

# PROFESSIONAL SERVICES AGREEMENT

## AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of December, 2018 by and between the City of Fort Bragg, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and Community Development Commission of Mendocino County, 1076 North State Street, Ukiah, California 95482 ("Consultant").

## RECITALS

**WHEREAS**, City has determined that it requires the following professional services from a consultant: to administer the City of Fort Bragg's HOME Owner-Occupied Rehabilitation Program; and

**WHEREAS**, Consultant represents and warrants that it is fully qualified to perform such professional services by virtue of specialized experience and training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement; and

**WHEREAS**, the legislative body of the City on December 10, 2018, by Resolution No. \_\_\_\_\_-2018 authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

**NOW, THEREFORE**, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

### 1. CONTRACT DOCUMENTS

This Agreement consists of the following documents, all of which are incorporated into and made a part of the Agreement:

- a. Professional Services Agreement;
- b. Scope of Service (Exhibit 1); and
- c. Required Contract Provisions for HOME-Aided Consultant Contracts (Exhibit 2)
- d. State of California Standard Agreement, No. 16-HOME-11373, dated December 20, 2017 (Exhibit 3)

### 2. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services") are as follows: To administer the City of Fort Bragg's HOME Owner-Occupied Rehabilitation Program operations. The Services are further described in Consultant's Scope of Service, which is attached to and made a part of this Agreement as Exhibit 1. Changes in the scope,

character, or complexity of the Services, if such changes become desirable or necessary as the work progresses, shall be agreed upon by both parties in a written change order. For special cases where it is essential that the extra work be performed immediately, execution of a change order or amendment to the Agreement covering the changes shall be completed as soon as possible.

### 3. TERM

The Agreement term will commence on December 11, 2018, and expire on December 31, 2020, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

### 4. PAYMENT TERMS

a. City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Scope of Service.

b. NOT TO EXCEED CONTRACT: In no event will the City's obligation to pay the Consultant under this Agreement exceed **Seventy-six Thousand Dollars (\$76,000.00)** (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. The Not to Exceed Amount includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the Consultant in completing its Services under this Agreement.

### 5. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 8 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by **September 30, 2020** (the "Time of Completion"). The Time of Completion may only be modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

### 6. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

## 7. SUBCONTRACTING

a. The Consultant shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted out without written authorization by the City's Contract Manager, except that which is expressly identified in the approved Scope of Service.

b. Any subcontract in excess of \$25,000 entered into by the Consultant relating to this Agreement shall incorporate by reference all of the provisions of this Agreement and make them applicable to said subcontractor.

c. Consultant will be solely responsible for payment of such subcontracted Services.

d. Any substitution of subcontractors must be approved in writing by the City's Contract Manager.

e. Subcontractors are bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Agreement. Subcontractor further must agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

f. If the Consultant uses subcontractors, it must comply with Civil Code § 8814 and all other California law relating to the prompt payment of subcontractors.

## 8. STANDARD OF PERFORMANCE

a. Consultant will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and will prepare all work products required by this Agreement in accordance with such standards. Consultant will comply with federal, state, and local laws and regulations applicable to performance of the Services, including, but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, any air pollution control laws and regulations applicable to Consultant, and any laws and regulations related to any copyright, patent, trademark, or other intellectual property right involved in performance of the services. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

b. The Consultant should not substitute key personnel or subcontractors without prior written approval from the City. The Consultant must request and justify the need for the substitution and obtain approval from the City prior to use of a different

subcontractor on the Agreement. The proposed substituted person or subcontractor must be as qualified as the original, and at the same or lower cost.

c. If this Agreement includes engineering services, the Consultant's Project Manager must be a registered Engineer in the State of California.

d. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

## 9. OTHER GOVERNMENTAL REGULATIONS

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

Required contract provisions for Home Investment Partnerships (HOME)-Aided Consultant Contracts are attached as Exhibit 2, and said provisions are incorporated into this Agreement by reference.

All forms provided in Exhibit 2 are to be completed and attached to this Agreement.

## 10. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to prepare and submit all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

## 11. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents, and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorneys' fees and costs and litigation costs) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services, or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees but excepting the active negligence or willful misconduct of the Indemnitees.

The Consultant's obligation to indemnify, defend, and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code § 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to Cal. Civil Code § 2782.8, as amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code § 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

Consultant/subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

## 12. INSURANCE

a. Before commencing performance of the Services, Consultant, at its own cost and expense, must: (1) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and (2) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's Scope of Service.

Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any work and Consultant will provide proof of compliance to the City.

Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to City.

b. **Workers Compensation Insurance.** Consultant must, at its sole cost and expense, maintain Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The insurance must be endorsed to waive all rights of subrogation against City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

c. For the Term of this Agreement, Consultant, at its own cost and expense, must maintain: (1) commercial general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, combined single limit coverage for risks associated with Services; and (2) automobile liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit coverage. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage

to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

d. Except for Workers' Compensation insurance and Professional Liability insurance, all other insurance coverages required pursuant to this Agreement must include or be endorsed to include the following:

(1) City and its officials, officers, employees, agents, and volunteers ("Additional Insured") shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by Consultant. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.

(2) The Additional Insured coverage under the Consultant's policy shall be "primary and non-contributory" and Consultant's coverage will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

e. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

f. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

g. Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

(1) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(2) Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

h. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering errors and omissions. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000 per claim.

i. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City.

j. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

k. All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or by the City. City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

l. To the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following completion of the Services. In the event Consultant fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.

### 13. DISADVANTAGED BUSINESS ENTERPRISE CONSIDERATION

The Grantee will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701(u)) and the Department of Housing and Urban Development's implementing regulations in 24 CFR, Part 135. The responsibilities of the Grantee are outlined in 24 CFR § 135.32 and 24 CFR § 85.36(e) and further described in Exhibit 2.

### 14. LICENSES & PERMITS

#### a. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, Consultant and any subcontractors must acquire, at their expense, a business license from City in accordance with Chapter 5.04 of the Fort Bragg Municipal Code. Such licenses must be kept valid throughout the Agreement term.

#### b. OTHER LICENSES AND PERMITS



Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

#### 15. DOCUMENTATION, OWNERSHIP OF WORK PRODUCTS, AND TREATMENT OF DOCUMENTS

a. Consultant shall document the results of the work to the satisfaction of the City, and if applicable, the State and the Department of Housing and Community Development ("HCD"). This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

b. The Consultant shall sign all plans, specifications, estimates, and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

c. All plans, specifications, reports, designs, documents, and work product prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents or work product by the City without Consultant's prior consultation will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports, documents, or work product pertaining to the Services without the prior written consent of City.

#### 16. DISPUTES

a. Any dispute, other than an audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the City's Contract Manager and the City Manager, who may consider written or verbal information submitted by the Consultant.

b. Not later than thirty (30) days after completion of all work under the Agreement, the Consultant may request review by the City Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

c. Neither the pendency of a dispute, nor its consideration by the committee will excuse the Consultant from full and timely performance in accordance with the terms of this Agreement.

d. Should a dispute not be resolved by the procedures set forth above, then the parties must mediate the dispute before a mutually agreed upon neutral within ninety (90) days of the completion of all Services under the Agreement. If mediation is not successful, the Consultant and City may pursue all rights and remedies available under California law.

## 17. TERMINATION AND REMEDIES

a. City or Consultant may terminate this Agreement for convenience by giving at least 30 days written notice to the other party specifying the termination effective date. Upon receipt of such notice from City, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.

b. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

(1) Terminate the Agreement by notice to the Consultant specifying the termination effective date;

(2) Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports, other design documents, and work product prepared by Consultant, whether or not completed;

(3) Complete the unfinished Services itself or have the unfinished Services completed, and/or;

(4) Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

## 18. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet, or transfer their interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

## 19. REPRESENTATIVES

a. City Contract Manager for purposes of this Agreement will be Natalie McLaughlin, Special Projects Assistant. Consultant's representative for purposes of this Agreement will be Josh Killion, Development & Sustainability Specialist. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

b. Notices:

Any written notice to Consultant shall be sent to:

Josh Killion  
Development & Sustainability Specialist  
Community Development Commission of Mendocino County  
1076 North State Street  
Ukiah, California 95482

Any written notice to City shall be sent to:

Natalie McLaughlin  
Special Projects Assistant  
City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, California 95437

## 20. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency, or difference in interpretation of terms arises as to terms or provisions of this Agreement and any Exhibit(s) attached to this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the parties with respect to the subject matter hereof, except for Exhibit 2, the terms of which shall remain. This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

## 21. COVENANT AGAINST CONTINGENT FEES, REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATION

a. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this covenant, the City shall have the right to annul this agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

b. The Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any City employee. The Consultant further warrants that it has not engaged in any activities barred by the provisions of Exhibit 2, § 9. For breach or violation of this

warranty, City shall have the right in its discretion, to terminate the Agreement without liability, to pay only for the value of the work actually performed, or to deduct from the Agreement price, or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

c. The Consultant warrants and represents that it has not participated in any lobbying activities prohibited by Exhibit 2, Consultant's/Sub-Consultant's Certification Concerning Anti-Lobbying and that any lobbying activities of Consultant are properly disclosed in Exhibit 2, Disclosure of Lobbying Activities Form.

## 22. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of all State and Local ethics laws, ordinances, and regulations applicable to the performance of the Services and/or this Agreement, including, but not limited to, the City's Conflict of Interest Code adopted pursuant to California Government Code § 87300 *et seq.*, the Political Reform Act (California Government Code § 81000 *et seq.*), the regulations promulgated by the Fair Political Practices Commission (Title 2, § 18110 *et seq.* of the California Code of Regulations), California Government Code § 1090 *et seq.* . Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services unless the City Clerk determines that completion of a Form 700 is not required, pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

City and Consultant will comply with the requirements of all Federal ethics laws and regulations applicable to the performance of the Services and/or this Agreement. Federal conflict of interest provisions are outlined in Exhibit 2 and the related form: Consultant's/Sub-Consultant's Certification Concerning Anti-Lobbying.

Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Consultant's obligations pursuant to this Agreement. Consultant agrees to cooperate fully with City and to provide any necessary and appropriate information requested by City or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement.

Consultant may not employ any City official, officer, or employee in the performance of the Services, nor may any official, officer, or employee of City have any financial interest in this Agreement that would violate California Government Code § 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any

compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code § 1090 *et seq.* may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

## 23. APPLICABLE LAW AND VENUE

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Mendocino County.

## 24. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

## 25. COUNTERPARTS


This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

CITY

By: \_\_\_\_\_  
Tabatha Miller  
Its: City Manager

CONSULTANT


By:  \_\_\_\_\_  
Todd Crabtree  
Its: Executive Director

ATTEST:

[Attach Notary Acknowledgment Page]

By: \_\_\_\_\_  
June Lemos, CMC  
City Clerk

APPROVED AS TO FORM:

By:   
Russell Hildebrand  
City Attorney

Exhibits:

Exhibit 1 – Consultant's Scope of Service

Exhibit 2 – Required Contract Provisions for HOME-Aided Consultant Contracts

Exhibit 3 – State of California Standard Agreement, No. 16-HOME-11373

## **I. SCOPE OF SERVICE**

### **A. PROGRAM ADMINISTRATION**

CDC will support the City with the administration of its HOME grant. City staff will have the primary responsibility for grants administration, reporting and consultations with the Department.

#### **Review/Update Program Materials**

CDC staff will review the existing program guidelines, forms, agreements, loan documents, and other printed materials and recommend revisions to comply with current HOME standards and regulations, as necessary.

#### **Monthly Status Reports**

CDC will provide monthly status reports to City staff on all housing rehabilitation projects, which will include information specific to the stage of each application.

#### **Marketing**

City staff will conduct all program marketing. CDC will support program marketing by reviewing the materials and procedures used to market the program to the community and making recommendations for enhancing the effectiveness of outreach activities, as appropriate. City marketing can include contacting all known local construction contractors to notify them about the program and compiling a contractor interest list.

### **B. PROGRAM IMPLEMENTATION – OWNER-OCCUPIED REHABILITATION**

CDC will assist the City with the following tasks in order to implement the OOR program. CDC will work closely with City staff who will be performing key tasks related to program implementation.

#### **Applicant Eligibility**

City staff will provide the public with interest applications. Based on review of basic information, staff will request applicants to complete full applications. Once complete applications are received, staff will forward them to CDC.

CDC's staff will review applications received by City staff and determine whether the owner's financial status and property location and condition would warrant a loan. CDC will also review applications to determine homeowner and property eligibility according to the City's program guidelines and the state HOME program regulations.

#### **Loan Origination and Processing**

CDC's housing staff will perform all of the application processing functions, including, but not limited to, the following:

- Creating a file that will contain all items constituting a complete application package, including the application, disclosures, and supporting documentation for income and ownership. City staff will provide assistance to applicants who need help completing the application or who may have questions about the process. Each case file will ultimately contain all material required for the Department monitoring/audit purposes.
- Ordering a credit report to determine if the applicant meets the Department's and the City's underwriting criteria.
- Ordering third-party verifications of income, employment, assets, and any other income-producing benefits, as necessary.
- Underwriting the loan to ensure the applicant will be qualified for the program based on

verification of income, current employment, credit history, and other factors determined essential by the City. Any additional information needed to underwrite the loan will be collected by CDC, including the property profile report, proof of insurance and taxes, after-rehabilitation value, and site-specific environmental review.

### **Preparation of Work Write-Up/Cost Estimate**

CDC's Sustainability and Energy Efficiency Specialist (SEES) and Maintenance Technician will visit the housing unit and conduct a walk-through with the homeowner to determine what repairs are required and eligible in accordance with HOME rules and regulations and the City's program guidelines. CDC will provide an inspection report for the initial walk-through. CDC will complete a detailed work write-up for all projects. The scope of work specifications will include all labor and materials needed to complete the rehabilitation, as well as an estimate of project cost and a line item cost estimate for the rehabilitation work specific to each trade. CDC's architect may be involved when necessary.

CDC will take before, during the course of construction, and after photos of the project for the file. Lead hazard assessments and termite inspections and clearance will be completed by qualified and licensed subconsultants as necessary. In the past the City paid these consultants from City share of Activity Delivery or General Administration funds. CDC will also schedule contractor walk-throughs. The City is welcome to attend all walk-throughs.

### **Loan Committee Review**

Once the above steps have been completed, CDC's project manager will assemble the necessary documents and present the loan package to the City's Loan Advisory Committee (LAC) for review and approval. The City is to schedule LAC meetings and present to LAC, with CDC staff available by phone as needed. CDC understands that the LAC is responsible for reviewing and making a final decision on each and every application. The LAC will confirm income eligibility and compliance with guidelines and ultimately make a final decision on the loan amount and term. Per the Department's requirements and the City's program guidelines, all loans will be non-interest-bearing, deferred-payment loans.

### **Loan Document Preparation**

CDC's staff will prepare all of the loan documents necessary to record the City's loan with the County Recorder or, in the case of mobile homes, the Department. Loan documents will include, but may not be limited to, a promissory note, deed of trust, statement of liens, statement to encumber, and truth-in-lending disclosures. It is anticipated that the City will provide CDC with final versions of all loan documents to be used in operating the program. City submits documents to the County Recorder, holds recorded documents, and sends electronic copies to CDC for their files.

### **Loan Approval and Closing**

CDC's staff will provide an original file including all financial and construction documents for loan closing. CDC will coordinate the execution of the loan documents with the homeowner and ensure that the City has a complete file package. CDC coordinates and reviews all docs with borrowers. City provides in-house notary and sets up signing appointments.

### **Construction Management**

Once the homeowner has selected a contractor, CDC will schedule a preconstruction conference meeting with the homeowner and contractor. CDC will review all anticipated improvements with the homeowner and the selected contractor and will coordinate the execution of the construction contract by both parties. CDC will make sure that both parties understand the scope of work and change order requirements. The City can attend these signing meetings, especially to explain City payment process.



CDC's Executive Director will be closely involved throughout the rehabilitation process, and will oversee all work performed to ensure it is completed as specified and is consistent with the quality standards set forth by the City. The Executive Director will also review any change order requests. Photographs of the work progress will be taken and maintained in the project file.

CDC will coordinate the processing of progress payments to the contractor with the City's Finance and/or Community Development Department. Prior to final payment or release of retention, CDC's qualified staff will make a final inspection of the work to confirm completion. CDC will contact the contractor to repair any work that is not satisfactory. CDC will ensure that all local requirements have been met, the building permit is finalized, a Notice of Completion has been recorded, and there are no liens pending on the property. The City will then release retention after the retention period.

#### **Compliance with HOME Program Requirements**

CDC will ensure all work performed by CDC staff complies with the requirements of HCD's HOME Contract Management Manual and approved Program Guidelines. The preceding scope of services assumes that the City of Fort Bragg has prepared and finalized its owner-occupied housing rehabilitation program guidelines and the loan documents to be used in operating the program. It is further assumed that the City will conduct all program marketing efforts, that City staff will distribute and serve as the initial point of contact for the submittal of applications, and that City staff will be involved in the preparation and submittal of HCD required financial and performance reports.

	OOB Task per RFP	Rate 1	Rate 2	Rate 3	Hours per	per Loan	Apps/	Total
		\$ 95	\$ 100	\$ 60				
		Hours Rate 1	Hours Rate 2	Hours Rate 3				
A.	Program training & admin. review:							
	Total Section A Tasks	0	10	42.00	52	\$ 590	7	\$ 4,720
B.	Application & loan activities							
	Tier A: initial submittals/review:							
	Sub-Total Tier A (added in #3 below)					\$ -		\$ -
	Tier B: Eligibility to pre-construction tasks:							
	Sub-Total Tier B	1	2	52	55	\$ 3,415	7	\$ 23,905
	Tier C: Implementation/loan closing:						7	
	Sub-Total Tier C	4.5	2	76	82.5	\$ 5,188	7	\$ 37,653
	Total Section B Tasks				137.5	\$ 8,603		\$ 61,558
	Fiscal Oversight/Billing				114.38			\$ 9,722
	GRAND TOTAL ALL TASKS				189.5	\$ 9,193		\$ 76,000

## EXHIBIT 2

CITY OF FORT BRAGG  
416 Franklin Street  
Fort Bragg, California 95437

### REQUIRED CONTRACT PROVISIONS for HOME-Aided Consultant Contracts

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## EXHIBIT 2

### 1. General Provisions

- 1.1 This project is funded wholly or in part by the State Home Investment Partnerships (HOME) Program and is subject to both Federal and State regulatory requirements. The consultant and its sub-contractors agree to comply with all State and Federal laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Consultant and any subcontractors. The consultant further agrees to comply with all Federal laws and regulations applicable to the HOME Program and with other Federal provisions as set forth below and as described in 24 CFR Part 85 for governmental entities, or OMB Circular A-122 and applicable provisions of 24 CFR Part 84 for non-profit entities.
- 1.2 These contract provisions shall apply to all work performed on the contract by the consultant's own organization and with the assistance of workers under the consultant's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
- 1.3 Except as otherwise provided for in each section, the consultant shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions for HOME-Aided Consultant Contracts, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions for HOME-Aided Consultant Contracts shall not be incorporated by reference in any case. The prime consultant shall be responsible for compliance by any sub-consultant or lower tier sub-consultant with these Required Contract Provisions for HOME-Aided Consultant Contracts.
- 1.4 The consultant and its sub-consultants shall perform the project in accordance with Federal, State and local housing and building codes as are applicable.
- 1.5 All data and design and engineering work created under this Agreement shall be owned by the Subgrantee / owner of the subject property and shall not be subject to copyright protection. The rights to any invention which is developed in the course of this Agreement shall be the property of the Subgrantee/subject property owner.
- 1.6 The consultant and its sub-consultants shall maintain at least the minimum State-required Worker's Compensation Insurance for those employees who will perform the contract activity(ies) or any part of it.
- 1.7 The consultant and its sub-consultants shall maintain, if so required by law, unemployment insurance, disability insurance and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the consultant or any sub-consultant in performing the project or any part of it.
- 1.8 The consultant and its sub-consultants shall retain all books, records, accounts, documentation, and all other materials relevant to the agreement for a period of five (5) years from date of termination of the agreement, or five (5) years from the conclusion or resolution of any and all audits or litigation relevant to the agreement and any amendments, whichever is later.
- 1.9 The consultant and its sub-consultants shall permit the State, Federal government, the Bureau of State Audits, the Department of Housing and Community Development, the City of Fort Bragg and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials

## EXHIBIT 2

relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

### 2. Conflict of Interest Provisions.

#### 2.1 Conflict of Interest of Members, Officers, or Employees of Consultants, Members of Local Governing Body, or other Public Officials

In the procurement of property and service, the consultant shall comply with the conflict of interest provision in 24 CCFR 85.36 for the procurement of property and with 24 CFR 92.356 prohibits, in part, that any employee, agent, consultant, officer or elected or appointed official, "who exercise or have exercised any function or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, wither for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter."

#### 2.2 Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

### 3. Affirmative Action:

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the United States Department of Housing and Urban Development (HUD) and subject to 24 CFR 85.36(e). All bidders are notified that the HOME grantee and all sub-grantees will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged, minority and women's business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religious creed, sex, or nation origin in consideration for an award. Minority and women-owned and operated businesses are encouraged to apply.

### 4. Non Discrimination Clause

The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances:

During the performance of this Agreement, the Consultant assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status, or religious preference, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

### 5. Section 3 Clauses: The Training, Employment, and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance

## EXHIBIT 2

- 5.1 The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in other order of priority provided in 24 CFR 135.34(a)(2).
- 5.2 The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- 5.3 The consultant will include these Section 3 clauses in every contract and subcontract for work in connection with the project and will, at the direction of the State or City, take appropriate action pursuant to the contract upon a finding that any consultant or sub-consultant is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and will not let any contract unless the Consultant or consultant or sub-consultant has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- 5.4 Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement shall be a condition of the Federal financial assistance provided to the project, binding upon the consultant, its successors, and assigns. Failure to fulfill these requirements shall subject the consultant and its sub-consultants, its successors, and assigns to those sanctions specified by the grant or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

### 6. Equal Opportunity

During the performance of this Contract, the Contractor agrees as follows:

- 6.1 The Contractor with comply with Executive Order 11246 of September 24, 1965 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 1967 as supplemented in Department of Labor regulations (41 CFR chapter 60).
- 6.2 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City Setting forth the provisions of this nondiscrimination clause.

## EXHIBIT 2

- 6.3 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- 6.4 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 6.5 The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6.6 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 6.7 The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 6.8 The Contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
- 6.9 Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
- 6.10 Whenever the Contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the

## EXHIBIT 2

extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

- 6.11 The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.
- 6.12 The Contractor will cause the foregoing provisions to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

### 7. Rehabilitation Act of 1973 and the "504 Coordinator"

The Consultant further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR Part 8, including, but not limited to, for Consultants with fifteen(15) or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the "504 Coordinator."

### 8. Disadvantaged/Minority/Women Business Enterprise Federal Regulatory Requirements Under 24 CFR 85.36(e):

The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps shall include:

- 8.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 8.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 8.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- 8.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;



## EXHIBIT 2

8.5 Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

9. Copeland "Anti-Kickback" Act (18 U.S.C. 874)

Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

10. Compliance with Clean Air Act and Clean Water Act.

Contractor shall comply with all applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)).

10.1 Contractor shall comply with all applicable standards, orders and requirements issued under Section 508 of the Clean Air Act (33 U.S.C. 1368).

10.2 Contractor shall comply with Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15).

11. Compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871)

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

12. Prevailing Wages

12.1 Where funds provided through this Agreement are used for construction work, or in support of construction work, the Consultant shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

12.2 For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Consultant and a licensed building contractor, the Consultant shall serve as the "awarding body" as that term is defined in the Labor Code. Where the Consultant will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

13. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330)

Contractor will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Requires the contracting officer to insert the clauses set forth in 29 CFR Part 5, Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

## EXHIBIT 2

### 14. Bonus or Commission, Prohibition Against Payments of

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- A. Obtaining the Department's approval of the application for such assistance; or
- B. The Department's approval of the applications for additional assistance; or
- C. Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of 1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

### 15. Labor Standards—Federal Labor Standards Provisions

Contractor shall comply with all provisions contained in the form HUD-1040, Federal Labor Standards Provisions. The Consultant shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of:

- 15.1 Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- 15.2 "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) prohibits any person from:
  - (1) providing, attempting to provide, or offering to provide any kickback;
  - (2) soliciting, accepting, or attempting to accept any kickback; or
  - (3) including directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.
- 15.3 Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that workers receive "overtime" compensation at a rate of one to one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.
- 15.4 Title 29, Code of Federal Regulations, Subtitle A, Parts I, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

### 16. Labor Standards—State Labor Standards Provisions

State prevailing wage rates shall apply when the State wage rate is higher than the Federal wage rate. All contractors and subcontractors are subject to the application of Section 1720 et seq. of the California Labor Code which details the regulations and procedures governing the payment of State prevailing wages.

## EXHIBIT 2

All contractors and subcontractors are subject to the provisions of Section 3700 of the California Labor Code which requires that every employer be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code.

All contractors and subcontractors are subject to the provisions of Sections 1810-1814 of the California Labor Code which provide that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor or subcontractor shall forfeit, as a penalty, \$25 for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week and is not paid overtime.

Section 1815 of the California Labor Code requires that notwithstanding the provisions of Sections 1810-1814, employees of contractors who work in excess of eight hours per day and 40 hours per week shall be compensated for all hours worked in excess of eight hours per day at not less than 1½ times the basic rate of pay.

### 17. Anti-Lobbying Certification

The consultant shall require that the language included in the Consultant's/Sub-consultant's Certification concerning Anti-Lobbying form be included in all subcontracts entered into in connection with this activity and that consultant and all subconsultants shall certify and disclose per the requirements of that form.

## EXHIBIT 2

CITY OF FORT BRAGG  
416 North Franklin Street  
Fort Bragg, California 95437

### DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISE FEDERAL REGULATORY REQUIREMENTS UNDER 24 CFR 85.36(E)

Pursuant to HUD reporting requirements for HOME recipients and subrecipients, all contractors and subcontractors must submit the following information to the City of Fort Bragg for annual HOME reporting:

1. Is Consultant's business Women Owned? ☐ Yes ☐ No

A woman-owned business enterprise (WBE) is defined as a business that is at least 51% owned, operated and controlled on a daily basis by one or more (in combination) female American citizens.

2. Is Consultant's business a Section 3 Business? ☐ Yes ☐ No

Section 3 businesses are those that can provide evidence of meeting one of the following three criteria:

a) 51 percent or more owned by Section 3 residents; or

b) At least 30 percent of its full time employees include persons that are currently Section 3 residents, or were Section 3 residents within three years of the date of first hire\*; or

c) Provides evidence, as required, of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to businesses that meet the qualifications of a) or b) above.

3. Consultant's Employer Identification Number: \_\_\_\_\_

4. Consultant's business Racial/Ethnic Code: \_\_\_\_\_

#### CODES:

11-White 16-American Indian/Alaskan Native & White

12-Black/African American 17-Asian & White

13-Asian 18-Black/African American & White

14-American Indian/Alaskan American 19-American Indian/Alaskan Native & Black/African Amer.

15-Native Hawaiian/other Pacific Islander 20-Other Multi-Racial

5. Will any subcontractors be hired by consultant in order to accomplish the contract scope of work? ☐ Yes ☐ No

If YES, list known subcontractors: \_\_\_\_\_  
(use additional page if needed)

If YES, a copy of this form must be provided to each subcontractor and submitted to the City of Fort Bragg within 10 days of contract/subcontract date.

Signed \_\_\_\_\_  
(Contractor representative)

Company name: \_\_\_\_\_

By: \_\_\_\_\_  
(Print Name and Title)

Date: \_\_\_\_\_

## EXHIBIT 2

CITY OF FORT BRAGG  
416 North Franklin Avenue  
Fort Bragg, California 95437

### CONSULTANT'S/SUB-CONSULTANT'S CERTIFICATION CONCERNING ANTI-LOBBYING

The Consultant shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant activity(ies) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure. "The undersigned certifies, to the best of his or her knowledge or belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions.

(Consultant/Sub-consultant)

By

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Date

## EXHIBIT 2

### DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity</b>  <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>	
<b>10. a. Name and Address of Lobby Entity</b> (If individual, last name, first name, MI)	<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI)	
(attach Continuation Sheet(s) if necessary)		
<b>11. Amount of Payment (check all that apply)</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment (check all that apply)</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
<b>12. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
<b>14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:</b>  (attach Continuation Sheet(s) if necessary)		
<b>15. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		

## EXHIBIT 2

### INSTRUCTIONS FOR COMPLETION OF DISCLOSURE OF LOBBYING ACTIVITIES FORM

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

## EXHIBIT 2

- (b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
  12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
  13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
  14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
  15. Check whether or not a continuation sheet(s) is attached.
  16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.



## EXHIBIT 2

CITY OF FORT BRAGG  
416 North Franklin Avenue  
Fort Bragg, California 95437

### CONSULTANT'S CERTIFICATION CONCERNING CONFLICT OF INTEREST

**By submitting its proposal the consultant certifies as follows:**

**I am aware and in compliance with the following provisions regarding Conflict of Interest of Consultants:**

**1. Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials**

In the procurement of property and service, the consultant shall comply with the conflict of interest provision in 24 CCFR 85.36 for the procurement of property and with 24 CFR 92.356 prohibits, in part, that any employee , agent, consultant, officer or elected or appointed official, "who exercise or have exercised any function or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, wither for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter."

**2. Conflict of Interest of Certain Federal Officials**

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Contract or to any benefit to arise from the same.

Signed \_\_\_\_\_  
(Consultant)

By \_\_\_\_\_  
Print Name and Title

Date: \_\_\_\_\_

## EXHIBIT 2

**STATE OF CALIFORNIA**  
**Department of Housing and Community Development**  
**HOME INVESTMENT PARTNERSHIPS (HOME) Program**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 24 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

**(BEFORE COMPLETING THIS CERTIFICATION, READ INSTRUCTIONS BELOW)**

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Grant Number:** \_\_\_\_\_

**Name of Participant:** \_\_\_\_\_

**Address of Participant:** \_\_\_\_\_

Name and Title of Authorized Representative	Signature	Date
<p>1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.</p> <p>2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.</p> <p>3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.</p> <p>4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.</p> <p>5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.</p> <p>6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.</p> <p>7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may check the non-procurement List.</p> <p>8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.</p> <p>9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.</p>		

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
STD 213 (Rev 06/03)

AGREEMENT NUMBER

16-HOME-11373

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

CONTRACTOR'S NAME

**City of Fort Bragg**

2. The term of this  
Agreement is:

**Upon HCD Approval through 07/31/2035**

3. The maximum amount of this  
Agreement is:

**\$500,000.00**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A - Authority, Purpose and Scope of Work

3

Exhibit B - Set-up and Payment Provisions

3

Exhibit C - State of California General Terms and Conditions\*

GTC - 04/2017

Exhibit D - HOME Program Terms and Conditions

22

Exhibit E - Special Terms and Conditions

1

Exhibit F - Additional Provisions

0

TOTAL NUMBER OF PAGES ATTACHED

29 pages

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. The GTC 04/2017 documents can be viewed at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

**CONTRACTOR**

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc)

**City of Fort Bragg**

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**416 North Franklin Street, Fort Bragg, CA 95437**

**STATE OF CALIFORNIA**

AGENCY NAME

**Department of Housing and Community Development**

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

**Synthia Rhinehart, Contracts Manager, Business & Contract Services Branch**

ADDRESS

**2020 W. El Camino Ave., Sacramento, CA 95833**

**California Department of  
General Service  
Use Only**

**DEC 20 2017**

☒ Exempt per: **SCM 4.04.A.3 (DGS  
Memo dated 6/12/81)**

**EXHIBIT A**

**AUTHORITY, PURPOSE AND SCOPE OF WORK**

**1. Authority & Purpose**

This Standard Agreement (hereinafter "Agreement") will provide official notification of the conditional reservation of funds under the State of California's administration of the Home Investment Partnerships Program (hereinafter "HOME") by the Department of Housing and Community Development (hereinafter the "Department") pursuant to the provisions of the Cranston-Gonzalez National Affordable Housing Act (42 USC 12741 et seq.), the HOME Investment Partnerships Program (Title 24 Code of Federal Regulations Part 92), California Health and Safety Code Section 50896, and Title 25, Division 1, Chapter 7, Subchapter 17 of the California Code of Regulations, Sections 8200 through 8220 (the "State Regulations"), all as amended and in effect from time to time. The HOME Program is listed in the Catalog of Federal Domestic Assistance (CFDA) as 14.239 - HOME Investment Partnerships Program. In accepting this conditional reservation of funds, the Contractor (sometimes referred to herein as the "HOME Recipient") agrees to comply with the terms and conditions of this Agreement, the Notice of Funding Availability (NOFA) under which the HOME Recipient applied, the representations contained in the HOME Recipient's application for this funding allocation (the "Application"), and the requirements of the authorities cited above.

**2. Scope of Work**

A. HOME Recipient shall perform the Scope of Work (hereinafter "Work") as described in the Application, which is on file at the Department, Division of Financial Assistance, 2020 West El Camino Ave., Suite 650, Sacramento, California, and which is incorporated herein by reference. All written materials or alterations submitted as addenda to the original Application and which are approved in writing by a Contract Management Section Manager or higher Departmental official, as appropriate, are hereby incorporated as part of the Application. The Department reserves the right to require the HOME Recipient to modify any or all parts of the application in order to comply with HOME Investment Partnerships Program federal and/or State Regulations or requirements. The Department reserves the right to review and approve all Work to be performed by the HOME Recipient in relation to this Agreement. Any proposed revision to the Work must be submitted in writing for review and approval by the Department. Any approval shall not be presumed unless such approval is made by the Department in writing.

B. The Work shall consist of:

<u>Project Location</u>	<u>Type of Activity</u>	<u>HOME Activity Funds</u>	<u>HOME Units</u>
City of Fort Bragg	(14A) Owner-Occupied Rehabilitation Program	\$487,500	7
	(21A) State Recipient Administration	\$12,500	

**EXHIBIT A**

**3. Term of Agreement and Deadlines**

- A. All Program funds shall be expended by: July 31, 2020
- B. All Drawdown Requests shall be submitted by: September 30, 2020.
- C. This Agreement shall expire on: July 31, 2035.

No payments shall be made for drawdown requests received after August 31, 2020. Any funds not drawn down by August 31, 2020, shall be disencumbered.

Pursuant to 24 CFR 92.254, any homeownership units funded by HOME that do not have a ratified sales contract with an eligible homebuyer for the housing within nine (9) months of the date of completion of construction or rehabilitation, shall be rented to an eligible tenant pursuant to the requirements of 24 CFR 92.252.

**4. Contract Amount**

For the purposes of performing the Work, the Department agrees to provide the amount shown on Page 1, No. 3 of this Agreement (STD 213). In no instance shall the Department be liable for any costs for Work in excess of this amount, nor for any unauthorized or ineligible costs. The HOME Recipient agrees to administer this allocation in accordance with the provisions of 24 CFR 92 and Section 8200 through, and including, Section 8220 of Title 25 of the California Code of Regulations. The Agreement amount shall be expended as follows:

(14A) Owner-Occupied Rehabilitation Program	\$487,500
(21A) State Recipient Administration	\$12,500

**5. Activity Delivery Costs**

HOME Recipients shall report the amount of Activity funds used for Activity Delivery Costs on the HOME Set-Up and Completion Reports. The HOME Recipient must request Activity Delivery Costs (ADC) in proportion to the amount of Activity funds being drawn down. The maximum amount of ADC that may be drawn for each specific activity is:

- A. Up to 24% of the HOME loan/grant amount for Owner-Occupied Rehabilitation (OOR).
- B. Up to 6.5% of the HOME loan/grant amount for First-Time Homebuyer (FTHB) activities including rehabilitation;
- C. Up to 6.5% of the HOME Construction loan amount for First-Time Homebuyer activities involving in-fill construction; and,
- D. Up to 5% of the total household assistance amount to reimburse the cost of unit inspections and eligibility determinations for Tenant-Based Rental Assistance.

**EXHIBIT A**

These amounts may be modified by a Department HOME Program Management Memorandum. The total amount of ADC drawn down during the entire contract term must be for actual costs incurred according to 2 CFR Part 200 and have documentation in each project file. The requirements of 2 CFR Part 200 apply to all non-Federal Entities.

**6. Other Funding Sources**

- A. Other Funding Sources - The HOME Recipient shall report on the value of other contributions included as leverage to the project activity with each Project Set-Up and Completion Report (this is one report). The Project Set-Up and Completion Report is the report, which conveys the information needed to establish a project-specific account in the Federal Integrated Disbursement and Information System (IDIS). It is also the report that is used to convey any changes to the project-specific account, or report the final project-specific information in IDIS established by U.S. Department of Housing and Urban Development (HUD).
- B. Match - All matching contributions for a specific activity required by 24 CFR 92.218-222 are waived. However, the HOME Recipient shall report all match eligible funding in the Project Set-Up Report and Project Completion Report.
- C. Subsidy Limits - The amount of HOME funds the HOME Recipient may contribute to HOME-assisted housing on a per-unit basis may not exceed the per-unit dollar limits established by HUD, as referenced in 24 CFR 92.250.

**7. HOME Program Contract Coordinator**

The HOME Recipient's contact for this Agreement may vary; therefore, you will be contacted directly by your assigned representative. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be sent by first class mail to the Contract Management HOME Program Manager at the following address:

Name: Ken Holder, HOME Program Manager  
Phone: (916) 263-1501  
Fax: (916) 263-2763  
Email: [HOME@hcd.ca.gov](mailto:HOME@hcd.ca.gov)  
Address: Department of Housing and Community Development  
Division of Financial Assistance  
P.O. Box 952054  
Sacramento, CA 94252-2054

**EXHIBIT B**

**SET-UP AND PAYMENT PROVISIONS**

**1. Definitions**

- A. "Activity Delivery Costs" means "related soft costs" as this term is defined in the HOME Final Rule 24 CFR 92.206(5)(d). The Activity Delivery Costs are included in the "HOME Activity Funds". The HOME Recipient may expend up to the indicated Activity Delivery Cost as identified in Exhibit A, 5. HOME funds for Activity Delivery Costs and Home Activity Funds shall be drawn down at the same time. If the activity is not completed, and a Project Completion Report for the full amount drawn down is not filed, all HOME funds, including ADC must be repaid to the Department.
- B. "Project Set-Up" refers to the forms and process required to reserve HOME funds in IDIS for a specific HOME assisted project.
- C. "Project Disbursement" refers to the forms and process required to request the drawdown of HOME funds from IDIS for a project's previously reserved HOME funds.
- D. "Project Completion Report" refers to the form and process required to report a project "complete". The Project Completion Report must be submitted to HCD within 60 days of the final draw request. If the activity is not complete, and a Project Completion Report for the full amount drawn down is not filed, all HOME funds for the particular project must be repaid to the Department.
- E. "Administration" refers to eligible administrative and planning costs as provided in 24 CFR 92.207.

**2. General Set-Up Requirements**

The HOME Recipient shall submit the following for the Department's approval, prior to project set-up in IDIS:

- A. The "General Set-Up Conditions Checklist" on a form provided by the Department and any required supporting documentation, including a program budget, and Affirmative Fair Market Analyses with marketing plan.
- B. For FTHB Activities, the Contractor shall submit a revised FTHB Feasibility Worksheet (Exhibit B7 of the Program application) as part of their General Set-up Conditions to confirm program feasibility.
- C. Any other documents, certifications, or evidence deemed necessary by the Department prior to Project Set-Up prior to Project Set-Up.

**EXHIBIT B**

**3. Individual Project Set-Up Requirements**

The HOME Recipient shall submit the following documentation to the Department:

- A. HUD-required Project Set-Up Report; and,
- B. Any other documents, certifications, or evidence deemed necessary by the State prior project set-up.

**4. Project Disbursement Requirements**

The HOME Recipient shall submit the following documentation to the Department prior to the disbursement of funds:

- A. HUD-required Project Drawdown Request Form;
- B. Std. 204, Payee Data Record form (if necessary);
- C. Designated Payee letter (if necessary);
- D. Evidence of sufficient and eligible HOME match, if necessary for funding;
- E. Any other documents, certifications, or evidence deemed necessary by the Department prior to disbursement of project funds; and,
- F. For the final drawdown, a revised Project Completion Report, if any funding sources and/or amounts have changed since the most recently submitted Project Set-Up Report.

**5. Project Completion Requirements**

The HOME Recipient shall submit the following documentation to the Department for project completion:

- A. HUD-required final Project Set-Up and Completion Report; and,
- B. Any other documents, certifications, or evidence deemed necessary by the Department prior to project completion.

**6. General Conditions of Disbursement**

- A. The HOME Recipient shall spend Program Income in the local account, before requesting funds from the Department and shall not request disbursement (drawdown request) of HOME funds under this Agreement until the funds are needed for the reimbursement of eligible costs. The amount of each request shall be limited to the amount needed for reimbursement of actual expenses for Work that has been completed. Work completed means FTHB escrow has closed, TBRA rent subsidies were paid, and/or OOR construction/rehabilitation costs are paid for Work completed, and inspected.



**EXHIBIT B**

- B. No later than 60 days after any final project drawdown request, the HOME Recipient shall provide a Project Completion Report to the Department. In the event that a Project Completion Report is not received by the Department within the 60-day period, the Department shall suspend further Project Set-Ups for the Contractor until the Project Completion Report is received by the Department and is accepted in IDIS.
- C. In the event the Department determines funds were used for ineligible expenses, further Project Set-Ups and all disbursements may be withheld until the issue of the ineligible expenses is resolved to the satisfaction of the Department.

EXHIBIT D

**HOME TERMS AND CONDITIONS**

**1. Effective Date and Commencement of Work**

This Agreement is effective upon approval by the Department. This approval date is indicated by the date stamped by the Department in the lower right hand corner of page one of this Agreement, STD 213. The HOME Recipient agrees that the Work shall not commence, nor any costs to be paid with HOME funds be incurred or obligated by any party prior to execution of this Agreement by the Department, completion of all required environmental clearances, and compliance with the applicable conditions of this Agreement. Notwithstanding the aforementioned statement, there are two circumstances when costs may be incurred prior to the execution of this Agreement. First, administrative expenses for eligible NEPA compliance work may be incurred prior to the execution of this Agreement. Second, with Contract Management Section Manager or Section Chief approval, other costs may also be incurred prior to the execution of this Agreement. Such costs may consist of procurement of administrative subcontractors, development of program guidelines, architectural, engineering and other professional services required to prepare plans, drawings, specifications, or work write-ups that are incurred not more than 24 months prior to the project being set up in IDIS. The HOME Recipient agrees that the Work shall be completed by the Expenditure date specified in Exhibit A, Section 3, A. This Agreement shall expire on the date set forth in Exhibit A, Section 3, C.

**2. Sufficiency of Funds**

- A. This Agreement is valid and enforceable only if sufficient funds are made available to the Department by the United States Government for the purposes of the HOME Program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or State Legislature, promulgated in State or federal regulations or any State or federal statute, as now in effect and as may be amended from time to time which may affect the provisions, terms, or funding of this Agreement in any manner, including 2 CFR Part 200.
- B. The parties to this Agreement mutually agree that if the Congress does not appropriate sufficient funds for the HOME Program, the Department, at its sole discretion, either may amend the contract to reflect any reduction in funds, or it may unilaterally cancel the contract with 14 days written notice to the HOME Recipient.

**3. Disencumbrance of Funds and Termination**

- A. The Department at its discretion, may require a partial disencumbrance of funds awarded when the HOME Recipient has difficulty expending funds during the contract period, and it appears they will be unable to expend them prior to the expenditure deadline (See Exhibit A, Section 3, A).
- B. The Department may terminate this Agreement at any time for cause by giving 14 days written notice to the HOME Recipient. Cause shall consist of any violation of the HOME requirements; any terms and/or special conditions of this Agreement; upon the request of HUD; unreasonably low rate of expenditure; or, upon a reduction in or elimination of the Department's expenditure authority.

**EXHIBIT D**

- C. Unless otherwise approved by the Department, upon termination or cancellation of this Agreement, the HOME Recipient shall complete all Work in progress and terminate any other activities that were to be paid for with HOME funds. Any unexpended funds received by the HOME Recipient shall be returned to the Department within 14 days of the Notice of Termination or Notice of Cancellation.

**4. Litigation**

The HOME Recipient shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

**5. Waivers**

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement, or to require at any time performance by the HOME Recipient of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

**6. HOME Recipient's Application for Funds**

- A. HOME Recipient has submitted to the Department an Application for funding under the HOME Program. The Department is entering into this Agreement on the basis of, and in substantial reliance upon, HOME Recipient's facts, information, assertions and representations contained in that Application, and in any subsequent modifications or additions thereto approved by the Department. The Application and any approved modifications and additions thereto are hereby incorporated into this Agreement.
- B. HOME Recipient warrants that all information, facts, assertions and representations contained in the Application and approved modifications and additions thereto are true, correct, and complete to the best of HOME Recipient's knowledge. In the event that any part of the Application and any approved modification and addition thereto is untrue, incorrect, incomplete, or misleading in such a manner that would substantially affect the Department's approval, disbursement, or monitoring of the funding and the HOME loans and grants or activities governed by this Agreement, then the Department may declare a breach hereof and take such action or pursue such remedies as are provided for breach hereof.

**7. Federal and State Laws and Regulations**

The HOME Recipient agrees to comply with all federal laws and regulations applicable to the HOME Program, including any federal Office of Management and Budget (OMB) Circular and all applicable HUD rules and regulations (including, without limitation, the HOME Grant-Based Accounting Interim Rule dated December 2, 2016 and any final rule related thereto.)

**EXHIBIT D**

**8. Uniform Administrative Requirements**

The HOME Recipient shall comply with the Federal Uniform Administrative Requirements set forth in 24 CFR 92.505 as may be updated by the federal government. This means compliance with OMB Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments" and the following sections of 24 CFR 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" 85.6, 85.12, 85.20, 85.22, 85.26, 85.32, through 85.34, 85.36, 85.44, 85.51, and 85.52. Generally speaking, these sections permit the HOME Recipient to use its own procurement procedures if they meet federal standards Pursuant to 24 CFR 85.36(b)(3), no employee, officer or agent (including subcontractors who perform specific administrative tasks and/or administer the local HOME Program) may also be the developer and/or owner of a HOME-assisted program or project, unless approved in writing by HUD in advance of the project commencement.

**9. Project Requirements**

The HOME Recipient shall comply with 24 CFR 92, Subpart F as applicable, in accordance with the type of project assisted.

**A. Maximum Per Unit Subsidy Amount and Subsidy Layering**

In accordance with 24 CFR 92.250 and Section 8207 of the State HOME Regulations, the HOME Recipient shall demonstrate to the Department, in a format identified by the Department, that the amount of HOME funds invested on a per-unit basis shall not exceed the current HOME per-unit subsidy limits as established by HUD that apply to the area where the housing is located, and that the HOME funds in combination with other financing and assistance, is not more than is necessary to provide housing to low-income households. The HOME Recipient shall provide a formal certification concerning the governmental assistance provided or to be provided to a project. If no such governmental assistance is to be provided at the time of the application or in the future, the HOME Recipient shall certify to that fact. The HOME Recipient shall also certify that should other governmental assistance be sought in the future, the Department shall be promptly notified. Activities assisted under this Agreement are subject to the underwriting and subsidy-layering requirements established by the Department for each activity pursuant to the requirements of 24 CFR 92.250 and 92.254.

For homeowner activities, the home sale price shall be determined through an appraisal and any applicable underwriting standards meeting the specifications approved by the Department in the CHDO program guidelines. The sales price shall also be subject to the Maximum Purchase Price Limits approved by the Department pursuant to 24 CFR 92.254.

For all First-Time Homebuyer activities, the HOME Recipient shall submit the Closing Disclosure (settlement statement from the escrow company) at the same time the Individual Project Set-Up Report is submitted to the Department.

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### B. Maximum Purchase Price/After Rehabilitation Value Limits

Homebuyer acquisition and/or rehabilitation activities shall meet the Maximum Purchase Price/After-Rehabilitation Limits published or otherwise approved by the Department pursuant to the requirements set forth in 24 CFR 92.254.

### C. Property Standards

The HOME Recipient shall ensure that all housing units meet the property standards in 24 CFR 92.251. All rental housing shall be maintained in compliance with 24 CFR 92.251 for the duration of the affordability period.

The HOME Recipient shall ensure that upon project completion, housing rehabilitated with HOME funds meets applicable local rehabilitation standards or another rehabilitation standard meeting the requirements of 24 CFR 92.251. The HOME Recipient shall ensure that the written scope of work must be in sufficient detail to establish the basis for a uniform inspection of the assisted housing to determine compliance with the requirements of this section. The HOME Recipient shall review and approve all written cost estimates after determining that costs are reasonable. The HOME Recipient shall conduct an initial property inspection to identify deficiencies that must be addressed, as well as progress and final inspections to determine that work was done in accordance with work write-ups.

The HOME Recipient shall ensure that existing housing that will be acquired for homeownership must be decent, safe, sanitary and in good repair. At a minimum, this housing must meet all applicable State and local housing quality standards and code requirements, and contain no deficiencies set forth by HUD based on applicable Uniform Physical Condition Standards at 24 CFR 5.705. The HOME Recipient shall inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet these standards or it cannot be acquired with HOME funds.

All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards established in 24 CFR 982.401 or the successor requirements as established by HUD.

Construction of all manufactured housing including manufactured housing that replaces an existing substandard unit under the definition of 'reconstruction' at 24 CFR 92.2 must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes, which are not identical to the federal standards for the new construction of manufactured housing.

The HOME Recipient shall ensure that manufactured housing assisted with HOME funds complies with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of "reconstruction" must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.43f(c)(i). All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the

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definition of "reconstruction" must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability. In HOME-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or state codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285. Manufactured housing that is rehabilitated using HOME funds must meet HOME property standards requirements of this section, as applicable. The HOME Recipient shall document this compliance in accordance with inspection procedures established pursuant to 24 CFR 92.251, as applicable.

### D. Affordability

The HOME Recipient shall ensure all assisted housing meets the minimum affordability period requirements as specified in 24 CFR 92.252 and Section 8208 of the State HOME Regulations for rental housing or 24 CFR 92.254 for homeownership, as applicable as shown below. For rental housing activities, the federal and state affordability periods run concurrently. HOME funds for activities that do not meet these affordability requirements are subject to recapture by the Department.

#### 1) Rental Rehabilitation Activities:

Federal Minimum Period of Affordability (In Years)	20
State Minimum Period of Affordability (In Years)	55

#### 2) Rental Rehabilitation Activities:

Amount of HOME Assistance Per Unit	Rental Rehab With or Without Acquisition	Rental Rehab Without Acquisition	Rental Rehab With Acquisition
	Federal Minimum Period of Affordability (In Years)	State Minimum Period of Affordability (In Years)	State Minimum Period of Affordability (In Years)
More than \$40,000	15	20	55
\$15,000 to \$40,000	10	15	55
Less than \$15,000	5	10	55

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3) Homeowner Activities:

Amount of HOME Assistance Per Unit	Federal Minimum Period of Affordability (In Years)	State Minimum Period of Affordability (In Years)
More than \$40,000	15	15
\$15,000 to \$40,000	10	10
Less than \$15,000	5	5

E. Income Determination

Households assisted under this Agreement must meet the income determination requirements of 24 CFR 92.203, including but not limited to the requirement to examine at least two months' source documentation evidencing annual income (e.g. wage statement, interest statement, unemployment compensation statement) when determining household income. In meeting these requirements, the income determination rules under 24 CFR Part 5 shall be used, including the Part 5 definition of income.

F. Fees and Other Project-Related Soft Costs

Pursuant to 24 CFR 92.214, fees such as loan servicing fees, origination fees, or other fees related to the cost of administering HOME funds cannot be charged to low-income beneficiaries except as expressly authorized by the Department pursuant to the requirements of this section. Pursuant to 24 CFR 92.206, other staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, lead-based paint evaluations (visual assessments, inspections, and risk assessments), and other services related to assisting potential owners, tenants, and homebuyers cannot be charged to individual households. These costs may be charged to the project as Activity Delivery Costs for projects assisted with HOME funds or they may be charged as administrative and planning costs under 24 CFR 92.207, not to exceed the applicable limits specified in Exhibit A. Project-related soft costs incurred in assisting households who do not become HOME beneficiaries are eligible administrative and planning costs under 92.207.

G. Written Agreements

The HOME recipient shall enter into a written agreement that complies with the provisions of 24 CFR 92.504 with any other entity or individual to which it disburses HOME funds. This Agreement must be executed prior to providing the HOME funds.

H. Providing Additional HOME Funds to a Project

Housing may be re-assisted by the HOME Program in accordance with any of the following: upon expiration of applicable federal affordability period, or as permitted under 24 CFR 92.214 (a)(6), or under 24 CFR 92.502. Housing may also be re-assisted as permitted by federal waiver.

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### I. Repayment of Funds

If the HOME Recipient either: (i) does not complete its project by July 31, 2020, or (ii) before that date fails to expend any funds the Department disburses to it pursuant the requirements applicable to the award of HOME funds granted herein, then the HOME Recipient shall: repay all such disbursed HOME funds to the Department, (ii) forfeit and have no further rights or claim to any other remaining herein-granted HOME award funds, and (iii) consent to and facilitate as necessary the Department's use of all the foregoing referenced funds for any purpose, including as may be necessary to satisfy any Department obligation regarding repayment of those funds to the State's HOME Investment Trust Fund in accordance with 24 CFR 92.503(b). For example, if a HOME Recipient receives a HOME grant of \$5,000,000 but is only disbursed and expends \$4,500,000 by the expenditure deadline referenced in the Standard Agreement, but has timely and completely finished the project in a manner that satisfies all applicable requirements for the granted award funds then only the remaining unused funds be returned to the Department.

Under other circumstances, if the housing does not meet the affordability requirement for the specified time period, the HOME Recipient shall repay all HOME funds to the local HOME account or the Department, as directed by the Department. Repayment of funds does not relieve the HOME Recipient of the legal obligation to seek judicial enforcement of the security documents, or such other actions, as may be required to meet the affordability requirements.

### J. Tenant-Based Rental Assistance

All households receiving Tenant-Based Rental Assistance (TBRA) must have a written lease with the owner of the rental housing for which the TBRA assistance is being provided that meets the lease requirements of 24 CFR 92.253.

Pursuant to 24 CFR 92.209, the rent standard for TBRA programs shall be the applicable local rent standard established under 24 CFR Part 982 for the Section 8 Housing Choice Voucher Program, unless annual written approval has been provided by the Department to use a rent standard based on local market conditions.

The HOME Recipient shall establish the utility allowance either by using the HUD Utility Schedule Model or otherwise determine the utility allowance for the project based on the types of utilities used at the project.

Pursuant to the requirements of 24 CFR 92.209, preferences in TBRA programs may be established for special needs populations and persons with disabilities. These preferences shall be subject to prior written approval by the Department.

HOME Recipients may require recipients of TBRA to participate in a self-sufficiency program as a condition of selection for assistance or renewal of assistance; however, once assistance has been granted or renewed, the failure to continue participating in self-sufficiency services cannot be used as a basis for terminating assistance. Households receiving TBRA as relocation assistance cannot be required to participate in a self-sufficiency program as a condition of receiving assistance.



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**10. Equal Opportunity Requirements and Responsibilities**

**A. Executive Order 11063 (1962)**

This Order prohibits discrimination in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.

**B. Executive Order 12892 (1994), as amended**

This Order requires federal agencies to affirmatively further fair housing in their programs and activities.

**C. The Architectural Barriers Act of 1968, as amended (42 USC 4151 et seq.)**

This Act requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and useable by handicapped persons.

**D. Executive Order 12898, Environmental Justice (1994)**

This Order requires that each federal agency conduct its program, policies, and activities that substantially affect human health or the environment in a manner that does not exclude persons based on race, color, or national origin.

**E. Affirmative Marketing**

The HOME Recipient shall adopt and follow affirmative marketing procedures that provide information, through the implementation of an outreach-marketing program, to attract all eligible persons in the area to the HOME housing without regard to race, color, national origin, sex, religion, familial status, or disability. This affirmative marketing includes, but is not limited to, a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, as required by 24 CFR 92.351. These affirmative marketing procedures shall be approved by the Department in accordance with the requirements of 24 CFR 92.351.

**F. Section 504 of the Rehabilitation Act of 1973 and the "504 Coordinator"**

The HOME Recipient agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR 8. For HOME Recipient's with 15 or more permanent, full-or part-time employees, this includes but is not limited to, the designation of a specific person charged with local enforcement of this Act, as the "504 Coordinator".

**G. The Civil Rights and Age Discrimination Acts Assurances**

During the performance of this Agreement, the HOME Recipient assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, familial status, religion, or belief, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42

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USC 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975 and all implementing regulations.

**H. The Training, Employment, and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance (Section 3)**

- 1) The Work to be performed under this Agreement is on a project, or projects, assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u). Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for Work in connection with the project be awarded to businesses, which are located in, or owned in substantial part by persons residing in the area of the HOME project.
- 2) The parties to this agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
- 3) The HOME Recipient shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice informing the said labor organization or worker's representative of the HOME Recipient's commitments under the Section 3 clause and shall post copies of the notice in conspicuous places available to said employees and applicants for employment or training.
- 4) The HOME Recipient shall include these Section 3 clauses in every contract and subcontract for Work in connection with the project and shall, at the direction of the Department, take appropriate action pursuant to the contract upon a finding that the HOME Recipient or any contractor or subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR 135, and shall not let any contract unless the HOME Recipient or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- 5) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement shall be a condition of the federal financial assistance provided to the HOME project, binding upon the HOME Recipient, its successors, and assigns. Failure to fulfill these requirements shall subject the HOME Recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the Agreement through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

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- I. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or more. All solicitations for bids and all construction contracts and subcontracts of \$10,000 or more issued by the HOME Recipient are required to include the following:
  - 1) The Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246) The HOME Recipient furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts as required by Executive Order 11246;
  - 2) The Standard Equal Opportunity Clause (41 CFR 60 - 1.4); and,
  - 3) The Standard Equal Employment Opportunity Construction Contract Specifications (41 CFR) 60 - 4.3).

### 11. Environmental Review

The HOME Recipient shall comply with the National Environmental Policy Act (NEPA) contained in 42 USC 4321-4347 and the implementing regulations at 24 CFR 50 and 58. No actions by any party (including the HOME Recipient, the developer, owner, or sponsor) shall be undertaken for any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives under 24 CFR 58.22 until HUD or the Department has issued an environmental clearance. Prior to the commitment of funds, the HOME Recipient shall submit to the Department the required NEPA documents for approval, unless the Department has waived this requirement in writing.

#### First-Time Homebuyer Acquisition with Rehabilitation (FTHB)

If the HOME Recipient is working under an existing FTHB Authority to use Grant Funds, the HOME Recipient must submit a project specific Appendix A and supporting documentation to the Department for review, prior to committing funds to the project; otherwise, a Statutory worksheet with supporting documentation is necessary.

#### Owner-Occupied Rehabilitation (OOR)

If the HOME Recipient is working under an existing OOR Authority to use Grant Funds, the HOME Recipient must submit a project specific Appendix A and supporting documentation to the Department for review, prior to committing funds to the project; otherwise, a Statutory Worksheet with supporting documentation is necessary.

### 12. Displacement, Relocation, and Acquisition

The HOME Recipient shall comply with the federal displacement, relocation, and real property acquisition rules governing the HOME Program, which are contained in the Uniform Relocation Act, with implementing regulations at 49 CFR 24; and Section 104 (d) of the Housing and Community Development Act of 1974, as amended, with implementing regulation at 24 CFR 92, and applicable State HOME Regulations.

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**13. Labor Standards/Prevailing Wage**

**A. Federal Requirements**

- 1) The HOME Recipient agrees to comply with the requirements of the United States Department of Labor and the Secretary of Labor in accordance with the Davis-Bacon and related Acts as amended, the provisions of Contract Work Hours and Safety Standards Act (40 USC 3701 et seq. (with implementing regulations at 29 CFR 5 and 29 CFR 1926) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The HOME Recipient agrees to comply with the Copeland Anti-Kick Back Act (18 USC 874 et seq. and 40 USC 276(c) with implementing regulations at 29 CFR 3). The HOME Recipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.
- 2) All contracts for new construction or rehabilitation projects with twelve (12) or more HOME-assisted units shall comply with HUD requirements pertaining to such contracts and the applicable requirements of the U. S. Department of Labor regulations at 29 CFR 1, 3, 5, and 7, which govern the payment of wages and the ratio of apprentices and trainees to journey workers. If, however, there are wage rates imposed by State or local law that are higher than those required under such regulations, nothing herein is intended to relieve the HOME Recipient or any contractor/subcontractor of their obligation, if any, to require payment of the higher wage. The HOME Recipient shall cause or require to be inserted in full, in all such contracts subject to said regulations, provisions meeting the requirements of this paragraph, HUD's Federal Labor Standards Provisions form HUD-4010 (07/2003), or its revised replacement that meet the requirements of this paragraph. All said contracts shall also comply with the provisions of 24 CFR 92.354.

**B. Department Requirements**

- 1) When funds provided through this Agreement are used for construction work, or in support of construction work, the HOME Recipient shall ensure that the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of the State of California Labor Code (State Labor Code) (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- 2) For the purposes of this requirement "construction work" includes, but is not limited to, rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part with HOME funds. All construction work shall be done through the use of a written contract (the "construction contract") with a properly licensed building contractor incorporating these requirements. When the construction contract is between the HOME Recipient and a licensed contractor, the third party shall serve as the "awarding body." The construction contract and any amendments thereto shall be subject to the prior written approval of the Department. Prior to any disbursement of funds, including but not limited to, release of any final retention payment, the Department may require a certification

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from the awarding body that prevailing wages have been or will be paid as required by Section 1720 of the State Labor Code.

**14. Lead-Based Paint Hazards**

Assistance provided under this Agreement is subject to the Lead-Based Paint Poisoning Prevention Act and subsequent amendments; and to HUD Lead-Based Paint Regulations found at 24 CFR 35, et al.

**15. Conflict of Interest**

In the procurement of property and services, the HOME Recipient shall comply with the conflict of interest provisions in 24 CFR 85.36 for the procurement of property and with 24 CFR 84.42 for the procurement of services. In all cases not governed by these two sections, the HOME Recipient shall comply with 24 CFR 92.356. Section 24 CFR 92.356 prohibits, in part, that any employee, agent, consultant, officer or elected or appointed official, "who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter."

**16. Interest of Certain Federal Officials**

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

**17. Certification Regarding Lobbying (Byrd Amendment)**

- A. The HOME Recipient shall require that the language of this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.
- C. "The undersigned certifies, to the best of his or her knowledge and belief, that:
  - 1) No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal

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contract, grant, loan, or cooperative agreement.

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

**18. Bonus or Commission Prohibition**

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining Department approval of the application for such assistance, or Department approval of the applications for additional assistance, or any other approval or concurrence of the Department required under this Agreement, Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, or State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

**19. Contractors and Subcontractors - State Requirements**

- A. The HOME Recipient shall not enter into any agreement, written or oral, with any construction contractor without determination of the construction contractor's eligibility. A construction contractor or subcontractor is not eligible to receive HOME funds if not licensed and in good standing with the State of California.
- B. The Department reserves the right to review and approve any contracts or agreements executed by the HOME Recipient related to any HOME-assisted projects.
- C. The contract between the HOME Recipient and any construction contractor shall require the construction contractor and its subcontractors, if any, to:
  - 1) Perform the Work in accordance with federal, State and local housing and building codes as applicable;
  - 2) Provide security to assure completion of the project by furnishing the borrower and construction lenders with Performance and Payment Bonds, or other security approved in advance in writing by the Department;
  - 3) Comply with the applicable Labor Standards/Prevailing Wage Provisions of Paragraph 12 of this Exhibit;
  - 4) Comply with the applicable Equal Opportunity Requirements described in Paragraph 9 of this Exhibit;

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- 5) Maintain at least the minimum State-required Workers' Compensation Insurance for those employees who shall perform the Work or any part of it; and,
- 6) Maintain, if so required by law, unemployment insurance, disability insurance and liability insurance in an amount to be determined by the Department, which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the contractor or any subcontractor in performing the Work or any part of it.

**20. Contractors and Subcontractors - Federal Non-Debarment Certification**

- A. Preamble: As a condition of receipt of federal funds under this Agreement, the HOME Recipient and all of its contractors and their subcontractors are required to provide the certification set forth below in Paragraph E, and include this certification in their contracts.
- B. This certification is required by the federal government and contains terms defined in Executive Order 12549, a copy of which is available from the Department. Generally speaking, for purposes of this Agreement: (1) "prospective lower tier participant" refers to the HOME Recipient and any other party or person that shall receive funds from this Agreement, such as general contractors and their subcontractors; (2) "lower tier transaction" refers to contracts let by the HOME Recipient or HOME Recipient's contractors utilizing funds provided through this Agreement; and (3) "this proposal" refers to the HOME Recipient's HOME application and any bid or application from a prospective lower tier participant.
- C. By signing this Agreement, the HOME Recipient is providing the certification set forth below. The HOME Recipient shall provide immediate written notice to the Department if at any time the HOME Recipient learns that its certification was erroneous when submitted or has become erroneous.
- D. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
  - 1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  - 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
- E. By signing this Agreement the HOME Recipient agrees that it shall not knowingly enter into any lower tier transaction with a person or entity that is proposed for debarment under 48 CFR 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
- F. By signing this Agreement, the HOME Recipient agrees that it shall include the above certification in all lower tier transactions to which it is a part; and it shall require that each of its contractors include the certification in their subcontracts.

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**21. Faith-Based Activities**

The HOME Recipient shall comply with the requirements of 24 CFR 92.257, which provide, in part, that "Organizations that are directly funded under the HOME Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this part." HOME funds and activities must be separate in time and location from explicitly religious activities.

**22. Insurance**

- A. The HOME Recipient shall have and maintain in full force and effect during the term of this contract:
- 1) Comprehensive general liability insurance in the amount of not less than one million dollars (\$1,000,000);
  - 2) Worker's compensation insurance; and,
  - 3) Other forms of insurance, at such levels, as may be determined by the HOME Recipient and the Department to be necessary for specific components of the Work listed in Exhibit A.
- B. The HOME Recipient agrees to furnish satisfactory evidence of the above listed insurance coverage to the Department upon request. Insurance coverage shall not be canceled or changed unless written notice is sent to the State thirty days prior to the effective date of the action. The Department reserves the right to waive or modify these insurance coverage requirements upon demonstration of cause satisfactory to the Department, and contingent upon the HOME Recipient providing evidence of an alternative to conventional insurance sufficient to provide equivalent protection.

**23. Records**

- A. The HOME Recipient shall maintain the program, project, financial, program administration, and federal requirement records specified in 24 CFR 92.508 for inspection by the Department.
- B. All records specified in 24 CFR 92.508 shall be retained for the time periods specified in Section 28 below. These records shall include, but are not limited to the following: (i) a full description of each project assisted with HOME funds, including the location (address of each unit), form of HOME assistance, and the units or tenants assisted with HOME funds; (ii) the source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20; and records to document the eligibility and permissibility of the project costs; (iii) records demonstrating that each project meets the minimum per-unit subsidy amount of 92.205(c), the maximum per-unit subsidy amount of 92.250(a), and the subsidy layering and underwriting evaluation adopted in accordance with 92.250(b); (iv) records (e.g., inspection reports) demonstrating that each project meets the property standards of 92.251 at project completion; (v) records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of 92.209 (c), including any targeting requirements, the rent reasonableness requirements of 92.209 (f), the maximum subsidy provisions of 24 CFR



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92.209(h), property inspection reports and calculation of the HOME subsidy and (vi.) records (written agreements) demonstrating compliance with the written agreement requirements in 92.504.

- C. If so directed by the Department upon termination of this Agreement, the HOME Recipient shall cause all records, accounts, documentation and all other materials relevant to the Work to be delivered to the Department as depository.

**24. Reporting**

- A. Commencing with the effective date of this Agreement and continuing through the acceptance of the Project Completion Report in IDIS and no later than thirty days after the end of each calendar quarter, the HOME Recipient shall submit a quarterly performance report to the Department on forms provided by the Department.
- B. For "Rental Project" and "First-Time Homebuyer Project" activities, commencing with the effective date of this Agreement and continuing through the acceptance of the Project Completion Report in IDIS and no later than the tenth business day of the following month, the HOME Recipient shall submit a "State HOME Project Monthly Status Report " to the Department on forms provided by the Department.
- C. Upon project completion, and annually thereafter during the required period of affordability, the HOME Recipient shall submit on an annual basis to the Department all HOME monitoring documentation necessary to ensure that HOME Recipients are in continued compliance with federal and State regulations. Such documentation requirements and the annual submission deadline shall be provided by the Department.
- D. Upon acceptance of the Project Completion Report in IDIS and throughout the affordability period, the HOME Recipient shall submit on July 1, and no later than July 31, an Annual Performance Report on a form provided by the Department.

**25. Breach and Remedies**

- A. The following shall constitute a breach of this Agreement:
- 1) HOME Recipient's failure to comply with the terms of this Agreement.
  - 2) HOME Recipient's failure to comply with, or HOME Recipient's failure to assure that all recipients of HOME funds comply with, applicable state and federal HOME rules and regulations.
  - 3) Use of, or permitting the use of, HOME funds provided under this Agreement for any ineligible costs or for activities not approved under this Agreement.
  - 4) Any failure to comply with the deadlines set forth in Exhibit A.
  - 5) HOME Recipient's failure to assure that the appropriate security documents and lien agreements applicable to the Work are executed and, where appropriate, recorded.

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- 6) HOME Recipient's failure to monitor the progress of the Work and the activities of any recipient of HOME funds provided under this Agreement in a commercially reasonable manner.
  - 7) HOME Recipient's failure to exercise commercially reasonable due diligence in the enforcement of the security documents and lien agreements.
  - 8) Lack of continued capacity to carry out the approved Work either on behalf of the HOME Recipient or by the HOME Recipient named in this Agreement.
- B. In addition to any other remedies that may be available to the Department in law or equity for breach of this Agreement, the Department, after written notice and reasonable time to cure, may:
- 1) Bar the HOME Recipient from applying for future HOME funds;
  - 2) Revoke any other existing HOME award(s) to the HOME Recipient;
  - 3) Withhold any funds remaining undisbursed under this Agreement;
  - 4) Require the return of any unexpended HOME funds disbursed under this Agreement;
  - 5) Require repayment of HOME funds disbursed and expended under this agreement;
  - 6) Require the immediate return to the Department of all funds derived from the use of HOME funds including, but not limited to program income, recaptured funds and returned funds; and,
  - 7) Require the HOME Recipient to assign the security documents and lien agreements for the Work to the Department.
- C. All remedies available to the Department are cumulative and not exclusive.

**26. Inspections**

- A. Before a project can be designated as completed in IDIS, the HOME Recipient shall perform an on-site inspection of all Work performed hereunder to ensure that the Work has been performed in accordance with the applicable federal, State and/or local requirements, the construction contract, and this Agreement. The HOME Recipient agrees to require that all Work found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to the construction contractor or subcontractor until it is so corrected.

**EXHIBIT D**

- B. The Department reserves the right to inspect the property at any time during the period of construction and throughout the period of affordability.

**27. Project Site**

Notwithstanding any provision in this Agreement, the parties hereto further agree and acknowledge that this Agreement does not constitute a commitment of funds or approval of a project site, and that such a commitment of funds or an approval of a project site may occur only upon satisfactory completion of environmental review and receipt by the HOME Recipient of a release from the Department.

**28. Security Documents and Lien Agreements**

HOME funds shall be disbursed in the form of loans except for funds disbursed for the purposes set forth in the Department HOME Regulations Section 8205(b)(2), which shall be provided in the form of a grant. The HOME Recipient shall ensure that all loans made by the HOME Recipient are evidenced by a promissory note, the repayment of which is secured by a deed of trust to be recorded on the property being assisted, or by other security approved by the Department in writing. The HOME Recipient agrees that all said documents shall be executed and where appropriate, recorded, prior to disbursement of funds to the project and shall contain the applicable minimum affordability period set forth in 24 CFR 92.252 and 92.254.

**29. Audit/Retention and Inspection of Records**

- A. The HOME Recipient agrees that the Department or its designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement. The HOME Recipient agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Government Code Section 8546.7. The HOME Recipient further agrees to maintain such records for a period of five years after final payment under this Agreement, unless a longer period of records retention is stipulated.
- B. The HOME Recipient further agrees to retain all records for a period of five years after the final payment under this Agreement, or as specifically stipulated below.
- 1) Rental housing project records shall be retained for five years after the project completion date. The records that specify individual tenant income verifications, project rents and project inspections must be retained for five years after the affordability period terminates. Tenant-based rental assistance project records shall be retained for five years after the period of rental assistance terminates.
  - 2) Homeownership housing project records shall be retained for five years after the project completion date. The documents imposing recapture/resale restrictions must be retained for five years after the affordability period terminates.

**EXHIBIT D**

- 3) All written agreements must be retained for five years after this Agreement terminates.
  - 4) Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment.
  - 5) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained until completion of the action and resolution of all issues, which arise from it.
  - 6) The HOME Recipient also agrees to include in any contract that it enters into in an amount exceeding \$10,000, the Department's right to audit the contractor's records and interview their employees. The HOME Recipient shall comply with the caveats and be aware of the penalties for violation of fraud and for obstruction of investigation as set forth in California Public Code Section 10115.10.
- C. The determination by the Department of the eligibility of any expenditure shall be final.
- D. Pursuant to 24 CFR §85.26 and OMB Circular A-133, a HOME Recipient who received in excess of \$500,000 in federal funds annually, shall cause to be performed an annual single or program-specific audit conducted for that year by the close of each fiscal year in which this Agreement is in effect, of the following:
- 1) The financial statements and a schedule of federal awards and the auditor's report on the statements and the schedule;
  - 2) A written report of the independent auditor's understanding of the internal control structure and the assessment of control risk;
  - 3) The auditor's report on compliance; and,
  - 4) Other items as stipulated in OMB Circular A-133.
- E. The audit shall be performed by an independent certified public accountant. Selection of an independent audit firm shall be consistent with procurement standards contained in 24 CFR 85.36.
- F. The HOME Recipient shall notify the Department of the auditor's name and address immediately after the selection has been made. The contract for audit shall allow access by the Department to the independent auditor's working papers.

**EXHIBIT D**

- G. The HOME Recipient shall submit three copies of all required audit reports to the State Controller's Office within 30 days after receipt of the auditor's report, nine months after the end of the required audit period, unless a longer period is agreed to in advance, to:

State Controller's Office  
Division of Audits  
Single Audit Unit  
3301 C Street, Suite 705  
Sacramento, CA 95816

In addition, the HOME Recipient shall submit one copy of the audit report within the same time frame described in this paragraph to:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 E. 10th Street  
Jeffersonville, IN 47132

- H. The performance of this Agreement by the HOME Recipient shall be subject to examination and audit by the State Auditor pursuant to Government Code Section 8546.7.
- I. The HOME Recipient is responsible for the completion of audits and all costs of preparing audits.
- J. If there are audit findings, the HOME Recipient must submit a detailed response acceptable to the Department for each audit finding.
- K. The HOME Recipient shall retain all books and records relevant to this Agreement for a minimum of five (5) years after the project completion, as evidenced by the certificate of occupancy or submittal of the HUD-required Completion Report whichever is later; except that 1) records of individual tenant income verifications, project rents inspections shall be retained for the most recent five year period, until five years after the affordability terminates; and, 2) records relating to any and all audits or litigation relevant to this Agreement shall be retained for five years after the conclusion or resolution of the matter.

**30. Signs**

During the construction period of a project, the Department may place or require to be placed signs on the property stating that the HOME Program is providing financing. The signs shall indicate in a typeface and size commensurate with its funding that the Department is a source of financing for the project, through the HOME Program.

**31. Special Conditions-Contractors/Sub Contractors**

The HOME Recipient agrees to comply with all conditions of this Agreement including the Special Conditions set forth in Exhibit E. These conditions shall be met to the satisfaction of the Department prior to Project Set-Up or disbursement of funds, as appropriate. The HOME Recipient shall ensure that all contractors and/or subcontractors are made aware of and agree to comply with all of the conditions of this Agreement and the applicable federal and State requirements governing the use of HOME funds. Failure to comply with these conditions may

**EXHIBIT D**

result in cancellation of this Agreement.

**32. Conditional Reservation of Funds**

Notwithstanding any provision in this Agreement, the parties hereto agree and acknowledge that this Agreement constitutes a conditional reservation of funds.

**33. Federal Property Management Standards**

The HOME Recipient shall comply with the HUD property management standards as set forth in 24 CFR 85.31 and 85.32.

**34. Eligible Uses of Program Income**

Program **Income** may be retained by the HOME Recipient for the term of this Agreement provided the HOME Recipient is in full compliance with all applicable HOME program requirements. Per 24 CFR 92.500(c)(1), Program Income must be placed in an interest bearing local HOME account.

Program Income shall be used for eligible activities as specified in the federal HOME regulations and as more specifically described at 24 CFR 92.2 and 92.503. Recipient shall obtain advance HOME management approval for the use of Program Income, and shall comply with all HOME program requirements including advance HOME set-up and NEPA approval, shall expend all program income prior to reimbursement for new grant funds from HCD, and shall report on the use of Program Income quarterly.

**35. State Contract Manual Requirements (Section 3.11, Federally Funded Contracts (Rev. 3/03):**

- A. All contracts, except for State construction projects that are funded in whole or in part by the Federal government, must contain a 30-day cancellation clause and the following provisions:
- 1) It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
  - 1) This contract is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the purpose of this Program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
  - 2) The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
  - 3) The department has the option to invalidate the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction in funds.

**EXHIBIT D**

- A. Exemptions from provisions A.1 through A.4 above may be granted by the Department of Finance provided that the director of the State agency can certify in writing that Federal funds are available for the term of the contract.
- B. GC § 8546.4(e) provides that State agencies receiving Federal funds shall be primarily responsible for arranging for Federally required financial and compliance audits, and shall immediately notify the Director of Finance, the State Auditor, and the State Controller when they are required to obtain Federally required financial and compliance audits.

**EXHIBIT E**

**SPECIAL TERMS AND CONDITIONS**

These Special Conditions are specific for this Standard Agreement.

1. None.