,000 people in CPSH's service area have I/DDs. I/DDs are usually present at birth and affect the trajectory of a person's physical, intellectual, and/or emotional development. People with I/DDs have significant limitations in their intelligence and/or adaptive behavior, which includes everyday social and life skills. Many adults with I/DDs nonetheless are capable of living with a significant degree of independence given sufficient supportive services, and such independence contributes greatly to their physical and emotional well-being.

39. Individuals with I/DDs face a variety of challenges, including obtaining gainful, sustained employment and earning sufficient income. Relatedly, they also have difficulty obtaining and affording suitable housing that allows them to live their lives to the fullest. Over 75% of adults with I/DDs live with their families,<sup>6</sup> upon whom they rely for financial support and assistance with activities of daily life.

40. But many adults with I/DDs—like other adults—are better off leaving their parents' homes. Recent research confirms that, in general, adults with I/DDs benefit greatly from transitioning from their families' homes into more independent, community-based living situations. Individuals receiving home- and community-based services and supports in smaller,

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<sup>5</sup> *Id.* at 2, 8 (referencing Section 8 project based voucher assistance under Section 8(o)(13) of the Housing Act of 1937).

<sup>6</sup> RFP at 2.

individualized settings experience greater community integration and positive life outcomes. One of the essential benefits such settings offer is the opportunity for socialization, which improves long-term well-being.

41. Moreover, often the parents with whom adults with I/DDs live are seniors. In the past people with I/DDs often had shorter lives than their parents, but with medical advances many are now living much longer than their parents. When aging parents die or become ill, adult children with I/DDs are at risk of institutionalization or homelessness due to the shortage of affordable housing with supportive services. Many aging parents of adult children with I/DDs live in a perpetual state of anxiety, wondering what will happen to their children should they become unable to care for them.

42. Thus, the best course for many individuals with I/DDs is to transition to a longer-term community-based living situation when they are between the ages of 20 and 30, and while parents or family caretakers are alive and in good health. Doing so provides both immediate benefits and long-term housing stability.

43. But suitable housing options are hard to find for most. Group homes managed by public or private social service agencies and traditional tenant-based vouchers, while good options for some, present a range of other drawbacks for many and are in short supply. And it is now well-established that institutionalization is not a good long-term solution for most: “It is clear from decades of studies that people with I/DDs have happier, healthier, and more independent lives when they live in smaller community-based residences than in larger institutional settings.”<sup>7</sup>

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<sup>7</sup> The Association of University Centers on Disabilities & American Association on Intellectual and Development Disabilities, *Community Living and Participation for People with Intellectual*

44. Instead of those arrangements, by far the best long-term housing situation for many if not most adults with I/DDs is to live independently with a small number of well-matched people and appropriate supportive services. Current research supports this conclusion: a recent examination of a number of studies addressing health, obesity, loneliness, well-being, satisfaction, and financial expenditures found that “the best outcomes occurred among individuals with I/DDs living in their own homes (owned or rented). Those living in their own homes, with appropriate supports, were less lonely, healthier, financially better off, and more satisfied with their lives.”<sup>8</sup> This type of housing provides ample opportunities for needed socialization and the development of independent living skills while allowing residents to remain in the community and readily access supportive services.

45. Financial constraints, however, frequently mean that this is not a realistic option. Adults with I/DDs typically have limited earning capacity, and they and their families typically lack sufficient financial resources to support independent living with peers and supportive services.

46. Plaintiff CPSH was established in 2011 to help people confront these issues. CPSH’s mission is to create housing options in the North Texas community for adults with I/DDs, and to provide educational services for them and their families to encourage independent living. For years, CPSH has worked directly with individuals with I/DDs and their families to find and create affordable, high-quality and lasting housing solutions. From the start, CPSH has

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*and Developmental Disabilities: What the Research Tells Us* (July 24, 2015), available at <https://tash.org/wp-content/uploads/2015/08/CommunityLivingPaper-Final-1.pdf>, at 4.

<sup>8</sup> *Id.* at 3.

recognized that the PBV program that DHA operates holds great potential for meeting the housing needs of its constituents.

47. Under the federal Housing Choice Voucher program, vouchers are issued by local public housing authorities, with financial support from HUD, to subsidize housing for low- and moderate-income people. There are tenant-based and project-based vouchers. DHA administers the Housing Choice Voucher program in Dallas, including both tenant-based and project-based vouchers. Tenant-based vouchers are the better known and much larger component. Individuals apply for tenant-based vouchers, and they must find a private landlord who will accept their voucher.

48. PBVs attach to a building, rather than to a tenant. For single-family PBVs, that means the voucher attaches to a specific house. The owners of the house apply to the local public housing authority for a voucher and enter into a contract with the housing authority if the application is approved. The owners of the house must find tenants who meet the eligibility requirements of the particular PBV program, such as having an income below a certain level. The voucher then pays much of the tenants' rent. If tenants leave, the owners are responsible for finding replacements. Housing authorities, including DHA, use PBV programs to target specific populations with a significant need for affordable housing, such as people who are homeless or who have disabilities.

49. From the start, CPSH recognized the value of PBVs for creating appropriate and affordable housing opportunities for the community it serves. PBVs can be used to create living arrangements that provide independent living with other people as well as long-term stability and security for adults with I/DDs and their families. These elements of living arrangements are of paramount importance to families affected by I/DDs.

50. When a parent owns the home in which an adult child with I/DDs resides, families need not be concerned about the issues that often arise in a routine landlord-tenant relationship. For instance, a family does not have to worry that an adult child's lease will not be renewed next year; about the quality or condition of the unit; whether the landlord is responsive to repairs; or whether the landlord is taking advantage of an adult with I/DDs, who may not be able to speak up for herself or recognize the need to do so. Parents who are also owner-landlords can maintain the quality of their child's living environment while also enabling their independence, growth, and socialization. Moreover, by establishing a trust or other arrangement, parents who own the homes in which their adult children with I/DDs live can ensure that security, stability, and a central role for family remain once the parents are gone.

51. These ownership arrangements—which otherwise would require considerable wealth, but do not with the subsidies that PBVs provide—hold comparable benefits for non-owners whose child lives in the house, because they facilitate close cooperation among owner- and non-owner families. An owner family is powerfully motivated to find people its child already knows and is compatible with to be the other residents of the house. The owner family can likewise make sure that the parents of the other residents are people with whom it can work cooperatively in managing the house over the years. The ownership arrangements facilitated by PBVs allow residents with disabilities and their parents to choose whom they live with, and that is a crucial element of creating the best living situation for adults with I/DDs.

52. In light of the tremendous but unrealized potential benefits that DHA could provide its constituents with properly tailored PBV offerings, CPSH began meeting with DHA officials, including DHA's former CEO MaryAnn Russ, in 2012 to convince DHA to offer a

community-based PBV program for adults with I/DDs. In 2013, CPSH worked with DHA on a PBV project that resulted in two apartment buildings receiving PBVs for people with I/DDs.

53. In addition, CPSH worked with DHA in 2014 to create PBVs targeted at single-family homes for residents with disabilities. However, difficulties with the state Medicaid waiver program—which supports services for people with disabilities—prevented most adults with I/DDs from transitioning their services to a community-based program at that time. Only one PBV was awarded.

54. By 2016, the Medicaid waiver issue was largely resolved. Advocacy from CPSH resulted in DHA offering a new PBV program for single family housing for people with I/DDs.

55. On July 31, 2016, through a “request for proposals” (“RFP”) soliciting applications from homeowners and service providers, DHA announced the availability of up to 50 PBVs specifically designed to create affordable, appropriate housing opportunities for individuals with I/DDs. The RFP’s stated purpose was to increase single-family housing options for adults with I/DDs throughout the Dallas metropolitan area. The announcement explained the importance of the program in terms of the shortage of affordable, long-term housing solutions for adults with I/DDs and the great benefits of neighborhood-based independent living:

Finding decent, affordable housing is a dilemma for millions of Americans. The challenge can be even greater for people with Intellectual and Developmental Disabilities (IDD). People with disabilities encounter significant barriers finding affordable community-based housing. Being part of the community and living as independently as possible are among the most important values and goals shared by people with disabilities, their families, and advocates. A home of one's own - either rented or owned - is the cornerstone of independence for people with disabilities. However, across the U.S. people with disabilities, including people with intellectual and developmental disabilities (IDD), face a severe housing crisis. . . .

Over 75% of people with Intellectual and Developmental Disabilities (IDD) live with families. More than 25% of family care providers are over the age of 60 years and another 38% are between 41-59 years. As this generation of caregivers

continues to age, many of their adult children with I/DDs may be at risk of institutionalization or homelessness due to the shortage of affordable housing with support services. Without a mandate to support to [sic] adults with IDD and their families, most of these families receive few support services and face long residential services waiting lists . . . .

The N[eighborhood] H[ousing] model sponsored by Dallas Housing Authority . . . . endeavors to provide opportunities for companionship and socialization instead of loneliness; safety and protection against crime; supervision with activities of daily living; and privacy and autonomy within a family lifestyle - all at an affordable price.<sup>9</sup>

56. The RFP invited property owners and potential property owners to submit proposals (*i.e.*, applications for a PBV). Each house had to be a single-family home with two to five bedrooms, designed to serve three or more adults with I/DDs. The residents would be considered a “family” for program purposes. Owners needed to demonstrate that qualified personnel (*e.g.*, a live-in aide) would provide the support needed by the residents to live independently.

57. The RFP also explained the finances of the program. DHA would approve a rent amount for the house; the individuals with I/DDs, treated as a family for this purpose, would pay 30% of their collective adjusted monthly income to the owners as rent; and DHA would pay the owners the difference between those two amounts. The owners would be responsible for maintaining the house and addressing services through a memorandum of understanding with a service provider.

58. As with past efforts, CPSH worked collaboratively with DHA to develop the program, educate families about it, and encourage families and property owners to participate in it. This included emailing updates, creating presentations, holding meetings, and referring property owners to DHA representatives to answer questions. Among other things, CPSH

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<sup>9</sup> RFP at 2, 3-4 (citations omitted).

organized events where interested families could learn about how the program would operate and application requirements, including an event at which a DHA representative made a presentation.<sup>10</sup> A central component of the outreach conducted by CPSH was to explain how families could obtain a PBV for a house in which their child with I/DDs would be a resident.

59. Applications were due September 19, 2016, and were timely received by DHA.<sup>11</sup> Upon information and belief, most of the applications submitted were from families who planned on having their child live in the house that they owned and for which they were seeking a voucher.

## **II. DHA Canceled the Program Because It Refused to Let Families Obtain a Voucher for a House in Which Their Child Would Reside**

60. Despite significant interest and applications designed to meet the housing needs of the very population the program was designed to serve, sometime during the first few months of 2017, DHA decided to discontinue the PBV program before it had even acted on the applications. This decision was made under new President and CEO Troy Broussard. The decision was communicated to CPSH in a meeting with DHA in April 2017.

61. DHA was canceling the program, it asserted to CPSH, because going forward would require allowing families to own homes in which their adult children with I/DDs resided, and it was not willing to permit this arrangement no matter how reasonable an accommodation that might be for people with disabilities. DHA effectively adopted this blanket ban on family-as-owner arrangements for all its PBV offerings—even though family-as-owner was the most

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<sup>10</sup> A video of DHA's presentation can be found at: [https://www.youtube.com/watch?v=cVhjnWT5z3U&feature=player\\_embedded](https://www.youtube.com/watch?v=cVhjnWT5z3U&feature=player_embedded).

<sup>11</sup> The RFP mistakenly stated that the deadline was in 2014, which DHA corrected in an addendum.

popular and feasible arrangement for the PBV program targeted at people with I/DDs that DHA was now canceling. That is to say, DHA adopted an eligibility requirement for its PBV offerings knowing full well that its inevitable effect would be the exclusion from DHA's services of the very families with adult children with I/DDs that this particular PBV program was meant to serve.

62. This was a contradiction of the program rules as originally announced by DHA. Those original rules permitted such ownership arrangements as a reasonable accommodation to an otherwise applicable bar on family members renting PBV-subsidized properties to each other. That accommodation was made in recognition of its necessity for certain people with disabilities to enjoy the benefits of DHA's PBV offerings and the lack of any reason why granting it would fundamentally alter those offerings. In an addendum to the RFP published on September 11, 2016, DHA addressed this subject explicitly. It stated that "[a] reasonable accommodation is a modification or change DHA can make to its offices, methods or procedures to assist an otherwise eligible applicant or participant with a disability to take full advantage of and use DHA's programs," and that with a reasonable accommodation, a parent can "be the owner of a home in which their child resides . . . ."

63. DHA had said the same thing in its presentation at the informational event organized by CPSH.<sup>12</sup>

64. DHA now claimed that it was categorically prohibiting family ownership, even when such an arrangement would be necessary to provide adults with I/DDs (or other disabilities) the opportunity to live independently. DHA relied on a HUD regulation that generally bars family ownership in PBV programs. DHA claimed it had learned that HUD barred

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<sup>12</sup> See *supra* note 10 at 10:50.

lifting the restriction as a reasonable accommodation to allow people with disabilities to obtain housing. In fact, HUD explicitly permits such an accommodation.

65. The HUD regulation states that “[a] PHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, *unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.*” 24 C.F.R. § 983.251(a)(4) (adopted in 2014) (emphasis added). The regulation explicitly *authorizes* PHAs to permit family ownership as a reasonable accommodation where necessary so that a person with disabilities can utilize the program, and so DHA cannot justify a program rule prohibiting family ownership without exception.

66. Ignoring this directly-on-point regulation, which has existed since 2014, DHA told CPSH that it construed HUD’s rules as barring family ownership because of HUD’s response to a comment in a 2005 rulemaking. It did not explain how a HUD statement from 2005 could overcome a subsequent regulation (and it cannot).

67. HUD has confirmed to DHA in writing that, to the extent its 2005 comment could be construed as taking a position consistent with DHA’s construction, the 2014 regulation superseded and reversed it. HUD told DHA that it “should handle a [project-based voucher] tenant’s or applicant’s reasonable accommodation request as it would any other reasonable accommodation request,” and that “regardless of whether the program regulation specifically refers to reasonable accommodations, PHAs are always required to provide reasonable accommodations consistent” with federal civil rights laws.

68. This means there is no legitimate basis for DHA's anti-family-ownership program rule, and that a reasonable accommodation permitting family ownership in the PBV program is wholly proper. Counsel for CPSH also explained this to DHA.

69. Even after being informed that its stated rationale for refusing to grant this accommodation is legally erroneous, DHA has stuck to its refusal to offer PBVs that parents of adults with I/DDs can use to buy homes and lease them to their children. As a direct result, there are no suitable DHA programs for many people with I/DDs. DHA is applying an eligibility requirement that denies adults with I/DDs the opportunity to obtain the benefits and services of its programs in the most integrated setting appropriate to their needs. DHA has offered no other rationale for its position.

70. DHA's blanket refusal to allow parents to lease to their adult children with I/DDs through the PBV program means that the individual Plaintiffs and those similarly-situated cannot now or ever participate in DHA public housing programs in a way that appropriately addresses their families' needs.

### **III. Plaintiffs Curtis, Hubbard, Niemotka, Shadduck, Waterman Tried to Utilize the PBV Program and/or Would Try If It Is Restored**

71. As the experiences of the individual Plaintiffs and their children make plain, the need for DHA programs that serve the needs of adults with I/DDs, as the 2016 RFP would have, is real and urgent for families in the Dallas metropolitan area.

72. **Plaintiff Mary Hubbard**, a flight attendant, and her husband, a Lutheran pastor, live in Wylie, Texas and are both close to retirement age. Their oldest daughter Jessica, 35, has an I/DD called pervasive developmental disorder.

73. Jessica's disability limits her ability to manage daily tasks, such as meal planning and keeping a schedule. Jessica has been institutionalized in the past, but she presently lives in an apartment

with a caregiver (paid for by Medicaid) and has a tenant-based Housing Choice Voucher issued by DHA. Due to her disabilities, Jessica is unable to work more than five hours per week and she is low-income. Jessica has a disability that significantly impairs one or more of her major life activities.

74. Jessica does much better when she has frequent associations with other people her age who have I/DDs. Without such opportunities, Jessica becomes lonely and engages in negative behaviors. Currently, she participates in an adult day program several times a week, but the combination of her disabilities and living arrangement—alone with a caregiver—prevents her from having the type and degree of peer interactions that she needs and wants.

75. For the past several years, Ms. Hubbard has searched for opportunities for Jessica to live independently with others and with longer-term support. She has frequently consulted with CPSH for this purpose. Community-based living in a single-family house would be ideal for Jessica, as it would allow her a significant degree of independence, offer regular opportunities for her to socialize with other her own age who have IDD, and allow her to avoid extended social isolation.

76. Focused on finding a longer-term solution for Jessica's living situation, Ms. Hubbard learned of DHA's 2016 RFP from CPSH. It was apparent to Ms. Hubbard that Jessica would benefit greatly from the PBV program.

77. Ms. Hubbard carefully evaluated the financial viability of the program. She determined that, although she and her husband would need to contribute some of their own funds, the amount was affordable. She applied by the deadline. The application satisfied DHA's criteria.

78. Ms. Hubbard's application for a PBV entailed converting the four-bedroom home in which she and her husband reside into a home for Jessica, a live-in caregiver, and two other adults with I/DDs. Had the proposal been approved, Ms. Hubbard and her husband planned on moving to a nearby condominium. The Hubbards would have continued to own the house and would have acted as landlords for the property.

79. The application included the name and qualifications of the service provider Ms. Hubbard had selected (*see infra* ¶ 109), as required, and satisfied all of DHA's other criteria.

80. The Hubbards could not turn their house into a home for Jessica and other adults with I/DDs because DHA canceled the program. They have not been able to find a permanent solution for Jessica's long-term living needs. Without the PBV program, they do not expect that they will be able to do so in the future.

81. **Plaintiff Peggy Shadduck** is a professor at the University of North Texas at Denton, where she chairs the department of applied arts and sciences. She is a single mother and lives with her 26-year-old son Greg in Richardson, Texas. Greg has pervasive developmental disorder, which is an I/DD, and an IQ between 59 and 68.

82. Greg's disability prevents him from working or volunteering steadily and limits his ability to manage other daily tasks, but he is gregarious and opinionated and able to live semi-independently. For socialization purposes, he regularly participates in a day program for adults with I/DDs, but he spends more time alone than is best for him to develop social skills and build friendships. Greg has a disability that significantly impairs one or more of his major life activities.

83. Ms. Shadduck has determined that she needs to help Greg transition to a more independent living situation. Greg would benefit greatly from living with a small, steady group

of roommates with I/DDs. In addition, as she nears retirement age, Ms. Shadduck wants to set Greg up in a long-term living situation where she can step back from caregiving duties.

84. The ideal long-term environment for Greg would be one where he lives with a small group of friends who also have I/DDs and a health aide or caregiver. Ms. Shadduck, however, cannot afford to maintain one home for herself and another one for her son without additional support. For this reason, Ms. Shadduck was excited to hear from CPSH about DHA's PBV program for individuals with I/DDs.

85. In the course of trying to address Greg's housing needs, Ms. Shadduck met another woman whose son is also an adult with an I/DD. The other woman and her fiancé owned a home in Plano. She and Ms. Shadduck ultimately agreed that, using a PBV obtained by the other woman and her fiancé through DHA's program, Greg and the other woman's son would live together in the home with another roommate and a caregiver. The other woman timely applied for a PBV. The application satisfied DHA's criteria.

86. In January 2017, Ms. Shadduck moved Greg into the home with the reasonable expectation that DHA would shortly approve the other woman's PBV application. Ms. Shadduck could afford to pay Greg's full rent herself over that short period. Greg and his new housemate got along well.

87. When DHA canceled the PBV program, however, Ms. Shadduck knew that she could not permanently afford the new living arrangement for Greg. As a result, she had to move Greg back home. Both Greg and Ms. Shadduck were very frustrated and upset. Had DHA not canceled the program, Greg could have relied on the PBV to continue sharing the home with his peers.

88. If the program were restored, Ms. Shadduck would do what the Hubbards were going to do. She would apply for a PBV herself, move out of her three-bedroom townhouse so that Greg could live there with a friend and a health aide, and move to a smaller location herself. She has examined the financial requirements and determined that it would be feasible with a PBV. This would be an ideal solution and a significantly improved long-term housing situation for her and Greg.

89. **Plaintiff Kelly Waterman** lives in Dallas with her husband and their 22-year-old daughter Sara, who has Down syndrome. Ms. Waterman works for Entercom/CBS Radio. Sara's disability prevents her from managing activities of daily life, including managing her medications and schedule.

90. Sara is highly social and thrives in environments where she can actively engage with her peers. She is engaged in a variety of activities through her day program at Heroes Academy. She is active in her church and in a number of sports through her involvement with the Special Olympics, including track, basketball, bowling, and horseback riding. Sara earns approximately \$200/month from a part-time job packing boxes for Glasses Ready to Go, Inc. Sara has a disability that significantly impairs one or more of her daily life activities.

91. Although she still needs daily support, Sara has achieved a high degree of independence. In addition to maintaining her part-time job, she sometimes travels to her activities on her own using a car service called Bubbl, in which off-duty or retired police officers serve as drivers. Sara is ready to live more independently in a home with roommates who also have IDD and would benefit greatly from the opportunity to do so.

92. Like the other individual Plaintiffs, Ms. Waterman has been actively searching for appropriate housing for her daughter. Cognizant of Sara's need to transition out of the family

home, for the past few years, Ms. Waterman has searched for housing opportunities that are both affordable and will allow Sara to remain an active part of her local community.

93. In 2016, Ms. Waterman found the perfect three-bedroom house for Sara. It was large enough for Sara, a roommate, and a paid caregiver; was an eight-minute drive from the Waterman home; and was located close to Sara's various social activities. The Watermans knew they could not afford the home, however, without assistance.

94. In the summer of 2016, Ms. Waterman became aware of DHA's PBV program for individuals with I/DDs. In anticipation of submitting a proposal and receiving a PBV, Ms. Waterman began negotiations with the owner of the home. She calculated the amount needed for a down payment, determined the size of the loan she would need, and had contractors evaluate the home to assess what work needed to be done before Sara could move in. She determined that, with a PBV, the house was financially viable as a long-term home for Sara and another person with IDD.

95. Ms. Waterman then learned that DHA had put the program on hold and might cancel it altogether.

96. Unable to commit to the purchase of a new house without the availability of a PBV to help cover the mortgage and other expenses, Ms. Waterman ended negotiations with the home's owner and walked away from the deal. Another buyer later bought the property.

97. Had DHA not canceled the program, Ms. Waterman intended to apply for and use a PBV to provide independent community-based housing for Sara and other residents. If DHA restores the program, Ms. Waterman intends to identify another house to purchase and use as a home for Sara and others with a PBV.

98. **Plaintiff Irene Niemotka** lives with her husband and their 36-year-old daughter Michele in Plano, Texas. Ms. Niemotka has retired from her position with US Youth Soccer to focus on the needs of her daughter. Michele has 18P-Syndrome, a chromosomal disorder that causes intellectual and developmental deficits. She lacks fine motor skills and requires assistance with many activities of daily living, including basic hygiene and meal preparation. Michele has a disability that significantly impairs one or more of her major life activities.

99. Despite her disability, Michele maintains an active social life and thrives on social activities. She goes to bible study weekly and enjoys shopping trips to the mall with her friends. She bowls, plays basketball, and participates in other communal activities. Michele has maintained some of the same friendships she has had since childhood.

100. Ms. Niemotka is 72 years old and a cancer survivor; her husband is 76 and has long-term health issues. Since Michele's diagnosis decades ago, Ms. Niemotka has worried constantly about her daughter's future, particularly what will happen once she and her husband can no longer provide care. Given Ms. Niemotka and her husband's age and his medical condition, this once abstract concern has become increasingly concrete.

101. In anticipation of the day that she and her husband will no longer be able to care for Michele, Ms. Niemotka has been actively searching for opportunities for Michele to live independently. This has proved a difficult task. It is important that Michele remain near her family and friends, but housing in Plano is expensive. Ms. Niemotka cannot afford to place Michele in single-family rental housing without additional support.

102. Ms. Niemotka had long discussed with the parents of Michele's friends the idea of jointly buying a home nearby and leasing it to their children. But as home prices in Plano have risen over the past several years, that dream seemed out of reach until DHA announced the PBV

program in 2016. Upon hearing about DHA's PBV program for individuals with I/DDs, Ms. Niemotka began making concrete plans for Michele's transition. Specifically, she identified a roommate for Michele and began helping Michele learn as much as possible about living on her own. Ms. Niemotka had every intention of eventually applying for a PBV, using the income to help pay the mortgage and other expenses on a property she would buy for the purpose of housing Michele and two of her friends. Ms. Niemotka believes that this would be financially viable.

103. DHA's decision to discontinue the program means that Ms. Niemotka likely will never be able to afford to position Michele to live on her own. Ms. Niemotka would seek a PBV if DHA restored the program to create a home for Michele and others with IDD.

104. **Plaintiff Cynthia Curtis** is nearly 70 years old and retired. She lives with her 41-year-old daughter Krystal, who was born with developmental and cognitive delays and has been diagnosed as a person with an I/DD. Krystal, although she has strong verbal and self-care skills, still needs assistance with activities such as budgeting, daily planning, and using the stove. For nearly a decade, Ms. Curtis has served as Krystal's host/home companion through a Medicaid waiver program. Krystal has a disability that significantly impairs one or more of her major life activities.

105. Despite her disability, Krystal is ready for more independence. She held the same job at Target for several years, packing and stocking goods for three hours per week. Krystal also attends a day program three days per week, where she is able to socialize and interact with others who have I/DDs. Plaintiff Hubbard's daughter, Jessica, attends the same day program.

106. Prior to moving back into her mother's home, Krystal briefly lived in a group home. Krystal chose to try a group home setting because she wanted to live more on her own and

learn the basics of taking care of herself and working with others. But it quickly became clear that the group home was not an ideal environment.

107. The group home staff was ever-changing, with a high rate of turnover. Some staff were not experienced in working with people with I/DDs, and lacked the patience, attitude, and compassion necessary to be effective. Krystal needs stability and a family-like atmosphere to thrive, and the group home lacked both of those components. After a year, Krystal moved home.

108. At almost 70, Ms. Curtis is now anxious to find a longer-term solution for Krystal's care and was actively searching for options when DHA issued its RFP.

109. Shortly after DHA announced the RFP, Ms. Curtis and Ms. Hubbard agreed that Krystal would move into Hubbard's home, where she would live with Jessica (Ms. Hubbard's daughter) and a third roommate with an I/DD. They also agreed that, while Ms. Hubbard would live elsewhere, Ms. Curtis would serve as the live-in aide for the three roommates in the home. In addition to being a single mother to Krystal her whole life, Ms. Curtis has been trained in caring for individuals with I/DDs as a host/home companion.

110. Moving Krystal into the Hubbard home with the support of a PBV would have been the ideal situation. Krystal would attain a safe place to live, cohabitating with peers she knows and is compatible with; she would have lived within walking distance of her day program; and Cynthia would have had the peace of mind that Krystal could remain in the home, even if Cynthia became unable to care for her. Because of DHA's actions, the planned move never happened.

111. Had Ms. Hubbard secured a PBV for her home, Ms. Curtis and her daughter would have attained a secure living environment. DHA's decision to shut down the RFP—and its

continuing refusal to make similar programs available—deprived Ms. Curtis and Krystal of an essential and unique housing opportunity.

112. Without a PBV or other subsidy, Ms. Curtis—who is Krystal’s only living relative and source of support—cannot afford to place Krystal in an independent living situation, especially because home prices in the area have risen over the past few years. Were the program or one like it reinstated, Ms. Curtis would jump at the chance to participate.

### **INJURY**

113. DHA’s continuing failure to administer its PBV program in a manner that would benefit people with I/DDs, or to otherwise make community-based housing programs available to people with I/DDs, has caused and continues to cause significant injuries to Plaintiffs.

114. As a result of DHA’s unlawful actions as described above, Plaintiffs have suffered and continue to suffer irreparable loss and injury, including but not limited to denial of their ability to apply for PBV vouchers and utilize public benefits, frustration, emotional distress, out-of-pocket losses, interference with their ability to obtain housing for their children appropriate to their needs, and unlawful deprivation of their rights protected under federal and state law.

115. The individual Plaintiffs have experienced and continue to experience deep anxiety and worry as to whether they will ever be able to secure permanent and affordable housing that is best-suited to the needs of their children. Each of these parents is fully aware that if they fail to do so, their children may ultimately be institutionalized or homeless, and that their children are presently being deprived of important social and developmental opportunities that affect the quality of their lives.

116. DHA's unlawful conduct has harmed CPSH by frustrating its mission of advancing housing opportunities for adults with I/DDs and their families. CPSH devoted extensive resources to making DHA's single-family community-based PBV program a success, including, *inter alia*, by bringing together and educating potential tenants, their families, property owners and State and private service agencies. It promoted the program to thousands of families across North Texas. That effort, in furtherance of CPSH's mission, has been frustrated and rendered for naught by DHA's failure to meet its obligations to people with I/DDs and their families as set forth herein.

117. DHA's unlawful conduct has also caused CPSH to expend scarce resources counteracting DHA's continuing wrongful conduct, such as by counseling affected parents and caregivers regarding the implications and consequences of the PBV program cancellation; providing guidance to caregivers regarding ways to ameliorate their losses in the wake of the cancellation; and addressing the cancellation with DHA via meeting and letters.

118. Furthermore, the need to respond to and counteract DHA's conduct has caused CPSH to divert resources from important projects it would otherwise have undertaken. Such projects include, among others, creating a property donation program to increase housing for adults with I/DDs and working to increase the availability of in-home care providers for adults with I/DDs.

**CAUSES OF ACTION**

**COUNT ONE**

**Violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.***

119. Plaintiffs reallege and incorporate by reference all of the allegations set forth in paragraphs 1 through 118 above.

120. Each of the adult children of Plaintiffs is a qualified individual with a disability within the meaning of the ADA, 42 U.S.C. § 12131(2).

121. DHA has violated Title II in at least four ways. In each of those ways, DHA acted with deliberate indifference to a known risk (or a risk that it should have known about) that it was violating the rights of individuals with I/DDs and their families.

**A. *Denial of Reasonable Modification***

122. Regulations implementing Title II of the ADA specify: “A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7).

123. Defendant knows that its policy or practice of categorically barring family ownership in the PBV program has the effect of barring Plaintiffs from participating in that program. Nonetheless, it has refused to make reasonable modifications to that policy to avoid such exclusion on the basis of disability, in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(7).

124. It would not fundamentally alter the Defendant’s programs, services, or activities to modify them sufficiently to provide Plaintiffs with access to DHA’s programs and activities.

Indeed, Defendant would need to do no more than reinstate the same program that it initially offered but then abruptly withdrew with no reasoned explanation.

***B. Discriminatory Eligibility Criteria***

125. Regulations implementing Title II of the ADA specify that “[a] public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.” 28 C.F.R. § 35.130(b)(8).

126. The Defendant has developed and implemented eligibility criteria for its community-based project-based voucher housing programs—in the form of a categorical ban on family ownership—that screens out individuals with intellectual and developmental disabilities who need community-based housing in neighborhood settings in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(8).

127. This eligibility requirement is unnecessary to the provision of the PBV program. The only justification DHA has offered is an incorrect construction of HUD rules, and there is no other rationale for it that could justify excluding individuals with I/DDs from the PBV program.

***C. Discriminatory Methods of Administration***

128. Regulations implementing Title II of the ADA provide that “a public entity may not, directly or through contractual or other arrangements, utilize criteria or other methods of administration: (i) that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the entity’s program with respect to individuals with disabilities . . . .” 28 C.F.R. § 35.130(b)(3).

129. The Defendant has developed and utilizes methods of administering its project-based voucher system that have the effect of subjecting Plaintiffs to discrimination on the basis of disability. These methods of administration—such as the categorical ban on permitting the rental of PBV-subsidized properties to adult children with I/DDs by family members—defeat or substantially impair the accomplishment of the objectives of DHA’s PBV program and wider Section 8 voucher program with respect to people with I/DDs, in violation of 42 U.S.C. § 12132 and 28 U.S.C. § 35.130(b)(3).

130. This eligibility requirement is unnecessary to the provision of the PBV program. The only justification DHA has offered is an incorrect construction of HUD rules, and there is no other rationale for it that could justify excluding individuals with I/DDs from the PBV program.

***D. Violation of the ADA’s Integration Mandate***

131. Title II of the ADA requires that “a public entity shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). As the Supreme Court found in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), this means that a public entity cannot offer only variants of its services that do not permit a person with a disability to live in the most integrated appropriate setting when the public entity could do otherwise.

132. DHA offers a variety of affordable-housing programs. None permit many if not most adults with I/DDs, such as Plaintiffs’ children, to live in the most integrated setting appropriate to their needs.

133. DHA could readily administer its programs in a manner that would permit adults with I/DDs to benefit from them while living in a more integrated living setting, through the community-based single-family PBV program that it publicly unveiled but then withdrew.

134. By refusing to offer project-based vouchers that would permit adults with I/DDs to live in the most integrated possible setting, Defendant has discriminated against Plaintiffs based on disability in violation of 42 U.S.C. § 12132 and 24 C.F.R. § 35.130(d).

## COUNT TWO

### **Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794**

135. Plaintiffs reallege and incorporate by reference all of the allegations set forth in paragraphs 1 through 134 above.

136. Each of the adult children of Plaintiffs is a qualified individual with a disability under Section 504 of the Rehabilitation Act. 29 U.S.C. § 794(a).

137. DHA receives federal financial assistance to operate its housing programs, including the project-based voucher program.

138. DHA has violated Section 504 in at least three ways. In each of those ways, DHA acted with deliberate indifference to a known risk (or a risk it should have known about) that it was violating the rights of individuals with I/DDs and their families.

#### ***A. Denial of Reasonable Modification***

139. Regulations implementing Section 504 specify: “A recipient shall modify its housing policies and practices to ensure that these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps.” 24 C.F.R. § 8.33.

140. Defendant knows that its housing policy or practice of categorically barring family ownership in the PBV program has the effect of barring Plaintiffs from participating in that program. Nonetheless, it has refused to make modifications to that policy to avoid such exclusion on the basis of disability, in violation of 29 U.S.C. § 794(a) and 24 C.F.R. § 8.33.

141. Section 504 regulations provide that a recipient only can refuse to make such modifications if it can demonstrate that the policy in question is “essential to the housing program or activity” and that “modifications to them would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.” 24 C.F.R. § 8.33.

142. The categorical bar on family ownership at issue here is not essential to Defendant’s programs. It would not fundamentally alter the Defendant’s programs, services, or activities to modify this policy sufficiently to provide Plaintiffs with access to DHA’s programs and activities, nor would it pose undue financial and administrative burden. Indeed, Defendant would need to do no more than reinstate the same program that it initially offered but then abruptly withdrew with no reasoned explanation.

***B. Failure to Make PBV Program Accessible and Usable***

143. Regulations implementing Section 504 specify that a recipient “shall operate *each* existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps.” 24 C.F.R. § 8.24(a) (emphasis added).

144. Rather than complying with this requirement, the Defendant has developed and implemented an eligibility criterion for its community-based project-based voucher housing programs—in the form of a categorical ban on family ownership—that screens out individuals with intellectual and developmental disabilities who need community-based housing in neighborhood settings. This eligibility criterion renders Defendant’s PBV program inaccessible and unusable for adults with I/DDs and their families.

145. This eligibility requirement is unnecessary to the provision of the PBV program, and changing it would neither fundamentally alter the program nor constitute an undue burden, as HUD regulations recognize. The only justification DHA has offered is an incorrect construction of HUD rules, and there is no other rationale for it that could justify excluding individuals with I/DDs from the PBV program.

**C. Violation of Integration Mandate**

146. Section 504's regulations provide that, "[i]n choosing among available methods for meeting" Section 504's other requirements, a funding recipient "shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate." 24 C.F.R. § 8.24(b). As the Supreme Court found in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), this means that a public entity cannot offer only variants of its services that do not permit a person with a disability to live in the most integrated appropriate setting when the public entity could do otherwise.

147. DHA offers a variety of affordable-housing programs. None permit many if not most adults with I/DDs, such as Plaintiffs' children, to live in the most integrated setting appropriate to their needs.

148. DHA could readily administer its programs in a manner that would permit adults with I/DDs to benefit from them while living in a more integrated living setting, through the community-based single-family PBV program that it publicly unveiled but then withdrew.

149. By refusing to offer project-based vouchers that would permit adults with I/DDs to live in the most integrated possible setting, Defendant has discriminated against Plaintiffs based on disability in violation of 29 U.S.C. § 794(a) and 24 C.F.R. § 8.24(b).

### COUNT THREE

#### **Violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.***

150. Plaintiffs reallege and incorporate by reference all of the allegations set forth in paragraphs 1 through 149 above.

151. Each of the adult children of Plaintiffs has a disability as defined in the Fair Housing Act. 42 U.S.C. § 3602.

#### ***A. Failure to Make Reasonable Accommodations***

152. Under the Fair Housing Act, Defendant is required to make reasonable accommodations in policies, practices, and procedures where such accommodations are necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B).

153. DHA refused to modify the rules of its project-based voucher program in a manner that would have reasonably accommodated the needs of adults with I/DDs such that they could rent a home from immediate family using a project-based voucher. As a result, adults with I/DDs are denied the equal opportunity to use and enjoy dwellings in which they otherwise could live.

154. DHA's categorical ban on renting to family members in the PBV program is unnecessary to the provision of the PBV program. Changing it would neither fundamentally alter the program nor constitute an undue burden, as HUD regulations recognize by explicitly authorizing PHAs to deviate from such policies when necessary to accommodate the needs of people with disabilities. The only justification DHA has offered is an incorrect construction of HUD rules, and there is no other rationale for it that could justify excluding individuals with I/DDs or other disabilities from the PBV program.

***B. Making Housing Unavailable on the Basis of Disability***

155. The Fair Housing Act provides that DHA may not “make unavailable or deny, a dwelling to any buyer or renter because of a handicap of” (A) “that buyer or renter”; (B) “a person residing in or intending to reside in that dwelling”; or (C) “any person associated with that [buyer or renter].” 42 U.S.C. § 3604(f)(1).

156. DHA’s categorical ban on permitting the rental of PBV-subsidized properties to adult children with I/DDs by family members makes those rental properties unavailable for rental to those adult children with I/DDs because of their disabilities. It also makes those properties unaffordable and thus unavailable for the family members to buy because of the disabilities of the people intending to reside in the dwelling.

157. This policy serves no necessary interest as applied to adults with I/DDs. The only justification DHA has offered is an incorrect construction of HUD rules, and there is no other rationale for it that could justify excluding individuals with I/DDs from the PBV program. Any such legitimate interest that DHA might eventually articulate that this policy serves could be served by a policy with a less discriminatory effect on adults with I/DDs.

158. DHA canceled its PBV program for adults with I/DDs with the intent of making housing unavailable based on disability as set forth above. Because it did not want to provide reasonable accommodations from its policies to the people with disabilities who would live in the housing subsidized by the PBV program, it elected instead to make the housing entirely unavailable to rent for adult children with I/DDs and entirely unavailable to buy for their family members.

**COUNT FOUR**

**Violation of Texas Property Code § 301.025**

159. Plaintiffs reallege and incorporate by reference all of the allegations set forth in paragraphs 1 through 158 above.

160. The Texas Fair Housing Act, Tex. Prop. Code § 301.025, “provide[s] rights and remedies substantially equivalent to those granted under federal law.” Tex. Prop. Code § 301.002.

161. For the same reasons that DHA violated the federal Fair Housing Act, it violated the Texas Fair Housing Act.

**DEMAND FOR JURY TRIAL**

162. Plaintiffs request trial by jury as to all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that the Court grant them the following relief:

163. Enter a declaratory judgment finding that the foregoing actions of Defendant violate 29 U.S.C. § 794; 42 U.S.C. § 12132; 42 U.S.C. § 3604(f); and Tex. Prop. Code § 301.025;

164. Enter an injunction directing Defendant to take all affirmative steps necessary to remedy the effect of the unlawful, discriminatory conduct described herein and to prevent similar occurrences in the future;

165. Award compensatory damages to Plaintiffs in an amount to be determined by the jury that would fully compensate Plaintiffs for the injuries they have suffered and continue to suffer as a result of Defendant’s unlawful conduct;

166. Award punitive damages under the FHA in an amount to be determined by the jury;

167. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; 29 U.S.C. § 794a(2); 42 U.S.C. § 12133; and 42 U.S.C. § 3613(c)(2); and

168. Order such other relief as this Court deems just and equitable.

Dated: August 6, 2018

Respectfully submitted,

/s/ Rachel B. Cohen-Miller  
RACHEL B. COHEN-MILLER (TX State Bar No. 24064301)  
CHRISTOPHER P. MCGREAL (TX State Bar No. 24051774)  
DISABILITY RIGHTS TEXAS  
1420 Mockingbird Lane, Suite 450  
Dallas, Texas 75247  
(214) 845-4069 (Phone)  
(214) 845-4056 (Phone)  
(214) 630-3472 (Fax)  
rmiller@drtx.org  
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Glenn Schlactus\*  
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Sara Pratt\*  
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*Attorneys for Plaintiffs*

\* *Pro hac vice* motion to be filed

# **EXHIBIT**

**1**



**REQUEST FOR PROPOSALS**

**FOR**

**SECTION 8 PROJECT-BASED  
VOUCHER (PBV) ASSISTANCE**

**AVAILABILITY OF 50 SECTION 8 PBVS  
FOR NEIGHBORHOOD HOUSING PILOT PROGRAM OF  
PERMANENT SUPPORTIVE HOUSING FOR  
PERSONS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES**

**Proposals to be received at**

Procurement Department  
Dallas Housing Authority  
3939 N. Hampton Rd.  
Dallas, Texas 75212

The responsibility for submitting a response to this Request for Proposals at the offices of the Dallas Housing Authority (DHA) on or before the stated time and date shall be solely and strictly the responsibility of the Applicant. DHA will not be responsible for delays caused by the U.S. Postal Service or any other occurrence. No facsimiles will be accepted.



Availability of 50 Section 8 Project-Based Vouchers for  
Neighborhood Housing Pilot Program of Permanent Supportive Housing for  
Persons with Intellectual or Developmental Disabilities

## **SECTION A – GENERAL INFORMATION**

### **A.1. Overview**

Finding decent, affordable housing is a dilemma for millions of Americans. The challenge can be even greater for people with Intellectual and Developmental Disabilities (IDD). People with disabilities encounter significant barriers finding affordable community-based housing. Being part of the community and living as independently as possible are among the most important values and goals shared by people with disabilities, their families, and advocates. A home of one's own - either rented or owned - is the cornerstone of independence for people with disabilities. However, across the U.S. people with disabilities, including people with intellectual and developmental disabilities (IDD), face a severe housing crisis.

### **A.2. Aging Caregivers**

Over 75% of people with Intellectual and Developmental Disabilities (IDD) live with families. More than 25% of family care providers are over the age of 60 years and another 38% are between 41-59 years (Braddock, Hemp, & Rizzolo, 2008). As this generation of caregivers continues to age, many of their adult children with IDD may be at risk of institutionalization or homelessness due to the shortage of affordable housing with support services. Without a mandate to support to adults with IDD and their families, most of these families receive few support services and face long residential services waiting lists, estimated at roughly 115,000 families nationally (Lakin, Larson, Salmi, & Scott, 2009).

### **A.3. Availability of Housing**

The supply of affordable, accessible housing remains far less than the need. Key programs at the U.S. Department of Housing and Urban Development (HUD) that seek to increase affordable housing for people with disabilities include the Section 811 Supportive Housing Program, Section 8 Housing Choice Voucher Program and Public Housing Program. With a

shortage in funding for Section 811 Housing, people with disabilities struggle to find safe, accessible and affordable households. DHA uses its permanent supportive housing program to meet the needs of the elderly, individual adults aging out of foster care, and Persons with Disabilities. For this pilot program DHA will implement the Neighborhood Housing for persons with Intellectual and Developmental Disabilities (IDD). Regulations governing Project-Based Assistance are defined in 24 CFR 983 (**Exhibit A**).

The Project-Based Voucher Assistance ("PBV") Program is a component of the Dallas Housing Authority ("DHA") Section 8 Tenant-Based Voucher program. The U.S. Department of Housing and Urban Development ("HUD") allows public housing agencies to set aside up to 20% of their total funding under their tenant-based voucher program Annual Contributions Contract ("ACC") for project-based assistance (24 CFR part 983). In the PBV program, the rental subsidy is attached to the unit, rather than the tenant. It is the intention of DHA to enter into a Housing Assistance Payment ("HAP") contract (**sample attached as Exhibit B**) with one or more Proposer(s)) with existing housing units for up to five years (potentially renewable in five-year increments totaling no more than 15 years).

#### **A.4. DHAs Neighborhood Housing Pilot Model**

For this pilot program, Neighborhood Housing (NH) model is an arrangement in which three or more individuals living together in a family setting share common areas such as the living, kitchen, and dining areas while maintaining a private bedroom. DHAs NH model will be agency sponsored meaning that the supportive service provider will provide supportive services to the tenants. The supportive service provider/live-in aide will also be responsible for ensuring tenants receive necessary and appropriate support to live in the house. The owner of the property will be responsible for maintaining the interior and exterior of the residence. The owner will also be responsible for identifying qualified personnel to assist the tenants to live independently. (Payments for these supportive services will be agreed to by owner and service provider.) The NH model provides a serviced environment required by frail, disabled and vulnerable individuals who need both shelter and a varying range of personal day-to-day services. The NH model sponsored by Dallas Housing Authority should not be confused with boarding homes and other types of institutional arrangements where there is a profit-making motive and tenants have little or no involvement in the management of the facility. This model endeavors to provide opportunities for companionship and socialization instead of loneliness; safety and protection

against crime; supervision with activities of daily living; and privacy and autonomy within a family lifestyle - all at an affordable price.

In the NH model, the rental subsidy is attached to the unit, rather than the tenant. It is the intention of DHA to enter into a Housing Assistance Payment ("HAP") contract with an owner (Proposer(s)) with for up to five years, potentially renewable in five year increments totaling no more than 15 years.

#### **A.5. Goal of the Neighborhood Housing Program**

The goals of DHAs PSH program are to expand the affordability of rental housing in Dallas County and all Counties in which DHA has jurisdiction for high-needs very low income households; make rental subsidies accessible so eligible families can afford safe, decent and sanitary housing; maintain full utilization of allocated vouchers, prevent and alleviate homelessness and prevent the concentration of poverty.

It is the intention of DHA's Board of Commissioners that Permanent Supportive Housing be employed in the following ways:

1. Permanent Supportive Housing (PSH) for homeless and potential homeless individuals and families;
2. Walker Settlement agreement housing (in approved census tracts);
3. Housing for senior citizens and people with disabilities;
4. Units Set Aside for Families participating in Supportive Services
5. Replacement of ACC public housing units.

#### **A.6. Benefits of the Neighborhood Housing Program**

Neighborhood Housing has many benefits for both the community and tenants.

1. It fosters self-determination and interdependence, reducing the need for formal supports and institutionalization.
2. Sharing reduces the housing cost of each individual, increasing disposable income for other basic needs.
3. It reduces isolation and provides opportunities for companionship and socialization.

#### **A.7. Essential Neighborhood Housing Program Design Elements**

- Under DHA's policies two or more persons who wish to live together (with or without a Live in Aide) and share resources are a "family".
- A "family" is defined as two or more persons (with or without children) regularly living together, related by blood, marriage, adoption, guardianship or operation of law who will live together in the DHA's HCV housing; OR two or more persons who are not so related, can verify shared income or resources who will live together in the DHA's HCV housing.
- There will be a HAP Contract between the owner and DHA and a Lease for the assisted "family".
- The share of rent to be paid by the family will be based on 30% of the monthly adjusted income. Family must meet income guidelines (**Exhibit C**).
- No more than two persons may share a bedroom.
- Participants may share a bedroom with a live-in aide, participant, or an unassisted person without a voucher.
- In addition to the bedrooms, the Neighborhood Housing must also contain a living area, a kitchen and full bathroom. Kitchens and living rooms need to be appropriately sized to accommodate the number of tenants in each residence.
- Where possible, provisions should be made for private or quiet area for a service provider to meet with tenants.
- The maximum number of bedrooms per Neighborhood Housing is five.
- Single Family homes, condominiums, duplexes, triplexes, etc. will qualify as Neighborhood Housing provided that there is a minimum of two bedrooms.
- A participant may be related to the owner of a Neighborhood Housing unit with an approved Reasonable Accommodation Request. However, the housing assistance may not be paid on behalf of the owner, and the owner is not allowed to live in the unit.
- It is the Owner's responsibility to check the municipal zoning ordinance to establish the numbers of unrelated individuals are permitted to live together as a single housing unit.
- Neighborhood Housing assistance must be consistent with the Agency Plan.
- Neighborhood Housing assistance must be consistent with the statutory goals of deconcentrating poverty and expanding economic opportunities.

#### **A.8. How Rents are determined**

The rent for the Neighborhood Housing dwelling unit is determined based on 30% of the family's monthly adjusted income. The HAP contract between the landlord and DHA would be the difference of the 30% of the family's monthly adjusted income and the approved contract rent.

#### **A.9. Elements of RFP**

Through this RFP, DHA will be awarding up to 50 Section 8 Project-Based Vouchers (PBVs) for DHA's Neighborhood Housing Pilot Program of Permanent Supportive Housing for Persons with Intellectual or Developmental Disabilities (IDD). The PBVs are available for use in existing housing only. Proposals involving new construction or rehabilitation are not being solicited under this RFP. DHA invites property owners and service providers to submit joint proposals. It is not necessary for a respondent to employ the services of a consultant to be awarded Project-Based Vouchers under this RFP. Applications for this RFP must: (1) be single family homes located in OHA areas of operation (**Exhibit C**); (2) single family homes with a minimum of two or a maximum of five bedrooms; (3) propose to serve households of members who qualify as developmentally or intellectually disabled; and (4) be willing to certify participants as IDD. A successful proposal will include owners/landlords who will enter into agreements for supportive services with qualified service providers. Proposals from owners who cannot demonstrate such an agreement for ongoing services will not be reviewed. This is a pilot program to determine the success of such collaboration.

#### **A.10. Selection Process**

Under the OHA's Permanent Supportive Housing program, Proposers submit proposals in response to this RFP. Proposers interested in qualifying for selection are asked to submit a proposal that conforms to **Section B - Qualification Criteria and Instructions** of this solicitation.

To be considered responsive by OHA, proposals must comply with the program and submission requirements identified in this package. The qualifications shall be reviewed by a selection team comprised of OHA staff and outside experts in accordance with the evaluation criteria set forth in **Section C - Evaluation Factors for Award**. The selection committee, at its discretion, reserves the right to require face-to-face or telephone interviews of Proposers to obtain clarity

with respect to submissions. Proposers not included within the competitive range will be notified in writing.

The successful Proposer(s) must be the owner of an existing home the lease of an existing home (with sub-leasing rights) or be able to purchase a home within six months after being recommended for contract award that require no rehabilitation. Prior to commencing this program, OHA will inspect the units described in the proposal. If the units meet the unit requirements outlined in the RFP, OHA will execute a HAP Contract with the Proposer. A housing unit will be considered an "existing unit" for purposes of this Neighborhood Housing program if, at the time of OHA's written notice of selection of the Proposer's project for project-based assistance, the units require a maximum expenditure of less than \$1,000 per assisted unit (including the unit's pro-rata share of any work to be accomplished on common areas or systems) to comply with HUC's Housing Quality Standards (HQS) - **(Exhibit D)**.

#### **A.11. DHA Options**

All proposals submitted for consideration will be reviewed by DHA The Proposal(s) receiving the highest rating, based on the criteria presented in D.2., will be selected as being the most capable of providing housing and services in a manner that is most advantageous to DHA's clients.

DHA reserves the right to reject, in whole or in part, any or all proposals received in response to this RFP. DHA further reserves the right to cancel or re-issue this RFP; to modify the selection procedure or the scope of this proposed project or the required responses; to request amendments to qualifications after expiration deadlines; or to negotiate or approve final agreements. DHA also reserves the right to waive any informalities or minor irregularities if it serves its best interest to do so.

DHA will reject the proposal of any Proposer who is debarred by HUD from providing services to public housing authorities, and reserves the right, in its sole discretion, to reject the proposal of any Proposer who, itself or its affiliate, has a criminal background involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or has previously failed, in any way, to adequately perform under any prior contract with DHA. DHA will not consider proposals if the Proposer fails to provide a certification that neither it nor its principals is presently disbarred, suspended or placed in ineligibility status.

The determination of the criteria and process whereby qualifications are evaluated and the decision as to who shall receive a contract award or whether or not an award shall be made as a result of this RFP shall be at the sole and absolute discretion of DHA, in accordance with HUD regulations and the requirements set forth in this RFP.

**A.12. Contract Form and Issues**

The intent is that this RFP will result in one or more HAP Contracts, the exact terms of which will be negotiated between DHA and the successful Proposer(s). No contractual rights shall arise out of the process of negotiation until such time as the HAP has been signed by DHA and the selected Proposer(s). The selected Proposer(s) must acknowledge that it will implement changes as needed or required by law or HUD.

**A.13. Rules, Regulations and Licensing Requirements**

The Proposer(s) and its staff shall comply with all laws, ordinances and regulations applicable to the scope of services outlined herein, including those applicable to conflict of interest. Proposers are presumed to be familiar with all federal, state, and local laws, ordinances, codes, rules and regulations that may in any way affect the services to be provided. This includes but is not limited to Texas Health and Safety Code, Chapter 252 (Exhibit D).

**A.14. Key Personnel**

The key personnel specified in the Proposer's proposal are considered to be essential to the work being performed under the HAP. Prior to diverting any of the key personnel dedicated to the performance of the HAP for any reason(s), the successful Proposer(s) shall notify DHA in writing at least thirty (30) calendar days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the HAP. Furthermore, all personnel shall be considered to be at all times, employees or subcontractors of the Proposer(s) under its sole direction and control, and not employees, partners or agents of DHA.

**A.15. Request for Information**

All inquiries concerning this solicitation should be submitted in writing to:

Dallas Housing Authority  
Voucher Programs  
2575 Lonestar Dr., Dallas, TX 75212  
Attention: Jaclyn Baker

Email: [jbaker@dhadal.com](mailto:jbaker@dhadal.com)  
Phone: 214-640-6837

All questions or requests for clarifications must be submitted in writing. Written answers to questions concerning this RFP will be provided to all Proposers, giving due regard to the proper protection of proprietary information.

**A.16. Cost Incurred in Preparing Proposals**

Proposers will be responsible for all costs incurred in preparing a response to this RFP. All material and documents submitted by prospective owners or development teams will become the property of DHA and will not be returned. Any materials submitted that a Proposer(s) considers to be proprietary must be clearly marked as such to keep it out of the public record. Proposers selected for further interview or negotiations will be responsible for all costs incurred during these processes.

**A.15. Request for Information**

All inquiries concerning this solicitation should be submitted in writing to:

Dallas Housing Authority  
Voucher Programs  
2575 Lonestar Dr., Dallas, TX 75212  
Attention: Jaclyn Baker  
Email: [jbaker@dhadal.com](mailto:jbaker@dhadal.com)  
Phone: 214-640-6837

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## **SECTION B – QUALIFICATION CRITERIA AND INSTRUCTIONS**

### **B.1. Overview /Response Requirements**

The instructions below provide guidance for preparing and submitting proposals. The purpose of the instructions is to establish the requirements, format, and content of proposals so that proposals are complete and contain all essential information.

### **B.2. Pre-Proposal Conference/ Meet and Greet**

We invite and encourage interested supportive service providers, owners or development entities to attend a Meet and Greet session, hosted by Community for Permanent Supported Housing, Sunday, August 3, 2014 at 2:30p.m., at Frankford Townhomes, located at 18110 Marsh Lane, Dallas, Texas 75287. Please RSVP at <http://www.txcpsph.org/pages/RSVP-080314.aspx>. The pre-proposal conference is scheduled for Wednesday, August 13, 2014, at 2:00 p.m. at Kingbridge Crossing, located at 3131 Kingbridge St., Dallas, Texas 75212. This pre-proposal conference is not mandatory; however, respondents (and their partnering service providers) that attend the pre-proposal conference will receive 10 bonus points, five (5) for representation from the service provider and five (5) for the property/owner. Please RSVP at <http://www.txcpsph.org/pages/rsvp-081314.aspx>.

The purpose of this conference is to discuss the proposed program and to respond to questions regarding the services required. It must be understood that any responses tendered at the pre-proposal conference are in the way of explanation, and are not to be construed as part of this RFP. Should there be any inconsistencies between the verbal conference responses and the RFP's requirements, this RFP's solicitation language shall govern, unless amended in writing. Any prospective Proposer(s) desiring an explanation or interpretation of any provision in this RFP must submit a written request to the appropriate person listed in this RFP. Oral explanations and/or responses are not binding. Any information given to prospective Proposers concerning this RFP will be furnished promptly to all other persons or entities that have indicated their interest in this solicitation by receiving a solicitation package and/or providing their contact information for this RFP to DHA.

### **B.2. Submission Date**

Proposals in response to this **RFP must be submitted by Monday, September 22, 2014** at 4:00p.m. Late submissions of RFPs will not be accepted. Incomplete proposals or proposals that are inconsistent with program regulations and statutory requirements will not be considered.

Dallas Housing Authority  
Procurement Department  
3939 N. Hampton Rd, Dallas, Texas 75212  
Attention: Syed Raza

Faxed or e-mailed submissions will not be accepted. All submissions become the property of DHA and will not be returned. Proposals will be held in confidence and not released in any manner until after contract award.

**B.4. Application Content**

The full RFP package consists of the following documents: 1) Request for Proposal; 2) Application Form; and 3) Exhibits/Attachments. Proposers must complete the Project-Based RFP PSH Application Form (Attachment A) and provide all necessary Exhibits and supporting documentation. The Application is available for download on the DHAs website. To download the RFP packets and all addenda, register at <http://www.dhadal.com/vendor-corner>. RFP packets will also be available for pick up in the Procurement Department, Dallas Housing Authority, 3939 N. Hampton Rd., Dallas, Texas 75212.

**B.5. Application Format**

Proposers should provide one (1) clearly marked "Original", and five (5) copies. Proposals must be submitted in sealed envelopes or boxes clearly marked "Neighborhood Housing Pilot Program of Permanent Supportive Housing for Persons with Intellectual or Developmental Disabilities". All applications must be legibly typed and neatly organized and presented.

**B.6. Limit on Number of Applications**

There is no limit on the number of applications that can be submitted by one owner/service provider. No more than 50 PBV will be available under this RFP. PBV will be awarded based on availability.

**B.7. Inspections**

All project-based units will be inspected after the owner submits the Request for Tenant Approval (RFTA) but before entering into the HAP contract, and annually thereafter. DHA may not enter into a HAP Contract for units that are not in full compliance with Housing Quality Standards (HQS).

## **B.8. Reporting**

If you are a Service Provider that receives Continuum of Care (CoC) funds, you will be required to enter data into Homeless Management Information System (HMIS) for reporting. HMIS is a secure web-based centralized database where non-profit organizations across our community enter, manage, share and report information about the clients that they serve. The HMIS system is used to collect client-level data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness. Each Continuum of Care is responsible for selecting an HMIS software solution that complies with HUD's data collection, management, and reporting standards. Supportive Service Agencies are responsible for entering data into HMIS.

Costs for HMIS implementation will vary according to supportive service agency size and budget; project scope, goals and objectives; implementation status; and a variety of other local community factors. Please review the HMIS Pricing Model (**Exhibit F**). The Supportive Service agency assumes fiscal and operational responsibility for HMIS setup, licensing fees and implementation. DHA is not liable for any costs that a Proposer incurs in preparing or implementation of this RFP. .

There is no established standard for the appropriate number of persons necessary to enter HMIS data for your agency but as a general guideline this HMIS project may require at least two staff persons able to access the system. Agencies should carefully consider their needs and goals while making decisions about level of investment in the HMIS system. There must be separate licenses for each user. The monthly service fee per user is \$35 per month. The monthly monitored hosting/support fee is \$25. You do not have to pay or be set up in HMIS prior to submitting a proposal. If your agency is recommended for contract award you will be required to begin HMIS participation prior to contract execution.

## **B.9. CERTIFICATIONS**

### **B.9.1. Disclosure of Possible Conflict of Interest**

Each Proposer must disclose any information regarding possible conflict of interest by any parties identified under "Participant Identification" that would be a violation of the AHAP or HAP contract (e.g., any parties who affiliated with DHA, local officials, or congressmen). Attach to the proposal submission.

**B.9.2. Zoning**

Zoning Attach documentation showing evidence of appropriate zoning for the subject property **(Reference Attachment A-Application)**.

**B.9.3. Evidence of Site Control**

Each Proposer must show evidence of site control in the form of a deed, purchase option or purchase contract. Attach a copy of the applicable document to the proposal submission.

**B.10. Complete and Accurate Submission**

A Proposer's failure to provide accurate information in response to this RFP shall disqualify the Proposer(s) from further participation in the selection process. A proposal may be corrected, modified, or withdrawn, provided that the correction, modification, or request for withdrawal is made by the Proposers(s) in writing and is received by the DHA Special Programs and Grants, Voucher Programs Department prior to the date and time designated in the RFP for final receipt of qualifications and proposals. After such date and time the Proposers(s) may not change any provision of its proposal in a manner prejudicial to the interests of DHA and/or fair competition.

**SECTION C – EVALUATION FACTORS FOR AWARD AND SELECTION**

**C.1. Evaluation of Proposals**

All proposals will be evaluated based on the evaluation criteria outlined in C.3. The Selection Committee will determine a competitive range based on the established criteria and point system.

Each Proposer(s) that falls within the competitive range will be considered. The Selection Committee may consider unacceptable any proposal for which critical information is lacking or if the submission represents a major deviation from the requirements of this RFP. Minor omissions, such as incomplete references may, at the sole option and discretion of DHA, be corrected subsequent to the submission due date.

All proposals will be initially reviewed to determine compliance with the Proposal Format Requirements as well as Threshold criteria specified within this solicitation. Proposals that do not comply with these requirements will be rejected without further review. The evaluation factors shown in C.3 will be used to determine which Proposer(s) fall within the competitive range.

**C.2. Evaluation Factors**

The evaluation factors on the following page will be used in determining the competitive range for award. Interviews, if desired by DHA, will be used to identify the top-rated proposer(s) for negotiation of the HAP(s). Each written proposal has a possible score of 100 points.

**C.3 Minimum Score for all Proposals**

Proposals that go through the ranking and rating process must receive a minimum score of 75 in order to be considered for Project-Based Voucher assistance.

<b>Points Available</b>	<b>Evaluation Criteria</b>
<b>15</b>	Qualification Statement
<b>25</b>	Property Owner Section-Project Plan
<b>25</b>	Supportive Service Section
<b>10</b>	Project Management Plan
<b>10</b>	Financial Information Property Owner 5 points

	Service Provider 5 points
<b>10</b>	References Property Owner 5 points Service Provider 5 points
<b>5</b>	Overall Responsiveness to
<b>10</b>	Bonus Points: Attending the Pre-Proposal Conference
<b>100</b>	Total Points

**C.4. SELECTION PROCESS**

Proposals received by the due date and time will be opened by the Administrator of Special Programs and Grants or his/her designee. These proposals will be initially reviewed to determine compliance with submission requirements specified in this RFP. Proposals that do not comply with these requirements may be rejected without further review. DHA will receive and rank acceptable proposals in accordance with its Units Selection Policy as outlined in this RFP. The successful Proposer(s) will be selected based on ranking and on full compliance with project-based voucher assistance regulations. All selected proposals will be submitted and subject to DHA's President and CEO approval prior to execution of the HAP Contract.

(END OF TEXT)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Community for Permanent Supported Housing, Cynthia Curtis, Mary Hubbard, Irene Niemotka, Margaret ("Peggy") Shadduck, and Kelly Waterman

(b) County of Residence of First Listed Plaintiff Collin County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rachel B. Cohen-Miller (see attached)
Disability Rights Texas, 1420 Mockingbird Lane, Suite 450, Dallas TX 75247 (214)845-4069

DEFENDANTS

Housing Authority of the City of Dallas, Texas

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Title II of the ADA, 42 U.S.C. §§ 12101 et seq.; 29 U.S.C. § 794; Fair Housing Act, 42 U.S.C. §§ 3601 et seq.
Brief description of cause: Plaintiffs challenge exclusion from housing program administered by Defendant.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER RULE 23, F.R.Cv.P. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/06/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Rachel Cohen-Miller

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

Additional Attorneys

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If you need to know whether you must send the presiding judge a paper copy of a document that you have docketed in this case, click here: [Judges' Copy Requirements](#). Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. [Forms and Instructions](#) found at [www.txnd.uscourts.gov](http://www.txnd.uscourts.gov). If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge.

**U.S. District Court**

**Northern District of Texas**

**Notice of Electronic Filing**

The following transaction was entered by Cohen-Miller, Rachel on 8/6/2018 at 6:49 AM CDT and filed on 8/6/2018

**Case Name:** Community for Permanent Supported Housing et al v. Housing Authority of the City of Dallas, Texas

**Case Number:** [3:18-cv-02030-K](#)

**Filer:** Kelly Waterman  
Irene Niemotka  
Cynthia Curtis  
Community for Permanent Supported Housing  
Mary Hubbard  
Shadduck Margaret

**Document Number:** [1](#)

**Judge Assigned:** Ed Kinkeade (presiding)

**Docket Text:**

**COMPLAINT WITH JURY DEMAND** against All Defendants filed by Kelly Waterman, Irene Niemotka, Cynthia Curtis, Community for Permanent Supported Housing, Mary Hubbard, Shadduck Margaret. (Filing fee \$400; Receipt number 0539-9361567) Plaintiff will submit summons(es) for issuance. In each Notice of Electronic Filing, the judge assignment is indicated, and a link to the [Judges Copy Requirements](#) is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at [www.txnd.uscourts.gov](http://www.txnd.uscourts.gov), or by clicking here: [Attorney Information - Bar Membership](#). If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # (1) Exhibit(s) 1, # (2) Cover Sheet) (Cohen-Miller, Rachel)

**3:18-cv-02030-K Notice has been electronically mailed to:**

Rachel Beth Cohen-Miller [rmiller@disabilityrightstx.org](mailto:rmiller@disabilityrightstx.org), [cmcgreal@drtx.org](mailto:cmcgreal@drtx.org), [kphillips@drtx.org](mailto:kphillips@drtx.org), [mmcnair@drtx.org](mailto:mmcnair@drtx.org)

**3:18-cv-02030-K** The CM/ECF system has NOT delivered notice electronically to the names listed below. The clerk's office will serve notice of court Orders and Judgments by mail as required by the federal rules. An attorney/pro se litigant is cautioned to carefully follow the federal rules (see FedRCivP 5) with regard to service of any document the attorney/pro se litigant has filed with the court. The clerk's office will not serve paper documents on behalf of an attorney/pro se litigant.

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1004035775 [Date=8/6/2018] [FileNumber=10913488-0] [b339e5c262942dac554b8df5857cae7d1d68f944f0345cf33b6e7a14512bad92403eab1c6704704917d495a54efa7f3db5d0b09d7a24a69af3c624c9e51de610]]

**Document description:**Exhibit(s) 1

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1004035775 [Date=8/6/2018] [FileNumber=10913488-1] [2b72ab3e0f8b539e3f780689eb2ae27364e5861f3302c166cf18f6c9c520a41422779bec9bfe1ec32b6d6faec6c86caa239fa12fe30604000b51735a81a13f39]]

**Document description:**Cover Sheet

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1004035775 [Date=8/6/2018] [FileNumber=10913488-2] [d4deb431c610e8dd1884f40e5946ab0597695ca685e892ffa0ab7671c346ef8ab26ef62064265bf47ca5c69eb4d3742a22687fbc1f416c529ba2796eac0f26c5]]