

CHDO AGREEMENT BETWEEN

THE CITY OF MILWAUKEE

AND

«Organization»

CFDA Number: 14.239

THIS AGREEMENT MADE this 1st day of January, ~~2014~~2015 by and between the City of Milwaukee, hereinafter referred to as the “CITY”, and «Organization» a nonprofit corporation hereinafter referred to as the “CONTRACTOR” and which is located at:

WITNESSETH

WHEREAS, the CITY is the recipient of HOME Investment Partnerships Program Funds from the U.S. Department of Housing and Urban Development (HUD), including funds that are reserved for the use of Community Housing Development Organizations (CHDOs); and

WHEREAS, the CONTRACTOR has been certified with the CITY as a CHDO, and has submitted a proposal for use of CHDO funds for a CHDO-eligible project under HOME regulations;

NOW, THEREFORE in consideration of the mutual covenants and obligations herein contained, including the Attachments, and subject to the terms and conditions hereinafter stated, the parties hereto understand and agree as follows:

Section I - Definitions

- A. **AGENCY** — is hereby defined as the Community Development Grants Administration (CDGA), the HOME Program administering agency of the City of Milwaukee. For the purpose of this Agreement and all administration of HOME funds, the AGENCY shall act on behalf of the CITY in the execution and fiscal and programmatic control of this agreement. The term “Approval by the CITY” or like term used in this Agreement shall in no way relieve the CONTRACTOR from any duties or responsibilities under the terms of this Agreement, or obligation State or local law or regulation.
- B. **DIRECTOR** — is hereby defined as the Director of the Community Development Grants Administration of the City of Milwaukee.

- C. **WORK** — is hereby defined as all the professional, technical and construction services to be rendered or provided by the CONTRACTOR as described here.
- D. **PROJECT** — is defined in Section IV below.
- E. **HOME** — is hereby defined as the HOME Investment Partnerships Program as described in 24 CFR Part 92, under the authority of 42 U.S.C. 3535 (d) and 12701 - 12839.
- F. P.L. 112-55 – is hereby defined as the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55).

Section II — Term

The CONTRACTOR expressly agrees to complete all work required by this agreement in accordance with the timetable set forth in Attachment A hereto.

In addition, all projects are subject to ongoing compliance requirements of HOME from the date of initial occupancy. During this compliance period (the applicable “Period of Affordability” as defined in 24 CFR §92.252 and 92.254), the CONTRACTOR will assure continued compliance with HOME requirements. For homebuyer units this includes monitoring units for principal residency and restrictions on resale or recapture provisions. For rental units, this includes ongoing property standards, occupancy and rent limits compliance.

Timely completion of the work specified in this agreement is an integral and essential part of performance. The expenditure of HOME funds is subject to Federal deadlines and could result in the loss of the Federal funds. By the acceptance and execution of this agreement, it is understood and agreed by the CONTRACTOR that the PROJECT will be completed as expeditiously as possible and that the CONTRACTOR will make every effort to ensure that the project will proceed and will not be delayed. Failure to meet these deadlines can result in cancellation of this contract and the revocation of HOME funds.

Since it is mutually agreed that time is of the essence as regards this agreement, the CONTRACTOR shall cause appropriate provisions to be inserted in all contracts or subcontracts relative to the work tasks required by this agreement, in order to ensure that the PROJECT will be completed according to the timetable set forth. It is intended that such provisions inserted in any subcontracts be, to the fullest extent permitted by law and equity, binding for the benefit of the CITY and enforceable by the CITY against the CONTRACTOR and its successors and assigns to the project or any part thereof or any interest therein.

In the event the CONTRACTOR is unable to meet the above schedule or complete the above services because of delays resulting from Acts of God, untimely review and approval by the CITY and other governmental authorities having jurisdiction over the PROJECT, or other delays that are not caused by the CONTRACTOR, the CITY shall grant a reasonable extension of time for completion of the WORK. It shall be the responsibility of the CONTRACTOR to notify the CITY promptly in writing whenever a delay is anticipated or experienced, and to inform the

CITY of all facts and details related to the delay.

Section III — Scope of Work

The CONTRACTOR, in close coordination with the CITY, shall perform all professional services (the "WORK") necessary to complete the development and occupancy of the project in full compliance with the terms of this Agreement as set forth in Attachment B.

The CONTRACTOR will provide a specific working budget and realistic timetable as relates to: acquisition, construction/rehabilitation, soft costs, development fees and other allowable costs/activities prior to any fund usage. Said budget shall identify all sources and uses of funds, and allocate HOME and non-HOME funds to activities or line items. In addition, the CONTRACTOR will submit underwriting and a market-needs analysis for each project subject to approval by CDGA in order to assure compliance with P.L. 112-55.

The aforementioned Work tasks will be performed in essentially the manner proposed in the CONTRACTOR'S proposal as received by the AGENCY. The aforementioned document will be considered to be a part and portion of this agreement for reference.

Section IV — Reimbursement of Expenses

- A.** Project expenses shall be paid based on vouchers for actual expenses incurred or paid. Requests for payment must be submitted by the CONTRACTOR on forms specified by the CITY, with adequate and proper documentation of eligible costs incurred in compliance with 92.206 and necessary for HUD IDIS disbursement requirements. All such expenses shall be in conformance to the approved project budget. Budget revision and approval shall be required prior to payment of any expenses not conforming to the approved project budget.

- B.** The final 10% of the project development budget (or portion thereof, with CDGA's written approval) shall be withheld until the Certificate of Occupancy" or the "Certificate of Code Compliance" is received by CDGA within 30 days of property sales/closing, submit the following to CDGA:
 - 1) HPG-13 Payment request
 - 2) Homebuyer/Homeowner Rehab completion form (HUD 40096). Must include all units rehabbed at the property.
 - 3) Certificate of Code Compliance (all units)
 - 4) Copy of executed Covenant
 - 5) Loan/Mortgage/deed restrictions documents, when required by CDGA.
 - 6) Copy of loan agreement (rental only)
 - 7) Calculation of Income Worksheet
 - 8) Lead clearance where applicable
 - 9) Regulatory Checklist

The City and/or CDGA reserve the right to require additional information as needed to document regulatory compliance.

In addition, the HUD 1 Settlement Statement should be submitted to CDGA by the close of the next business day following property sale/closing, but in no event later than 30 days following property sale/closing.

- C. The CITY reserves the right to inspect records and project sites to determine that reimbursement and compensation requests are reasonable. The CITY also reserves the right to hold payment until adequate documentation has been provided and reviewed.
- D. The CONTRACTOR may submit a final invoice upon completion. Final payment shall be made after the CITY has determined that all services have been rendered, files and documentation delivered, and units have been placed in service in full compliance with HOME regulations, including submission of a completion report and documentation of eligible occupancy, property standards and long-term use restrictions.
- E. The CITY shall have the right to review and audit all records of the CONTRACTOR pertaining to any payment by the CITY. Said records shall be maintained for a period of five years after completion.

Section V — Project Requirements

The CONTRACTOR agrees to comply with all requirements of the HOME Program as stated in 24 CFR Part 92, including but not limited to the following.

- 1) No HOME project funds will be advanced, and no costs can be incurred, until the City has completed 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 project.

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the CITY of a Request for Release of Funds Certificate from the U.S. Department of Housing and Urban Development and the State of Wisconsin under 24 CFR Part §58.

Further, the CONTRACTOR will not undertake or commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, and must indicate that the violation of this provision may result in the denial of any funds under the agreement.

- 2) The HOME funds advanced to the PROJECT for owner-occupied units will be secured by a Covenant and HOME Program Regulatory Agreement in the form prescribed by the AGENCY for owner-occupants, and in the case of a rental project, Covenant and HOME Program Regulatory Agreement in the form prescribed by the AGENCY for rental properties, each as required by 24 CFR Part 92.
- 3) The CONTRACTOR will ensure that any expenditure of HOME funds will be in compliance with the requirements at 92.206, and acknowledges that HOME funds will only be provided as reimbursement for eligible costs incurred, including actual expenditures or invoices for work completed.
- 4) If the project is to be owner-occupied, the CONTRACTOR will ensure that all HOME assisted units will be in compliance with 24 CFR 92.254, including documenting that the property is eligible under 92.254(a)(1)-(2), and will maintain compliance during the minimum compliance period. (If the property also contains a rental unit assisted with HOME funds, the CONTRACTOR will ensure that occupancy complies with the requirements of 92.254(a)(6).) If the project is to be rental, the CONTRACTOR will ensure that that project is eligible under 92.214, and that it will meet the applicable standards of 24 CFR 92.252 - 253 at occupancy and for the minimum compliance period.
- 5) The designated HOME-assisted units of this PROJECT will meet the affordability requirements as found in 24 CFR 92.252 (rental) or 92.254 (owner-occupied) as applicable. The CONTRACTOR shall collect and maintain Project beneficiary information pertaining to household size, income levels, racial characteristics, and the presence of Female Headed Households in order to determine low and moderate-income benefit in a cumulative and individual manner. Income documentation shall be in a form consistent with HOME requirements as stated in the HUD *Technical Guide for Determining Income and Allowances Under the HOME Program*.
- 6) In the selection of occupants for PROJECT units, the CONTRACTOR shall comply with all nondiscrimination requirements of 24 CFR 92.350. If the project consists of 5 or more units, the CONTRACTOR will implement affirmative marketing procedures as required by 24 CFR 92.351. Such procedures are subject to approval of the AGENCY.
- 7) If the PROJECT is occupied at the time of this commitment, the CONTRACTOR will comply with the relocation requirements of 24 CFR 92.353.
- 8) The CONTRACTOR shall assure compliance with 24 CFR 92.251 as it relates to Property Standards and Accessibility Standards under 24 CFR 92.251(a)(3) as applicable, and Lead-Based Paint Requirements as found in 24 CFR 92.355 and 24 CFR Part 35. CONTRACTOR shall also comply with all applicable requirements for Property Standards, Accessibility, and Lead-Based Paint of HUD Proposed Rule 92 CFR 92.251 (76 F.R. 78344).
- 9) If the PROJECT is to be owner-occupied, the CONTRACTOR shall assure that any Covenant and HOME Program Regulatory Agreements recorded for owner/occupant homebuyers shall be in the form provided by the AGENCY, to ensure compliance with 24 CFR 92.254(a)(5)(i)(A) with respect to restrictions on resale and that the CONTRACTOR

will monitor each unit for principal residency (under 92.254 (a)(3)) and resale (under 92.254 (a)(4) - (5)).

- 10) The CONTRACTOR will provide any documentation required by the AGENCY regarding match as may be required to document match for purposes of the HOME program.
- 11) If any project under this agreement involves the construction or rehabilitation of 12 or more HOME-assisted units, the CONTRACTOR shall comply with the provisions of the Davis-Bacon Ad (40 U.S.C. 276 a to a - 7) as supplemented by AGENCY of Labor regulations (29 CFR, Part 5), as amended.
- 12) The CONTRACTOR will be monitored by the AGENCY for compliance with the regulations of 24 CFR 92 for the compliance period specified above. The CONTRACTOR will provide reports and access to project files as requested by the AGENCY during the PROJECT and for Five (5) years after completion and closeout of the AGREEMENT.
- 13) As required for compliance with P.L. 112-55, the CONTRACTOR shall repay to the CITY any HOME funds invested in PROJECTS that are not completed within four years of the commitment date, and shall convert any fiscal year ~~2014~~2015 HOME homeownership unit that has not been sold to an eligible homebuyer within six months of construction completion to a HOME-assisted rental unit.

Section VI - Repayment of HOME Funds

- A. All HOME funds are subject to repayment in the event the PROJECT does not meet the Project Requirements as outlined above.
- B. It is understood that upon the completion of the PROJECT, any HOME funds reserved but not expended under this agreement will revert to the CITY.
- C. If the PROJECT is rental, sale of the property to another party may occur only with the approval of the CITY during the applicable period of affordability, and the purchaser shall assume all obligations of the CONTRACTOR under the Covenant and HOME Program Regulatory Agreement recorded with respect to the rental property.
- D. If the PROJECT is for owner-occupancy, sale of the property to another party may occur only with the approval of the CITY, and the purchaser shall assume all obligations of the CONTRACTOR under the Covenant and HOME Program Regulatory Agreement recorded with respect to the property. (and consistent with the method of resale restriction identified in the CITY's Consolidated Plan.)
 - 1.) All net sales proceeds from the sale of units are considered to be either:

_____ Program Income and must be returned to the AGENCY as repayment of the HOME loan; or

X CHDO proceeds that may be retained by the CONTRACTOR and used in conformance with 24 CFR 92.300(a)(2), or as specified below:

CHDO proceeds must be used only for other eligible housing activities that benefit low income families (with incomes less than 80% of the County Median Income (CMI)). All CHDO proceeds and related activity must be reported to CDGA and the City Comptroller's office on a quarterly basis, within 30 days of the close of each calendar quarter. Such reporting shall include the amount, source and date of receipt of each amount of CHDO proceeds. After such initial reporting, CHDO proceed may be retained by the CONTRACTOR to be used or expended only for other eligible housing activities that benefit low income families (those with incomes less than 80% of the County Median Income. The CONTRACTOR shall provide CDGA with documentation of the use of such CHDO proceeds within five (5) business days of such expenditure, and after providing such documentation shall be subject to no further reporting requirements with respect to such CHDO proceeds.

- 2.) The CONTRACTOR will provide to the AGENCY the estimated HUD1 settlement statement, along with a reconciliation statement and the draft Covenant and HOME Program Regulatory Agreement (for either owner-occupied or rental properties, as applicable). The reconciliation statement shall account for the pro-ration of HOME project funds to the individual unit, and identify those funds that are to be lent to the buyer as "Buyer subsidies" secured by the HOME note and mortgage, the pro-rated HOME development funds that are to be forgiven as "Development subsidies", and the amount of developer fee or CHDO sales proceeds to be retained from settlement funds.
- 3.) All resale of properties during the compliance period to other buyers shall be in compliance with the terms of the Covenant and HOME Program Regulatory Agreement, including agreements for return of shared appreciation realized to the CITY.

Section VII - CHDO Provisions

It is understood that the CONTRACTOR has certified that it is and will maintain CHDO (Community Housing Development Organization) status for the term of the PROJECT/AGREEMENT in accordance with 24 CFR 92. CONTRACTOR shall demonstrate that it has staff with demonstrated development experience as required by P.L. 112-55. CONTRACTOR agrees to provide information as may be requested by the AGENCY to document its continued compliance, including but not limited to a current board roster, current staff roster, and demonstrations of experienced, qualified staff by submittal of staff resumes to document its continued certification compliance. The CONTRACTOR/developer will also demonstrate its fiscal soundness by submitting most recent audit reports, available lines of credit,

pro-formas of other projects developed by the CONTRACTOR and other documentation as CDGA deems necessary to comply with 24 CFR section 92.2, 93.3 and the Consolidated and Further Continuing Appropriations Act of 2012 (P.L. 112-55).

Any funds advanced as CHDO pre-development funds must be in compliance with 92.301, and are forgivable only under the terms in 92.301.

Any funds advanced to the CHDO as CHDO Operating Expenses must be expended in compliance with 24 CFR 92.208.

Any funds that the CHDO is permitted to retain as CHDO proceeds from this project shall be used in compliance with 24 CFR 92.300(a)(2) or as specified in this Agreement.

If the project is rental, the CONTRACTOR will create and follow a tenant participation plan as required in 24 CFR 92.303.

Section VIII — Procurement Standards

The CONTRACTOR shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner.

A. Contractor Award Criteria. City of Milwaukee funded housing production agencies must adhere to the following criteria when selecting contractors to perform production activities:

- 1) Contracts may not be awarded to debarred, suspended, or otherwise ineligible contractors. The CONTRACTOR certifies that throughout the term of this Agreement, neither the CONTRACTOR nor any of its principals are, or will be, debarred, suspended, or proposed for debarment for federal financial assistance (e.g., General Services Administration's List of Parties Excluded from Federal Procurement and Non-Procurement Programs), and that the CONTRACTOR will not enter into any transactions with any sub-recipients, contractors, or any of their principals who are debarred, suspended or proposed for debarment. The CONTRACTOR further certifies that it will verify that no suspended or debarred entities are under contract or participating in activities under this agreement by reviewing the federal General Services Administration's System for Award Management (SAM), which is available in electronic format and can be accessed on the internet by checking both of the following websites: www.sam.gov, www.uscontractorregistration.com or www.federalcontractorregistry.com.

Prior to signing this agreement, the CONTRACTOR has reviewed SAM to verify the status of any sub-recipients, contractors, and their principals.

The CONTRACT must also comply with all Federal, State, and Local laws, rules and regulations. The City of Milwaukee will not pay for work performed by any firm that is de-barred or not otherwise eligible to be awarded work. The

CONTRACTOR is responsible for reviewing the HUD debarred and suspended list, and for rejecting bids from ineligible contractors. The list is updated regularly and can be accessed via the internet at: www.sam.gov, www.uscontractorregistration.com or www.federalcontractorregistry.com. In the event that the CONTRACTOR has reason to believe that a subcontractor is ineligible, it must also inquire further to learn the subcontractor's actual status. If the CONTRACTOR finds that the subcontractor is in fact ineligible, it must notify the prime contractor immediately that the ineligible subcontractor must be terminated. The contractor/vendor will provide products and service that meet the appropriate specifications, including start and completion time requirements.

- 2) The firm is a bona fide business with experience in the work it is proposing to do.
- 3) The company has a good record of doing business and/or a good reputation with customers, peers, and suppliers. The business has all required licenses, certifications, and qualifications.
- 4) The price is competitive, reasonable and market-based. Utilize to the greatest extent possible, a Minority, Women-Owned, or Disadvantaged Business Enterprise. The AGENCY seeks to purchase from local (i.e. City of Milwaukee-based) vendors/contractors. *Unless there are extenuating circumstances, a lower quote may not be reasonable and market-based" if it deviates from staff's cost estimate and/or the average of the other bidders' prices by 15% or more.*
- 5) Any deviation from these standards may result in non-payment of costs reported unless written documentation adequate in the sole judgment (discretion) of CDGA, to establish compliance with HUD federal procurement standards, is submitted to and approved by CDGA.

In addition, it is understood that any CONTRACTOR that can be considered to be a religious organization shall abide by all portions of 24 CFR 92.257.

Section IX - Conflict of Interest Provisions

The CONTRACTOR warrants and covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of its services hereunder. The CONTRACTOR further warrants and covenants that in the performance of this contract, no person having such interest shall be employed.

HOME conflict of interest provisions, as stated in 92.356, apply to the award of any contracts under the agreement and the selection of tenant households to occupy HOME-assisted units.

No employee, agent, consultant, elected official, or appointed official of the CONTRACTOR may obtain a financial interest or unit benefits from a HOME-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition includes the following:

- Any interest in any contract, subcontract or agreement with respect to a HOME-assisted project or program administered by the CONTRACTOR, or the proceeds thereunder; or
- Any unit benefits or financial assistance associated with HOME projects or programs administered by the CONTRACTOR, including:
 - ◊ Occupancy of a rental housing unit in a HOME-assisted rental project;
 - ◊ Receipt of HOME tenant-based rental assistance;
 - ◊ Purchase or occupancy of a homebuyer unit in a HOME-assisted project;
 - ◊ Receipt of HOME homebuyer acquisition assistance; or
 - ◊ Receipt of HOME owner-occupied rehabilitation assistance.

This prohibition does not apply to an employee or agent of the CONTRACTOR who occupies a HOME-assisted unit as the on-site project manager or maintenance worker.

In addition, no member of Congress of the United States, official or employee of HUD, or official or employee of the Participating Jurisdiction shall be permitted to receive or share any financial or unit benefits arising from the HOME-assisted project or program.

If the CONTRACTOR is created or sponsored by a for-profit entity, no officers or employees of such for-profit entity shall serve as officers or employees of the CONTRACTOR, and the CONTRACTOR shall not use office space of such for-profit entity.

Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested by the CONTRACTOR in writing to the Participating Jurisdiction. The CONTRACTOR must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. The Jurisdiction may grant exceptions or forward the requests to HUD as permitted by 24 CFR 92.356, 85.36 and 84.42, as they apply.

Section X — City Responsibilities

The CITY shall furnish the CONTRACTOR with the following services and information from existing CITY records and CITY files:

- A. The CITY shall provide to the CONTRACTOR information regarding its requirements for the PROJECT.
- B. The CITY will provide the CONTRACTOR with any changes in HOME regulations or program limits that affect the project, including but not limited to income limits, property value limits and rent limits.

- C. The CITY will conduct progress inspections of work completed to protect its interests as lender and regulatory authority for the project, and will provide information to the CONTRACTOR regarding any progress inspections or monitoring to assist it in ensuring compliance.
- D. The CITY's review and approval of the WORK will relate only to overall compliance with the general requirements of this Agreement and HOME regulations, and all CITY regulations and ordinances.

Nothing contained herein shall relieve the CONTRACTOR of any responsibility as provided under this Agreement.

Section XI - Equal Employment Opportunity

During the performance of this contract, the CONTRACTOR agrees as follows:

- A. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). The CONTRACTOR will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin(s). Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or 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 contracting officer of the CITY setting forth the provisions of this nondiscrimination clause.
- B. 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 race, color, religion, sex, or national origin.
- C. 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 CITY's contracting officer, advising the labor union or worker's 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.
- D. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The CONTRACTOR will furnish all information and reports required by Executive Order 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 its books, records, and accounts by the AGENCY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.

- F. In the event the CONTRACTOR is found to be in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, 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 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.
- G. The CONTRACTOR will include the provisions of paragraphs (a) through (g) 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. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the AGENCY may direct 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 by the AGENCY, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

Section XII — Labor, Training & Business Opportunity

The CONTRACTOR agrees to comply with the federal regulations governing training, employment and business opportunities as follows:

- A. It is agreed that the WORK to be performed under this agreement is on a project assisted under a program providing direct Federal financial assistance from the US 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. 1701 u, as well as any and all applicable amendments thereto. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given low and moderate income residents of the project area, and that contracts for work in connection with the project are awarded to business concerns which are located in, or owned in substantial part by persons residing in the project area.
- B. The CONTRACTOR shall 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 Code of Federal Regulations and all applicable rules and orders of the AGENCY of Housing and Urban Development issued thereunder as well as any and all applicable amendments thereto prior to the execution of this contract as well as during the term of this contract. The CONTRACTOR certifies and agrees that it is under no

contractual or other disability, which would prevent it from complying with these requirements as well as any and all applicable amendments thereto.

- C. The CONTRACTOR will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the CITY, take appropriate action pursuant to the subcontractor upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, in 24 Code of Federal Regulations.

The CONTRACTOR will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 code of Federal Regulations and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with these requirements as well as with any and all applicable amendments thereto.

- D. Compliance with the provisions of Section 3, the regulations set forth in 24 Code of Federal Regulations and all applicable rules and orders of the AGENCY of Housing and Urban Development issued thereunder prior to the execution of the contract shall be a condition precedent to federal financial assistance being provided to the PROJECT as well as a continuing condition, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the CONTRACTOR or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by 24 Code of Federal Regulations as well as with any and all applicable amendments thereto.

Section XIII — Compliance with Federal, State & Local Laws

The CONTRACTOR covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, and all amendments thereto, including, but not limited to; Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing Section 3 of the Housing and Urban Development Act of 1968; Housing and Community Development Act of 1974, as well as all requirements set forth in 24 CFR 92 of the HOME INVESTMENT PARTNERSHIP PROGRAM. The CONTRACTOR covenants and warrants that it will indemnify and hold the City forever free and harmless with respect to any and all damages whether directly or indirectly arising out of the provisions and maintenance of this contract.

The CONTRACTOR agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

The CONTRACTOR further warrants and agrees to include or cause to be included the criteria and requirements of this section in every non-exempt subcontract in excess of \$100,000. The CONTRACTOR also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

Section XIV — Suspension & Termination

In accordance with 24 CFR 85.43, suspension or termination may occur if the CONTRACTOR materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

If, through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this contract, or if the CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this contract, the CITY shall thereupon have the right to terminate this contract by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder to the date of said termination. Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the contract by the CONTRACTOR and the CITY may withhold any payments to the CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due the CITY from the CONTRACTOR is determined whether by court of competent jurisdiction or otherwise.

Section XV — Termination for Convenience of the CITY

The CITY may terminate for its convenience this contract at any time by giving at least thirty (30) days notice in writing to the CONTRACTOR. If the contract is terminated by the CITY, as provided herein, the City will reimburse for any actual and approved expenses incurred, including those costs involved in terminating the contracts and shutting down the work as of the date of notice, and the CONTRACTOR will be paid as a FEE an amount which bears the same ratio to the total compensation as the services actually performed bear to the total service of the CONTRACTOR covered by this contract, less payments of compensation previously made. Claims and disputes between the parties will be submitted to the American Arbitration Association for resolution. Award or judgment may be entered in any court having jurisdiction thereof.

Section XVI — Default-Loss of Grant Funds

If the CONTRACTOR fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the agreement, and more particularly if the CONTRACTOR refuses or fails to proceed with the work with such diligence as will insure its completion within the time fixed by the schedule set forth in Attachment C of this agreement, the CONTRACTOR shall be in default and notice in writing shall be given to the CONTRACTOR of such default by the AGENCY or an agent of the AGENCY. If the CONTRACTOR fails to cure such default within such time as may be required by such notice, the CITY, acting by and through the AGENCY, may at its option terminate and cancel the contract.

In the event of such termination, all grant funds awarded to the CONTRACTOR pursuant to this agreement shall be immediately revoked and any approvals related to the PROJECT shall

immediately be deemed revoked and canceled. In such event, the CONTRACTOR will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this agreement, as the grant funds will no longer be available for this project.

Such termination shall not effect or terminate any of the rights of the CITY as against the CONTRACTOR then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the CITY under the law and the note and mortgage (if in effect), including but not limited to compelling the CONTRACTOR to complete the project in accordance with the terms of this agreement, in a court of equity.

The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

Section XVII — Reporting Responsibilities

The CONTRACTOR agrees to submit any and all reports required by CDGA or on the due dates as specified in Attachment C.

Section XVIII — Inspection, Monitoring & Access to Records

The CITY reserves the right to inspect, monitor, and observe work and services performed by the CONTRACTOR at any and all reasonable times.

The CITY reserves the right to audit the records of the CONTRACTOR any time during the performance of this Agreement and for a period of five years after final payment is made under this Agreement.

If required, the CONTRACTOR will provide the AGENCY with a certified audit of the CONTRACTOR's records representing the Fiscal Year during which the PROJECT becomes complete whenever the amount of expenditures under this agreement is at or exceeds \$500,000, pursuant to the requirements of OMB Circular A-133.

Access shall be immediately granted to the CITY, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONTRACTOR or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Section XIX -- General Conditions

- A. All notices or other communication which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier, and addressed to the CONTRACTOR at:

Name: **«Organization»**
Address: **«Address»**
City: **Milwaukee, Wisconsin «Zipcode»**

Attention: **«FName» «LName»**

and to the CITY at:

Community Development Grants Administration
City Hall - Room 606
200 East Wells Street
Milwaukee, Wisconsin 53202

Attention: Steven L. Mahan, Director

- B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.
- C. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall rule.
- D. No waiver or breach of any provision of this Agreement shall constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
- E. The parties hereto agree that this Agreement shall be construed and enforced according to the laws of the State of Wisconsin.
- F. Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Wisconsin or the City of Milwaukee, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

- G.** The CONTRACTOR shall comply with the provisions of the Copeland Anti-Kick-Back Act (18 U.S.C. 874) as supplemented in the AGENCY of Labor Regulations (29 CFR Part 3), as amended.
- H.** The CONTRACTOR shall comply with the provisions of sections 103 and 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by AGENCY of Labor regulations (29 CFR, Part 5), as amended.
- I.** The CONTRACTOR further warrants and agrees to include or cause to be included the criteria and requirements of paragraphs (G) through (H) of this section in every nonexempt subcontract. The CONTRACTOR also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.
- J.** The obligations undertaken by CONTRACTOR pursuant to this Agreement shall not be delegated or assigned to any other person or agency unless CITY shall first consent to the performance or assignment of such service or any part thereof by another person or agency.
- K.** The Agreement shall be binding upon the parties hereto, their heirs, executors, legal representative, successors and assigns.
- L.** CONTRACTOR shall indemnify and save CITY harmless from and against any negligent daims, liabilities, losses and causes of action which may arise out of CONTRACTOR's activities under this Agreement, including all other acts or omissions to act on the part of CONTRACTOR, including any person acting for or on its behalf, and, from and against any orders, judgments, or decrees which may be entered, and from and against all costs, attorneys fees, expenses and liabilities incurred in the defense of any such claims, or in the investigation thereof.
- M.** CONTRACTOR and its employees and agents shall be deemed to be independent contractors, and not agents or employees of the CITY, and shall not attain any rights or benefits under the civil service or pension ordinances of the CITY, or any rights generally afforded classified or unclassified employee; further they shall not be deemed entitled to state Compensation benefits as an employee of the CITY.
- N.** Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.

IN WITNESS WHEREOF,

The City of Milwaukee and the CONTRACTOR have caused their signatures to be hereunto affixed and duly attested

CONTRACTOR

«Organization»

By: _____

Title: _____

THE CITY OF MILWAUKEE

By: _____

Director

Date: _____

COUNTERSIGNED:

By: _____

COMPTROLLER

Date: _____

Approved as to form and execution

this _____ day of

_____, ~~2013~~2015

By: _____

Assistant City Attorney

ATTACHMENT A

SCOPE OF WORK

<i>Milestone</i>	<i>Deadline</i>
Project Start Date	January 1, 2013 <u>2015</u> (e.g.)
Interim Milestones/Deadlines (list below): Acquire property:	
Begin rehab/construction	
Complete rehab/construction	
Obtain Certificate of Code Compliance	
Sell property and provide close out data to CDGA.	

ATTACHMENT B

PROJECT DESCRIPTION/SCOPE OF WORK

Insert project description, including number of HOME-assisted units, occupancy type (owner/tenant), project type (rehab/new construction) & compliance term.
