

APPENDIX H: HOME INVESTMENT PARTNERSHIP AGREEMENT TEMPLATE

SALT LAKE COUNTY
HOME Ownership/Rental Development
District Attorney No.
County Contract No.:
Program Year:
Home Project No(s): HM _____

SUBGRANT AGREEMENT FOR THE CONDUCT OF A HOME INVESTMENT PARTNERSHIPS PROGRAM

Between
SALT LAKE COUNTY
And
[NAME OF CONTRACTING ENTITY]

THIS SUBGRANT AGREEMENT (“Agreement”) is entered into and shall be effective as of the ___ day of _____, 202_, by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah, with its address located at 2001 South State Street, Salt Lake City, Utah 84190 (“County”), and _____, a Utah _____, with its business address located at _____ Utah, 84 ___, (“Subgrantee” and/or “Developer”). County and Subgrantee may be referred to jointly as “Parties” and individually as a “Party.”

RECITALS

WHEREAS, County has entered into a grant agreement (the “Grant Agreement”) with the United States Department of Housing and Urban Development (“HUD”) for financial assistance to conduct a HOME Investment Partnership Program (“HOME”) pursuant to the HOME Investment Partnerships Act, located at Title II of the Cranston-Gonzales National Affordable Housing Act, 42 U.S.C. § 12701-12898 (the “Act”), as amended, and subject to the Rules and Regulations, promulgated by HUD governing the conduct of HOME Investment Partnership Programs including, but not limited to, Title 24, Part 92 of the Code of Federal Regulations (“CFR”) (the “Rules and Regulations”); and the applicable provisions of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the “Super Circular”); and

WHEREAS, Based on recommendations made by the Salt Lake County Consortium Housing Committee, the Mayor of Salt Lake County approved the sub-grant of the funds

described in this Agreement to be used for the specific purposes described herein on May __, 202_ (“Home Project”); and

WHEREAS, Developer desires to serve as a HOME developer of a Home Project, described in the Statement of Work and Attachment I; and

WHEREAS, County has determined that the Home Project is eligible for funding under the HOME program; and

WHEREAS, Developer has been fully informed and understands all requirements and obligations that must be met by Developer in order to utilize HOME funds for the Home Project, including but not limited to, the requirement that the assisted housing units must remain affordable to low-income households for a period of five (5) and up to twenty (20) years, in accordance with 24 CFR Part 92, Sections 203, 251-253; and

WHEREAS, Under this Agreement, Developer will receive HOME funds from County under County’s HOME program and, therefore, this Agreement is a sub-granting arrangement arrived at between County and Developer.

NOW, THEREFORE on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereinafter set forth, the mutual benefits to the Parties to be derived therefrom, and for other good and valuable consideration, the receipt, and sufficiency of which the Parties hereby acknowledge, it is hereby agreed as follows:

GENERAL PROVISIONS

1. Content of this Agreement.

a. This Agreement consists of this part “General Provisions” and the following listed attachments that are appended hereto and incorporated herein, together with all of the HOME requirements referred to in Paragraph 7 below whether or not they are attached:

i. Attachment I Statement of Work (including all Sub-attachments if this Agreement covers more than one Home Project).

ii. Attachment II Budget (including all Sub-attachments if this Agreement covers more than one Home Project).

iii. Attachment III Home Project Schedule (including all Sub-attachments if this Agreement covers more than one Home Project).

2. Home Project Responsibility.

a. The Housing and Community Development Division ("HCD") is hereby

designated as the representative of County regarding all HOME matters and shall be responsible for the overall administration and management of that program and the manner in which the Home Project(s) described herein are conducted. In the administration of this Agreement, HCD shall coordinate with all County's agencies, as appropriate.

3. Statement of Work.

a. The Home Project(s) to be conducted are listed in County's Program Description as submitted to HUD for the HOME Year specified on Page 1 above, and are generally described in the Statement of Work, which is Attachment I hereto, and referred to hereinafter as the "Home Project." Developer shall perform or cause to be performed all work required for the Home Project, and, in that performance, shall conduct all personnel staffing and contracting, provide all services, and furnish all related real and personal property required to successfully complete the Home Project, which shall be completed in a manner satisfactory to County and in accordance with this Agreement and its attachments and 24 CFR Part 92.

b. Developer shall include the provisions of Paragraph 16 (a) – (h) of this Agreement 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 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Developer will take such action with respect to any subcontract or purchase order as County may direct as a means of enforcing such provisions.

4. Home Project Budget.

a. A budget must be prepared for each Home Project and submitted to County for review and approval prior to the start of each of the Home Project, and the approved budget(s) must be attached to this Agreement as Attachment II, with a sub-attachment number for each Home Project, if appropriate, at the time of the execution. All budget(s) shall be prepared in a format that is acceptable to County and, in general, shall list the major cost elements of the Home Project.

b. Developer shall adhere to the requirements of the budget(s) as approved by County but is not precluded from making changes in the amounts budgeted for the major cost elements within the budget(s) as such changes become necessary. All changes, within the budget(s), however, shall be reported to County in a timely manner for acceptance and approval. All proposed changes in the total amount of any "Fixed Total Home Project Costs" in any of the budgets(s) under this Agreement, or which would increase or decrease the total amount of funding specified in Paragraph 10(a) below shall be submitted to County for prior approval and must be formally authorized by a written amendment to this Agreement in accordance with the provisions of Sub-paragraphs 12(a) and (b) below.

5. Period of Performance and Affordability.

a. The Home Project period of performance shall be _____ months, which period shall begin on _____, 202_, and end on _____, 202_. This Agreement shall remain in effect through the Affordability Period as set forth in 24 CFR § 92.254. In the event the date on which this Agreement is fully signed is more recent than the above beginning date, then this Agreement shall be considered to be retroactive and to have taken effect on the above beginning date. As time is of the essence, the Home Project must be completed in a timely fashion. The Developer expressly agrees to complete all work required by this Agreement in accordance with the Home Project Schedule specified in Attachment III and shall not extend beyond the end of the Period of Performance specified above unless this Agreement is amended authorizing an extension of that period. At the end of the Period of Performance and/or at the end of the Affordability Period, as applicable, the Parties shall conduct a review of the work performed under the Agreement to evaluate the Developer's performance under the Agreement, if there are issues, defaults or incomplete performance under the Agreement, the Parties, at County's sole option, may negotiate to either continue the project as affordable housing or to obtain an immediate repayment of the loan/grant amount.

b. Subject to the provisions of Paragraph 15 below, entitled Notice to Proceed, all costs which are incurred on the Home Project by Developer after the effective date of this Agreement and which have been determined by County to be appropriate and allowable costs of the Home Project shall be eligible for reimbursement and payment.

c. In addition, the Home Project is subject to ongoing compliance requirements of the HOME program for the applicable affordability period for _____ () years from the date of initial occupancy as set forth in 24 CFR § 92.252(e), and any other applicable provisions (the Affordability Period"). This Agreement shall remain in effect throughout the Affordability Period. During the Affordability Period, the Developer will assure continued compliance with HOME requirements, this includes ongoing property standards, occupancy, and rent limits compliance.

d. All amendments of this Agreement, including extensions of time and termination, shall be accomplished in writing and in accordance with all requirements of Paragraph 12, entitled Changes, and shall comply with the requirements of 24 CFR Part 92. Failure by Developer to adhere to the Home Project Schedule may result in a default by Developer and the repayment of HOME funds by Developer to County.

6. Affordability Requirements.

a. Developer assures County that housing assisted with Home Project and matching funds will meet the affordability requirements of 24 CFR § 92.252 (rental housing) or 24 CFR § 92.254 (homeownership), as applicable, and guarantees repayment of funds if the housing does not meet said affordability requirements. Failure by Developer to maintain the affordability requirements, as applicable, shall be considered a material breach of this Agreement, and, if the affordability requirements are not met, Developer shall repay such funds regardless of any subordination or other agreement entered into by the County with other lenders of the Home

Project.

7. Enforcement.

a. The Parties specifically agree that County shall require means of enforcement which may include, but are not limited to, liens on real property, deed restrictions as required by 24 CFR § 92.252, covenants running with the land, or other mechanisms approved by HUD, as a means of ensuring compliance with affordability restrictions set forth above. In addition to enforcement mechanisms that run with the land, County may, in its discretion, choose to enforce the affordability requirements through specific performance or a breach of contract action.

b. For homeownership HOME Projects, County shall impose either resale or recapture requirements as set forth in 24 CFR § 92.254, as appropriate, based on the type of assistance provided. In addition to enforcement mechanisms that run with the land, County may, in its discretion, choose to enforce the affordability requirements through a breach of contract action.

8. Remedies.

a. Developer acknowledges that the development of affordable housing provides significant intangible benefits to County related to its obligation to provide for the health and safety of the community. Developer further acknowledges that under HUD regulations, failure by Developer to fulfill its obligations to maintain affordability as set forth above, could result in HUD, at any time in the future and at its sole discretion, requiring County to reimburse HUD, with non-federal funds, up to the full amount funded to Developer under this Agreement. For these reasons, the damages to County in the event Developer breaches its obligation to maintain affordability would be extremely difficult to quantify; therefore, in addition to all rights and remedies afforded to County in this Agreement, should County, in the event of breach, elect to enforce the affordability requirements through a contract action, the Developer, shall pay to County liquidated damages equal to the total funding amount specified in Paragraph 17 of this Agreement and any amendments thereto.

9. Commencement of Affordability Period.

a. The applicable affordability period shall commence upon the date of the Notice of Home Project Close Out, which shall be issued to Developer upon determination by County that the HOME-assisted units are occupied and rents are structured as specified by the HOME requirements and this Agreement. The Notice of Home Project Close Out shall be recorded by County, or in lieu thereof, Developer shall record an Amended Deed Restriction which provides the specific affordability commencement date.

10. Deed Restriction Will Not Be Subordinated.

a. Developer acknowledges that County will not agree, under any circumstances, to

subordinate the deed restriction, or other mechanism by which County enforces the affordability requirements, to any lender and that by entering into this Agreement, Developer agrees to be bound by this provision without exception; however, notwithstanding the above provision, if the funds provided under this Agreement are in the form of a loan, County agrees to consider requests by other lenders to subordinate any lien it may hold against Developer's real property as security for said loan. By agreeing to consider such subordination requests, County does not promise, guarantee, or in any way obligate itself to approve such requests. Approval will be made on a case-by-case basis at County's sole discretion.

11. Rent Limitations.

a. The HOME-assisted units in a rental housing project must be occupied by households that are eligible as low income families and meet the requirements of 24 CFR § 92.252 (a-c). The maximum HOME rents (High HOME Rents) are set out in Attachment I, Statement of Work as allowed by 24 CFR § 92.252(a). The rent limits apply to the rent plus the utilities or the utility allowance. The initial rents (including utility allowances) for each HOME-assisted unit shall be set using County provided ceiling at the time of the initial occupancy of each matching HOME-assisted unit by a new household.

12. Low HOME Rents.

a. In rental projects with five (5) or more HOME-assisted rental units, at least twenty percent (20%) of the HOME-assisted rental units must be occupied by very low-income families and meet the Low HOME Rent requirements of 24 CFR § 92.252(b). County may, regardless of project size, designate more than the minimum HOME units in a rental housing project to have Low HOME Rents. The Low HOME Rents are set out in Attachment I, Statement of Work.

13. Subsequent Rents.

a. Developer must annually provide County with information on rents and occupancy of HOME-assisted units to demonstrate compliance with 24 CFR § 92.252(f). The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes, which it then supplies to County. County shall provide Developer with the information on updated HOME rent limits so that rents may be adjusted. Rents for HOME-assisted units may be increased no more than once annually. At least sixty (60) calendar days prior to any proposed rent increase, Developer shall submit to County for review and approval a written request for each increase, which County will review for compliance and approve or disapprove them every year. Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, Developer must provide tenants of those units not less than thirty (30) days prior written notice before implementing any increase in rents.

14. HOME Program Requirements.

a. Developer shall administer this Agreement in compliance with 24 CFR Part 92, which is incorporated by reference, including, but not limited to the following:

i. Tenant Protections and Selection. Developer shall comply with the tenant protections and selection requirements as applicable as set forth in 24 CFR § 92.253. Developer, and all persons acting on its behalf, agree to comply with the non-discrimination requirements set forth in 24 CFR § 5.105 and 25 CFR § 92.350 and with all federal, state and county laws governing discrimination, and they shall not discriminate in the application, screening, participation, or any other involvement of any person in relation to any phase of the Home Project.

ii. Uniform Administrative Requirements. Developer and its agencies or instrumentalities and subrecipients shall comply with applicable uniform administrative requirements, cost principles, and audit requirements as described in 2 CFR Part 200 and as modified by 24 CFR §92.505. The Super Circular supersedes and consolidates the requirements from OMB Circulars A-21, A-50, A-87, A-89, A-102, A-110, A-122, and A-13.

iii. HOME Program Requirements. Developer shall comply with HOME Project requirements in 24 CFR Part 92, Subpart F in accordance with the type of Home Project.

iv. Housing Quality Standard. Developer shall maintain the housing in compliance with applicable Housing Quality Standards, as set forth in 24 CFR § 92.251 and as provided by County, Accessibility Standards under 24 CFR § 92.251(a)(3), Lead Based Paint requirements, as applicable, found in 24 CFR § 92.355 and 24 CFR Part 35, and with local housing code requirements for the duration of the affordability period and this Agreement.

v. Affirmative Marketing. Developer shall be responsible for affirmative marketing in accordance with procedures developed by County pursuant to 24 CFR § 92.351.

vi. Displacement and Relocation. Developer shall comply with the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted Programs, as amended (“URA”) (42 U.S.C. §§4601-4655), its implementing regulations at 49 CFR Part 24, and 24 CFR § 92.353. Developer shall provide relocation assistance to persons (families, individuals, businesses, nonprofit organizations, and farms) that are displaced as a direct result of acquisition, rehabilitation, or demolition for the Home Project. Developer also agrees to comply with applicable state law, including Utah Code §57-12-1 et. seq. and County ordinances, resolutions and policies concerning the displacement of persons from their residences.

vii. VAWA Requirements. Developer shall comply with the requirements set forth in 24 CFR Part 5, Subpart L, the Violence Against Women Act (VAWA) and as supplemented by 24 CFR § 92.359, including but not limited to notice obligations and obligations under the emergency transfer plan.

viii. Access to Records. Developer shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required by County and will permit access to its books, records and accounts by the County, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

ix. Conditions for Religious Organizations. Developer shall comply with the provisions of 24 CFR § 5.109 and 24 CFR § 92.257, including the requirements regarding disposition and change in use of real property by a faith-based organization. Pursuant thereto, faith-based organizations are eligible, on the same basis as any other organization to participate in the HOME Project, provided that it does not use HOME funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, or in any other manner prohibited by law. Developer, in carrying out the HOME Project shall not discriminate on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

x. Homeownership or Rental Assistance. Developer shall comply with the provisions of 24 CFR § 92.254 (Qualifications as affordable housing if Homeownership project) or § 92.252 (Qualifications as affordable housing if Rental Housing).

xi. Monitoring. Pursuant to 2 CFR § 200.331, County will monitor Developer's performance in providing services and facilities in accordance with the purposes of this Agreement, and may conduct one or more site visits during the contract period to inspect said performance. Criteria to be used in monitoring performance includes but is not limited to compliance with the provisions of this Agreement and the degree to which Developer meets the federal and County objectives established for and outlined in the Home Project Description for the applicable Program Year.

xii. Program Income, Repayments, and Recaptured Funds. Any program income, repayments, or recaptured funds obtained by Developer from use of HOME funds provided under this Agreement are to be returned immediately to County, as set forth at 24 CFR § 92.503. If program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used. Developer must report monthly all program income received under this Agreement. Any program income, repayments, or recaptured funds Developer has on hand when this Agreement expires or is terminated, or that are received by Developer after this Agreement expires or is terminated, shall be transferred or paid to the County in accordance with the provisions of the paragraph Reversion of Assets.

xiii. Reversion of Assets. Developer, upon expiration of this Agreement, shall transfer to County any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds. Also, any real property under the control of Developer that was acquired or improved in whole or in part with HOME funds shall be either:

1. used for an eligible HOME activity, as set forth in the Statement of Work of this Agreement, for the applicable affordability period, or

2. disposed of in a manner that results in County's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-HOME funds for acquisition of, or improvement to, the property.

xiv. Right To Audit. Notwithstanding any other provision of this Agreement, Developer agrees County may, at its discretion, audit or inspect Developer at any time with or without prior notice. Developer, as a condition of entering into this Agreement, agrees to make available for inspection and copying, without reservation, all documents which reflect Developer's financial condition or operations, or which reflect Developer's actions in connection with this Agreement. Such documents shall include, but not be limited to, all accounting records, books, ledgers, journals, financial statements, correspondence, memoranda, invoices, vouchers, checks, deposit slips, bank statements, contract leases, minutes, notes, and the like, and all Home Project related information.

xv. Fees. Developer is prohibited from charging fees that are not customarily charged in rental housing such as laundry room access fees, and other fees. However, Developer may charge reasonable application fees to prospective tenants and may charge parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and may charge fees for services such as bus transportation or meals, as long as such services are voluntary.

15. Reporting Requirements.

a. County and HUD required Reports. Developer shall file all reports and other information necessary to comply with applicable federal laws and regulations as required by the County and HUD. This shall include providing to County information necessary to complete any required reports in a timely fashion.

b. Status Reports. Developer shall prepare and submit to County every month, or as otherwise specifically requested by County during the actual conduct of the Home Project, a detailed Home Project status report on each Home Project. The report format shall be as approved by County and must show, at a minimum, the current performance status of the Home Project being reported, the costs and contractual commitments incurred to date on the Home Project and any Home Project Income received to date on the Home Project. All other contents of the report shall meet the requirements of this Agreement and provide all data and information that County may need or require for coordinating, monitoring and evaluating the Home Project through completion and for fulfilling County's reporting requirements to HUD in the overall administration of the HOME program. Failure to submit said report may constitute grounds for County to withhold program funds.

c. Audit Report or Year-End Financial Statement. Developer shall submit to County an audit report or a year-end financial statement in a form acceptable to County no later than six (6) months after the end of Developer's fiscal year for every year in which funds for this Home Project are used. If Developer is a local governmental entity or non-profit organization, it shall comply with the auditing requirements set forth in 2 CFR Part 200, Subpart F, in addition to any auditing requirements imposed by County.

d. Additional Reports. Developer shall also submit, in a timely fashion, any additional reports required by County.

16. Recordkeeping.

a. Records to be Maintained. Developer shall maintain all records required by County and 24 CFR § 92.508(a)(3) that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

i. Records providing a full description of each project assisted with HOME funds, including the location, form of HOME assistance, and the unit or tenants assisted with HOME funds;

ii. Records indicating source and application of funds for each project, including supporting documentation in accordance with 2 CFR § 200.302; and records to document the eligibility and permissibility of the project costs, including the documentation of the actual HOME-eligible development costs of each HOME-assisted unit (through allocation of costs, if permissible under 24 CFR § 92.205(d)) where HOME funds are used to assist less than all of the units in a multi-unit project;

iii. Records demonstrating that each rental housing or homeownership project meets the minimum per-unit subsidy amount of 24 CFR § 92.205(c), the maximum per-unit subsidy amount of 24 CFR § 92.250(a), and the subsidy layering and underwriting evaluation adopted in accordance with 24 CFR § 92.250(b);

iv. Records demonstrating that each project meets the property standards of 24 CFR § 92.251 (e.g., inspection reports) at project completion. In addition, during the period of affordability, records for rental projects demonstrating compliance with the property standards and financial reviews and actions pursuant to 24 CFR § 92.504(d);

v. Records demonstrating that each family is income eligible in accordance with 24 CFR § 92.203;

vi. Records demonstrating that each homeownership project meets the affordability requirements of 24 CFR § 92.254 for the required period or that rental housing project meets the affordability and income targeting requirements of 24 CFR § 92.252 for the

required period and that records are kept for each family assisted;

vii. Records demonstrating that the purchase price or estimated value after rehabilitation for each homeownership housing project does not exceed ninety-five percent (95%) of the median purchase price for the area in accordance with 24 CFR § 92.254(a)(2). The records must show how the estimated value was determined.

viii. Records demonstrating that any pre-award costs charged to the HOME allocation meet the requirements of 24 CFR § 92.212;

ix. Records demonstrating that the activity undertaken meets the requirements of the HOME Program and required to determine the eligibility of activities;

x. Records (written agreements) demonstrating compliance with the Written agreements requirements in 24 CFR § 92.504;

xi. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with HOME assistance, including but not limited to, records clearly identifying properties purchased, improved or sold;

xii. Records documenting compliance with the federal housing and equal opportunity components of the HOME program;

xiii. Financial records as required by 24 CFR § 92.508 (a)(5) and by County;

xiv. Records demonstrating that a site and neighborhood standards review was conducted for each project which includes new construction of rental housing assisted under HOME to determine that the site meets the requirements of 24 CFR § 983.57(e)(2) and (e)(3), in accordance with §92.202; and

xv. Reports as required by County.

b. Retention. Developer shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all affordability periods for activities funded with HOME funds under this Agreement, or after the resolution of all federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for five (5) years after final disposition of such property. Records regarding any displaced persons must be kept for five (5) years after he/she has received final payment. If any litigation or other action has been started before the end of the applicable retention period, records must be maintained until completion of the action and resolution of all issues which arise from it.

17. Funding Amount; Allowable Costs.

a. Subject to the requirements of this paragraph and of Paragraph 22, Notice to Proceed, County will fund to Developer for the full performance of this Agreement and the actual conduct of the Home Project up to a total amount of _____ Dollars, (\$_____) for all Home Projects. This amount is a fixed ceiling amount and will be paid to reimburse Developer for its costs actually expended to perform the activities and/or provide the services required hereunder and to acquire the real and/or personal property required and used in or for the conduct of the Home Project; subject, however, to a determination by County, before payment, that the Notice to Proceed requirements contained in Paragraph 22 below have been satisfied and that all costs submitted for reimbursement or payment are allowable and eligible for payment under the HOME Program as legitimate Home Project costs as provided in 24 CFR §§ 92.206-92.207 and 92.214 and other applicable provisions within the Rules and Regulations, the applicable provisions of the Super Circular and this Agreement. The above stated fixed ceiling amount may be considered as a “not-to-exceed” amount but shall not be considered as an “estimate-of-cost,” “percentage-of-cost” or any kind of “cost-plus” sum, price or amount. Also, as used in this Agreement, unless the context indicates otherwise, the words “expend,” “expended,” and “expenditure” shall include all amounts obligated or committed by Developer by written Agreement (including unilateral purchase orders) for expenditure on the Home Project.

b. Developer must make a concerted, good-faith effort to expend the total funded amount specified above within the Period of Performance stated in Paragraph 5. Developer’s costs and expenditures shall not exceed that amount without a prior written Agreement to that effect and County shall not be liable for or pay Developer for any extra costs or overruns on the Home Project or any additional funding in excess of the total amount stated above; provided, however, this provision shall not prevent the total funded amount from being increased or decreased in accordance with Paragraph 19 of this Agreement entitled Changes.

c. In the event the total funded amount to be disbursed by County is not expended by Developer for eligible Home Project costs by the end of the Period of Performance, as that period may have been extended or otherwise changed, Developer shall refund, release or transfer any unexpended amount back to County unless a fully executed, written amendment to this Agreement shall provide otherwise.

18. Disbursement Procedures.

a. Developer may request disbursement from County of that part of the amount stated in Paragraph 17, relating to a particular Home Project, either on the basis of a lump sum reimbursement of the Home Project costs upon completion of the Home Project or on the basis of periodic reimbursement payments for eligible costs during the course of a Home Project as the funds for that Home Project are expended.

b. A request by Developer, for either a lump sum or for periodic reimbursement, payments on a Home Project shall be in a form and content as prescribed by County and shall be submitted to County for review and for a determination of eligibility for payment. Requests for

periodic payments shall not be submitted more frequently than once per month and shall be supported and documented as required by County on the basis of costs actually incurred by Developer on a Home Project during the period for which payment is requested.

c. No requests for payments under this Agreement due to cost overruns of any kind on the Home Project shall be approved, allowed or paid by County unless the amount requested has been approved by a written amendment and authorized in accordance with the provisions of Paragraph 19 below.

d. Developer shall not request disbursement of funds under the Agreement until the funds are needed for payment of eligible costs. The amount of each request shall be limited to the amount needed.

19. Changes.

a. Either County or Developer may request amendments to any of the provisions of this Agreement other than substantial changes in scope, purpose, location, or beneficiary, but no amendment shall be made or performed until it has been mutually agreed to by the Parties or is required to be made pursuant to or because of changes in the federal, state or local laws, rules or regulations governing the conduct of the Home Project. All amendments shall be authorized by a duly executed modification of this Agreement prior to any work being done; except that amendments extending the Period of Performance, specified in Paragraph 5 of this Agreement, and adjustments to the Home Project Budget(s), specified in Paragraph 4 of this Agreement, only, may be authorized and given by County as provided in Subparagraphs 4(b) and 19(b).

b. All adjustments to the budget or extensions of time proposed for the performance of this Agreement shall be requested in writing by Developer and be submitted to County for approval and processing. Upon its approval, County shall add a signed, written endorsement to Developer's letter of request granting the adjustment or extension and that letter shall be attached hereto and shall be numbered and identified as a duly authorized written amendment of this Agreement.

20. Conflict of Interest.

a. County and Developer agree to abide by the Conflict of Interest provisions set

forth in 24 CFR § 92.356(f)¹ and 2 CFR § 200.318² If a potential conflict of interest arises pursuant to that section, or pursuant to the Utah Public Officers' and Employees' Ethics Act, Utah Code § 67-16-1 et seq, the Parties agree to seek an exception from HUD pursuant to 24 CFR Section 92.356(d) and to follow all the necessary steps in seeking such exception.

21. Assignment and Contracting.

a. The responsibility for the performance of this Agreement shall not be assigned, transferred, or contracted out by Developer without the prior, written consent of County. Contracts or purchase orders by Developer for the acquisition of equipment, materials, supplies or services for the Home Project do not require the consent of the County but shall be done in accordance with the with the Procurement Standards of 2 CFR Part 200, Subpart D, except to the extent that the County's Purchasing Procedures are more restrictive, Developer shall follow the County's procedures pursuant to Chapter 3.20 of the Salt Lake County Code of Ordinances. In the event the procurement standards of Developer are more restrictive than those in Chapter 3.20 or 2 CFR §§ 200.317 - 326, the more restrictive standards and requirements will apply. Developer shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner.

22. Notice to Proceed.

a. No HOME funds will be advanced and no costs can be incurred until the County has conducted an environmental review of the proposed project site as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the Home Project. Developer must notify County in writing when it is ready to actually start work on the Home Project and must give that notice before incurring any Home Project costs for which it will request payment or reimbursement from County under this Agreement. When this notice is received from Developer, County will determine whether the environmental protection procedures, the release of funds procedures and any other procedures or processes that must be

¹ "Owner and developers (1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required period of affordability specified in §92.252(e) or §92.254(a)(4). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker."

² Non-Federal entities must maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest. "If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization." 2 CFR Section 200.318 (c)(2).

accomplished prior to the start of the Home Project have been satisfied and/or completed. If they have, County will then give Developer a "Notice to Proceed" with the Home Project. If Developer does not comply with the requirements of this paragraph and fails to obtain this Notice to Proceed from County at the time and in the manner provided above, County shall not be obligated or required to implement this Agreement or to fund or reimburse Developer for any costs incurred on or for the Home Project. Under appropriate circumstances and in its sole discretion, County may waive the provisions of this paragraph.

23. Labor and Contract Standards.

a. Home Project(s) that include twelve (12) or more Home-assisted units are subject to the requirements of 24 CFR § 92.354 and the prevailing wage standards of the Davis-Bacon Act. Developer shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to County for review upon request. During the performance of this Agreement, Developer agrees to comply with the federal regulations governing training, employment and business opportunities as follows:

i. Davis-Bacon. Developer agrees that all contracts or subcontracts for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with the requirements of the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act, 40 U.S.C. §276a1 to 276-a10, as amended, including (a)(1) Minimum wages, (a)(2) Withholding, (a)(3) Payrolls and basic records, (a)(4) Apprentices and trainees, (a)(5) Compliance with Copeland Act requirements, (a)(6) Subcontracts, (a)(7) Contract termination: debarment, (a)(8) Compliance with Davis-Bacon and Related Act requirements, (a)(9) Disputes concerning labor standards and (a)(10) Certification of eligibility. Nevertheless, if state or local law require the payment of higher wages, nothing herein is intended to relieve Developer of its obligation to pay such higher wages. Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

ii. Copeland "Anti-Kickback" Act and CWHSSA. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 CFR Part 3) for all contracts and subcontracts for construction or repair; the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327; 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.

iii. WMBE. Developer will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement in keeping with the principles as provided in President's Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises); Executive Order 12432 (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (Women's Business Enterprise). As used in this

Agreement, the term “minority and Women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are those groups of U.S. citizens found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act. Developer may rely on written representations by businesses regarding their status as minority and women business enterprises in lieu of an independent investigation.

iv. “Section 3” Compliance. The following applies to all contracts and subcontracts for the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with HOME funds.

1. The work to be performed under this Agreement 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”). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The Parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3. Developer agrees to send to each labor organization or representative of workers with which the Developer has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Developer's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. Developer agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Developer will not subcontract with any subcontractor where the Developer has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. Developer will certify that any vacant employment positions, including training positions, that are filled (1) after the Developer is selected but before the

Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Developer's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Approved Plan. Developer agrees that it shall be committed to carry out an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 regarding Equal Employment Opportunity programs; and implementing regulations at 41 CFR Part 60.

9. Equal Employment Opportunity/ Affirmative Action. Developer will, in all solicitations or advertisements for employees placed by or on behalf of any subrecipients, state that it is an Equal opportunity or Affirmative Action employer. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, as enforced by the Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

10. Prohibited Activity. Developer is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; or lobbying, political patronage, and nepotism activities.

11. Section 504. Developer agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (290 U.S.C. 794), and implementing regulations at 24 CFR Part 8, which prohibits

discrimination against the disabled in any federally assisted program. County shall provide Developer with any guidelines necessary for compliance with that portion of the regulations in force during the term of this agreement.

24. Laws and Regulations.

a. Developer shall administer this Agreement in compliance with all applicable federal, state, and local laws, ordinances, and regulations, including but not limited to the following:

i. The requirements of 24 CFR Part 92, Subpart H and all other applicable provisions of the Rules and Regulations.

ii. No funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87); Developer, if a public entity, shall also comply with the provisions of the Hatch Act (5 USC § 1501-1508) and the Intergovernmental Personnel Act of 1970 as Amended by Title VI of the Civil Service Reform Act (Pub. L. 95-454 § 4728), which limit political activities of public employees.

iii. 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.

iv. 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 Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

25. Violations and Breaches of Contract.

a. Restriction on Disbursement. Notwithstanding any other provisions of this Agreement, County may withhold disbursements made under this Agreement to Developer where Developer fails to comply with any applicable provisions found in this Agreement and with any other HUD requirements applicable to this HOME Program.

b. Setoff. Notwithstanding any other provision of this Agreement, Developer shall not be relieved of liability to County for damages sustained by County by virtue of any breach of this Agreement by Developer. County may withhold disbursement of funds to Developer for the

purpose of setoff until such time as the exact amount of damage incurred by County is determined and paid. Such damages may include HUD's disqualification of activities because of Developer's failure to properly administer the same.

c. No Limitation of Remedies. The various rights and remedies herein contained, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy not mentioned herein, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law or equity. No delay or omission by County to exercise any power or remedy it may have in the event of Developer's breach shall impair any such right, power or remedy or be construed as a waiver of any other breach or nonperformance or as acquiescence therein. Developer and its successors and assigns, shall be jointly and severally liable for any default under this Agreement; any action with regard to such breach may be instituted against all or any one of them.

26. Suspension or Termination of this Agreement.

a. If Developer fails to materially comply with any of the provisions, requirements, conditions, standards or other terms of this Agreement, County may utilize the remedies for noncompliance available under 2 CFR § 200.338. This Agreement may also be terminated in whole or in part, subject to the provisions of 2 CFR § 200.339, as applicable.

27. Employee Status Verification System.

a. Developer shall register and participate in the Status Verification System before entering into a contract with County as required by Utah Code § 63G-12-302(3). The Status Verification System is an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. § 1373 to verify the citizenship or immigration status of an individual within the jurisdiction of the agency or political subdivision. Developer is individually responsible for verifying the employment status of only new employees who work under Developer's supervision or direction and not those who work for another contractor or subcontractor, except each contractor or subcontractor who works under or for another contractor shall certify to the main Developer by affidavit that the contractor or subcontractor has verified, through the Status Verification System, the employment status of each new employee of the respective contractor or subcontractor. Developer shall comply in all respects with the provisions of Utah Code § 63G-12-302(3). Developer's failure to so comply may result in the immediate termination of its contract with Salt Lake County.

28. Integrated Document.

a. This Agreement, including all Attachments, as set forth in Paragraph 1, embodies the entire understanding between County and Developer regarding the Home Project. No verbal agreements or conversation with any officer, agent or employee of County prior to or subsequent to the execution of this Agreement shall affect or modify any of the terms or obligations

contained in any documents comprising this Agreement.

29. Survival of Provisions.

a. The Parties to this Agreement specifically agree that all the paragraphs, terms, conditions and other provisions of this Agreement that requires some action to be taken by either or both of the Parties upon or after the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and shall be completed, taken or performed as provided or as may be required under the circumstances at that time.

30. Independent Contractor Status.

a. In performing the work, Developer acts as an independent contractor responsible for calculating, withholding, and paying all federal and state taxes and for obtaining necessary and adequate workers' compensation insurance, general liability insurance and any other insurance required under this Agreement. Developer's employees are not and shall not become employees, agents or servants of County hereunder. Developer and its employees are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Developer or some other entity. Developer is obligated to pay federal and state income tax on any monies paid pursuant to this Agreement, as applicable.

31. Incorporation by Reference.

a. All applicable federal, state, and local laws, ordinances, rules, regulations, circulars, Executive Orders pertaining to the HOME Program, and the funding approvals executed by HUD and County are incorporated herein by this reference.

32. Severability Clause.

a. The declaration by any court or other binding legal source that any provision of the Agreement is illegal and void shall not affect the legality and enforceability of any other provision of this Agreement unless said provisions are mutually dependent.

33. Ethical Standards.

a. Developer represents that it has not: (a) provided an illegal gift or payoff to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or Salt Lake County's Ethics Code ordinance (Chapter 2.07, Salt Lake County Code of Ordinances); or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or

employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

34. Campaign Contributions.

a. Developer acknowledges the limits on campaign contributions by contractors to County candidates, pursuant to Chapter 2.72A, Salt Lake County Code of Ordinances. Developer further acknowledges that violating campaign contribution limitations may result in criminal prosecution and sanctions as well as termination of this Agreement. Developer represents, by executing this Agreement, that Developer has not made or caused others to make any campaign contribution to any County candidate in violation of the above-referenced County ordinance.

35. Public Funds and Public Monies.

a. Definitions: “Public funds” and “public monies” mean monies, funds, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. The terms also include monies, funds or accounts that have been transferred by any of the aforementioned public entities to a private contract provider for public programs or services. Said funds shall maintain the nature of “public funds” while in Developer’s possession.

b. Developer’s Obligation: Developer, as recipient of “public funds” and “public monies” pursuant to this and other contracts related hereto, expressly understands that it, its officers, and employees are obligated to receive, keep safe, transfer, disburse and use these “public funds” and “public monies” as authorized by law and this Agreement for the provision of services to Salt Lake County. Developer understands that it, its officers, and employees may be criminally liable under Utah Code § 76-8-402, for misuse of public funds or monies. Developer expressly understands that County may monitor the expenditure of public funds by Developer. Developer expressly understands that County may withhold funds or require repayment of funds from Developer for contract noncompliance, failure to comply with directives regarding the use of public funds, or for misuse of public funds or monies.

36. Insurance.

a. Developer shall, at its sole cost and expense, secure and maintain during the term of this agreement, including all renewal or additional terms, the following minimum insurance coverage:

i. General Insurance Requirements for All Policies.

1. Any insurance coverage required herein that is written on a “claims

made” form rather than on an “occurrence” form shall (a) provide full prior acts coverage or have a retroactive date effective before the date of this agreement, and (b) be maintained for a period of at least three (3) years following the end of the term of this Agreement or contain a comparable “extended discovery” clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to County.

2. All policies of insurance shall be issued by insurance companies licensed to do business in the State of Utah and either:

a. Currently rated A- or better by A.M. Best Company;

—OR—

b. Listed in the United States Treasury Department’s current Listing of Approved Sureties (Department Circular 570), as amended.

3. Developer shall furnish certificates of insurance, acceptable to County, verifying the foregoing matters concurrent with the execution hereof and thereafter as required.

4. In the event any work is subcontracted, Developer shall require its subcontractor, at no cost to County, to secure and maintain all minimum insurance coverages required of Developer hereunder.

5. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, Developer shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by the County, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to County.

6. All required certificates and policies shall provide that coverage thereunder shall not be canceled or modified without providing thirty (30) days prior written notice to County in a manner approved by the County District Attorney.

7. In the event Developer fails to maintain and keep in force any insurance policies as required herein, County shall have the right, but not the obligation, at its sole discretion to obtain such coverage and reduce payments to Developer for the costs of said insurance.

ii. Required Insurance Policies. Developer agrees to secure and maintain the following required policies of insurance in accordance with the general insurance requirements set forth in the preceding subsection:

1. Workers’ compensation and employer’s liability insurance

sufficient to cover all of Developer's employees unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations, limited liability companies, joint ventures and partnerships. In the event any work is subcontracted, Developer shall require its subcontractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law. (County is not to be an additional insured under Developer's workers' compensation insurance.)

2. Commercial general liability insurance with County as an additional insured, in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence with a Two Million Dollars (\$2,000,000.00) general policy aggregate and Two Million Dollars (\$2,000,000.00) products completed operations policy aggregate. The policy shall protect County, Developer, and any subcontractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Developer's operations under this Agreement, whether performed by Developer itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations.

3. If Developer shall operate a motor vehicle in connection with any services funded by this agreement, commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, with County as an additional insured, in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence.

4. If the Home Project will result in County holding a lien interest in real property, Developer shall maintain all-risk property insurance in an amount equaling at least ninety percent (90%) of the fair market value of the lien property, with County named as an additional insured.

37. Bond Requirements.

a. If the Home Project involves construction or rehabilitation costing Twenty-Five Thousand Dollars (\$25,000.00) or more, Developer shall ensure that contractors furnish, at the contractors' expense, a separate performance bond and a labor and materials bond, each for an amount not less than one hundred percent (100%) of the contract price, or such other assurances as approved in writing by County. The bonds shall be issued by a qualified corporate surety licensed to transact business in Utah. If at any time during performance of the work, the surety on the bonds shall be disqualified from doing business in Utah, or shall become insolvent or otherwise impaired, contractors shall furnish bonds from an alternate surety acceptable to County and Developer. The bonds shall remain in effect until completion of the Home Project including completion of all warranty and guaranty work and shall be delivered to County prior to the commencement of any work. The contractors shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or amendment to this Agreement.

38. Indemnification.

a. If Developer is not a governmental entity, then it agrees that it shall indemnify, hold harmless, and defend County, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, and liabilities of, to, or by third Parties, including Developer, its subcontractors, or the employees of either, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, Developer's breach of this Agreement or any acts or omissions of or by Developer, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement. Developer agrees that its duty to defend and indemnify County under this Agreement includes all attorney's fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against County for the defense of any claim or to satisfy any settlement, arbitration award, or verdict paid or incurred on behalf of County.

b. If Developer is a governmental entity under the Governmental Immunity Act, § 63G-7-101 et seq., Utah Code Annotated, then, consistent with the terms of the Act, the Parties agree that each Party is responsible and liable for any wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither Party waives any defenses or limits of liability otherwise available under the Governmental Immunity Act.

39. Appropriation.

a. Financial obligations of County are contingent upon funds for such purposes being appropriated, budgeted and otherwise made available. If the funds are not so appropriated, budgeted and made available, County may terminate this Agreement by notice to Developer. Developer agrees that it will include in every contract into which it enters that it relies on HOME monies for funding the Home Project and will include a non-appropriations clause that will protect itself and County from any liability or responsibility or any suit which might result from the discontinuance of HOME funding for any reason.

40. Jurisdiction; Venue; Interpretation.

a. This Agreement and the rights and duties of the parties hereunder shall be interpreted in accordance with the laws of the State of Utah. Venue for any and all legal actions arising hereunder shall lie in the Third District Court in and for the County of Salt Lake, State of Utah. This Agreement is the result of arms-length negotiations between the Parties, accordingly, each of the Parties affirms its desire that this Agreement be interpreted in an absolutely neutral fashion with no regard to any rule of interpretation (or the like) requiring that the provisions of this agreement be construed to favor one party (such as, for example, the party that did not draft this agreement) over the other.

41. Notice.

a. Any notice or communication given pursuant to this Agreement shall be given in writing, either in person or by certified mail, return receipt requested to the addresses specified below or such other address as Developer or County may from time to time designate. If given in person, notice shall be deemed given when actually given. If given by certified mail, notice shall be deemed given at the time indicated on the duly completed return receipt.

Notice to the Developer shall be delivered or mailed to:

Notice to the County shall be delivered or mailed to:

Attn: HOME Program Coordinator
Salt Lake County
Division of Housing and Community Development
2001 South State Street, S2-100
Salt Lake City, Utah 84190

[Signature Page to Follow]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be approved and to be duly executed the _____ day of _____, 20_____.

SALT LAKE COUNTY

By: _____
Mayor or Designee

Date: _____

Administrative Approval:
Housing and Community Development

By _____
Director

Date: _____

Reviewed and Advised as to Form and Legality;

John E. Diaz
Deputy District Attorney
Salt Lake County

DEVELOPER

By: _____

Name: _____

Its: _____

Date: _____

ATTACHMENT I

to

SALT LAKE COUNTY CONTRACT NUMBER: BV23XXX

DEVELOPER:

PROJECT:

PROJECT NUMBER:

HM.

PROJECT STATEMENT OF WORK

This attachment is a supplement of the general work statement contained in Paragraph 3 of this Agreement. Therefore, in addition to the general work required to be done under that paragraph, which applies to all projects to be conducted under this Agreement, the particular work to be performed for this Project is as follows:

_____ dollars (\$000) of HOME funds are to help finance the rehabilitation and improvement of the project. The _____ is a _____ rental unit housing development for those with disabilities. It is located at _____, _____, Utah 84 _____. These funds are provided as a ____% deferred loan.

RENTAL UNITS: This project has ____ rental units. There are __ HOME assisted units, of which ____ will be High HOME assisted units and ____ will be a Low HOME assisted unit. The HOME assisted units must meet the following criteria:

High HOME Rent for an assisted one bedroom unit is \$1,258.00

Low HOME Rent for an assisted one bedroom is \$993.00

Virtually all HOME assisted rental units will be occupied by tenants with annual incomes sixty percent (60%) of median or less in order to meet the overall funds targeting requirements described above.

On an annual basis, HCD shall provide Developer with the most recent determination of the ceilings as outlined on the previous page, as well as the most recent utility allowances to be used (based on the utility allowance used by the Housing Authority of the County of Salt Lake). Initial rents (including utility allowances) for each HOME assisted unit shall be set using the HCD-provided ceiling at the time of the initial occupancy of each matching HOME assisted unit by a new household.

Rents for HOME assisted units shall be increased no more than once annually and annual rent increases shall be calculated by Developer and HCD based on the change in permissible rents published annually by HUD. At least sixty (60) calendar days prior to increasing rents on any HOME assisted unit, Developer shall submit to HCD for review and approval a written request for each increase, which HCD shall approve if the increased rent will comply with the requirements of HUD. Households occupying HOME assisted units shall be given at least thirty (30) days written notice prior to any rent increase.

Project(s) will be monitored every year during the five (5) year Affordability Period. At the time of the monitoring, the rents and family's income will be evaluated for compliance with these requirements. Developer agrees that the HOME assisted units will remain affordable, pursuant to deed restriction, for not less than twenty (20) years beginning after the project completion without regard to the terms of the mortgage or to transfer of ownership. The demographics and racial/ethnic distribution of the households living in the housing development will be compared to Salt Lake County. If any of the federally protected classes are underrepresented additional outreach to the particular federally protected class additional targeted outreach plan will need to be developed and implemented.

LEASING THE DEVELOPMENT: Before leasing any HOME assisted unit, Developer shall submit its proposed lease for the County's review and approval. The term of the lease shall be for no less than one (1) year unless terminated by mutual agreement between the tenant and the owner and shall not contain any provision which is prohibited by 24 CFR § 92.253(b), as amended from time to time, or inconsistent with this Agreement. Any termination of the lease or refusal to renew must be in conformance with 24 CFR § 92.253(c) and must be preceded by not less than thirty (30) days written notice to the tenant by the Developer specifying the grounds for the action. Developer shall include in leases for all HOME assisted units provisions which provide that the household is subject to annual certification of income and that the tenancy of the household shall be immediately terminated should one or more of the household's members misrepresent any material fact regarding the household's qualification as Low HOME Rent or High HOME Rent household, as applicable.

TENANT SELECTION. Before leasing any unit, Developer must provide to County for its review and approval Developer's written tenant selection plan. Developer's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 CFR §92.253(e), as amended from time to time.

SECTION 8 CERTIFICATE HOLDERS: Developer shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing programs under Section 8 of the United State Housing Act, or its successor. Developer shall not apply selection criteria to Section 8 Certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants, nor shall Developer apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective tenants.

INCOME CERTIFICATION: The income levels and other qualification of High and Low HOME rent tenants shall be certified prior to initial occupancy and recertified by Developer. Developer shall utilize the income calculation method required by HUD for households assisted by the HOME funds.

INCREASES IN TENANT INCOME: Tenants occupying HOME assisted units whose annual incomes exceed eighty percent (80%) of median (that is they are no longer low income) may stay in their HOME-assisted apartments. Over income tenants (those who no longer qualify as low income) in HOME assisted units must pay the lessor of thirty percent (30%) of their adjusted monthly income for rent and utilities or the market rent. NOTE: Rents for over income tenants in projects financed with both HOME and Tax Credits are exempted from this provision.

CONDOMINIUM CONVERSION: Developer shall not convert units to condominium or cooperative conversion rights to the property during the term of this contract.

MODEL ENERGY CODE: This rental and homeownership housing project shall conform to all of the requirements of the Council of American Building Official's Model Energy Code and Energy Star.

ACCESSIBLE UNITS: At least five percent (5%) of the total units will be designed and constructed to meet the Section 504 accessibility requirements at 24 CFR § 100.25 and the remaining ninety-five percent (95%) of the dwelling units must comply with Fair Housing Act design and construction requirements at 24 CFR § 100.205. An additional two percent (2%) of the total units must be accessible to individuals with sensory impairments (i.e., hearing or vision impairments).

VISITABILITY: Emphasis is placed on having all design, construction, incorporate whenever practical, the concept of visitability in addition to the requirements under Section 504 and the Fair Housing Act. All ground level units will provide a thirty-two inches (32") clear opening in all bathroom and interior doorways. Provide at least one accessible means of egress/ingress for each unit. All electrical outlets will be set at fifteen inches (15") above the floor and the thermostats will be set at Forty-eight inches (48"). All units will be in compliance with Fair Housing requirements, and 504 requirements. The plans for the accessible units will be submitted to HCD for review and approval prior to the start of construction.

ATTACHMENT II

to

SALT LAKE COUNTY CONTRACT NUMBER: BV23XXX

DEVELOPER:

PROJECT:

PROJECT NUMBER:

HM

PROJECT BUDGET

I.	Estimated Total Project Cost		<u>\$XXXX</u>
II.	<u>Budgeted Expenditures by Cost Elements:</u>		
	(a)	\$XXXXXX	
	Total		\$XXXXXX

ATTACHMENT III

to

SALT LAKE COUNTY CONTRACT NUMBER: BV23XXX

DEVELOPER:

PROJECT:

PROJECT NUMBER:

HM

PROJECT SCHEDULE

It is anticipated that by _____ the rehabilitation work will be completed