

CONTRACT FOR SERVICES-HOME FUNDS
City of Milwaukee
COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM

CONTRACT NUMBER:
DEPARTMENT: **DOA-CDGA**
DATE OF AWARD: **January 1, 2013**
FUND NUMBER:
CFDA Number **14.239**
Department Use

Distribution:

Original - DOA - CDGA
Copy 1 - Contractor
Copy 2 - Comptroller

The provisions of this Contract have been approved by the Office of the City Attorney of the City of Milwaukee.

SERVICE DESCRIPTION: See Attachment A hereto

TIME OF PERFORMANCE: **January 1, 2013 through December 31, 2013**

TOTAL AMOUNT OF CONTRACT: Not to exceed _____
DOLLARS (\$_____), and subject to the terms, conditions and limitations on funding amounts for specific activities set forth in **Attachment A** hereto.

THIS AGREEMENT, entered into by and between _____ (hereinafter referred to as the "CONTRACTOR"), and the City of Milwaukee, a municipal corporation of the State of Wisconsin (hereinafter referred to as the "CITY").

Performance and schedules will be approved by the Director of the City of Milwaukee Community Development Grants Administration (or the Director's designee).

Work may commence in accordance with the terms and conditions of this Contract on **January 1, 2013**, provided the grant agreement for the Community Development Grants Administration from the U.S. Department of Housing and Urban Development has been executed by the City of Milwaukee or the Common Council of the City of Milwaukee has established other temporary appropriation authority for the City's Grant Program, or subject to the specific limitations set forth in Article III hereof.

WITNESSETH THAT:

WHEREAS, the Common Council of the City of Milwaukee has authorized execution of contracts and allocation of funds for the 2012 Community Development Block Grant Program and related 2013 grant programs (HOME, HOPWA, ESG) as approved under Common Council Files No; 120323, 120691, 120692, 120693, 120694, 120695, and 120861; and

WHEREAS, In furtherance of those grant programs, the CONTRACTOR represents itself as being capable, experienced and qualified to undertake and perform those certain services, as hereinafter set forth, as are required in accomplishing fulfillment of the obligations under the terms and conditions of this Contract as an independent contractor and not as an employee of the CITY.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. USE OF HOME FUNDS, RETENTION OF SERVICES AND REQUIREMENTS. The CITY hereby agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to personally perform, as an independent contractor and not as an employee of the CITY, the services hereinafter set forth, all in accordance with the terms and conditions of this Contract. CONTRACTOR agrees time is of the essence and will meet all deadlines, any schedules as herein set forth, and is required to:
 - A. Do, perform, and carry out in a satisfactory, timely, and proper manner, the services delineated in **Attachment A** to this Contract.
 - B. Comply with requirements listed in this Contract, and all attachments hereto, with respect to reporting on progress of the services, additional approvals required, and other matters relating to the performance of the services.
 - C. Comply with time schedules and payment terms.

2. SCOPE OF SERVICES. A specific description of services relating to the approved CDGA Project Activity Report and approved Organization Budget Forecast is delineated in the approved **Attachment A** attached to and made part of this Contract.
 - A. CONTRACTOR will adhere to the Administrative Policies and Procedures for the City of Milwaukee's Community Development Grants Administration as adopted by the CITY's Community and Economic Development Committee attached to and made a part of the Contract as **Attachment B**.
 - B. Any Budget Amendment or Activity Report amendment to be considered by the CITY from the CONTRACTOR must be submitted no later than 4:00 P.M. on September 30, 2013.
 - C. The CONTRACTOR shall comply with the CITY's Performance-Based Measurement System for Grant-funded agencies. Documentation and the data sources on outcome measurements shall be reported to the Community Development Grants Administration on June 3, 2013, and again on January 17, 2014 (to be submitted with the CONTRACTOR's final cost report). (**See Attachment L.**)
 - D. 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 at www.sam.gov. Prior to signing this agreement, the CONTRACTOR has reviewed SAM to verify the status of any sub-recipients, contractors, and their principals.

3. AVAILABILITY OF FUNDS:
 - A. This contract award is 100% funded under the Grant Program. Thus, should the availability of federal funds be reduced, the CITY and the CONTRACTOR agree that the

City of Milwaukee's Community and Economic Development Committee can modify and reduce either the CONTRACTOR's compensation (as listed on page 1 as the "Total Amount of Contract") or the CONTRACTOR's program year or both. The Community and Economic Development Committee will notify the CONTRACTOR of any such reduction. In the event of such a modification or reduction, the parties shall agree upon the portions of the contract to be reduced or modified.

- B. The CITY and CONTRACTOR further acknowledge that payments under this Contract are subject to either (1) actual receipt by the CITY of funding by the Grant Program or (2) the ability of the CITY to finance its payment obligations hereunder with other City funds pending receipt of the federal grant monies.
4. NOTICES. Any and all notices shall be in writing and deemed served upon depositing same with the United States Postal Services as "Certified Mail, Return Receipt Requested," addressed to the CONTRACTOR at:

Name:
Address:
City:

Attention:

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

All other correspondence shall be addressed as above, but may be sent "Regular Mail" and deemed delivered upon receipt by the addressee.

NOTE: All Federal regulatory citations can be accessed at www.HUD.gov. In addition, all HOME-funded agencies must adhere to the Home Investments Partnerships Program Final Rule Regulations; 24CFR 92.

5. TIME OF PERFORMANCE. The services to be performed under the terms and conditions of this Contract shall be in force and shall commence on January 1, 2013 and shall be undertaken and completed in such sequence as to assure its expeditious completion in light of the purposes of this Contract, but in any event all of the services required hereunder shall be completed as indicated on page 1 under "Time of Performance", which is the termination date of this Contract. In addition to all other remedies inuring to the CITY should the Contract not be completed by the date specified in accordance with all of its terms, requirements and conditions therein set forth, the CONTRACTOR shall continue to be obligated thereafter to fulfill CONTRACTOR's responsibility to amend, modify, change, correct or expand thereon until the Contract is fully completed.
6. CONDITIONS OF PERFORMANCE AND COMPENSATION.
- A. Performance and Standard of Care. The CONTRACTOR agrees that the performance of CONTRACTOR's work, services and the results therefore, pursuant to the terms,

conditions and agreements of this Contract, shall conform to such recognized high professional standards as are prevalent in this field of endeavor and like services.

- B. Place of Performance. The CONTRACTOR shall conduct CONTRACTOR's services in the City of Milwaukee.
- C. Compensation. The CITY agrees to pay, subject to the contingencies herein, and the CONTRACTOR agrees to accept for the satisfactory performance of the services under this Contract, amounts not to exceed, in the aggregate, the maximum as indicated on page 1 under "Total Amount of Contract", inclusive of all expenses, it being expressly understood and agreed that in no event will the total compensation to be paid hereunder exceed said maximum sum for all of the services required, and that such compensation is subject to the terms, conditions and limitations on funding amounts for specific activities set forth in **Attachment A** hereto.
- D. Taxes, Social Security, and Government Reporting: Personal income tax payments, income tax withholding, social security contributions, FICA, FUTA, insurance and all other governmental reporting and contributions required as a consequence of the CONTRACTOR receiving payment under this Contract shall be the sole responsibility of the CONTRACTOR, and, as more specifically provided in Section XIII of this Contract, the CONTRACTOR shall indemnify and save harmless the CITY and its officers, agents and employees from all losses, damages, costs, expenses, judgments, decrees, and fees, including attorney's fees, arising out of the performance of (or failure to perform) such obligations.
- E. Required Contract Provisions; If the CONTRACTOR provides HOME funds to for-profit owners or developer, nonprofit owners or developer, subrecipients, homeowner, homebuyers, tenants receiving tenant-based rental assistance, or contractors, the CONTRACTOR must have a written agreement with such entity which meets the requirements of 24 CFR §92.504 and includes the provisions set forth in the following paragraphs 1 through 9:
 - 1. Use of HOME Funds. The HOME funds awarded under the agreement must be used for services as described in "Attachment A" to this Agreement.
 - 2. The agreement must state that "program income" means gross income received by the CONTRACTOR directly generated from the use of HOME funds and as further detailed in 24 CFR 570.503, and that all program income generated from the use of HOME funds under any contract with the City of Milwaukee is the sole property of the CITY and must be returned to it within five days of receipt unless otherwise authorized by the CITY.
 - 3. The party to the agreement must agree to comply with applicable uniform administrative requirements as described in 24 CFR §92.505, including OMB Circular A-122 and the following requirements of 24 CFR part 84: 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73.
 - 4. The party to the agreement must agree to carry out each activity under the agreement in compliance with all applicable federal laws and regulations described in subpart H of 24 CFR part 92.
 - 5. The party to the agreement must agree to comply with the affirmative marketing responsibilities in accordance with 24 CFR §92.351, if the HOME funds administered pursuant to the contract will be used for housing containing five or more assisted units.

6. The agreement must provide that the HOME Program operates on a reimbursement basis, and that all claimed costs must be paid before submission of reimbursements request. Any act(s) of non-compliance will require the entire amount of HOME subsidy to be repaid to the HOME Investment Partnership Account as required by 24 CFR part 92. The CONTRACTOR may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.
 7. The agreement must provide that upon its expiration, the parties to the contract will transfer to the City any HOME funds on hand at the time of expiration and attributable to the use of HOME funds and any accounts receivable attributable to the use of HOME funds.
 8. The agreement must provide that records shall be maintained and reports shall be submitted as more specifically set forth in sections XVI, XVII and XVIII of this Contract in order to assist the City in meeting its recordkeeping and reporting requirements.
 9. The agreement must provide that, in addition to any other remedies for breach which may be available to the City at law or in equity, in accordance with 24 CFR §85.43, suspension or termination may occur if the party to the agreement materially fails to comply with any term of the award, and the award may be terminated for convenience in accordance with 24 CFR § 85.44.
7. **REMEDIES FOR NONCOMPLIANCE.** If a CONTRACTOR materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a CITY plan or application, a notice of award, or elsewhere, the CITY may take one or more of the following actions as appropriate in the circumstances pursuant to 24 C.F.R. 85.43:
- A. Temporarily withhold cash payments pending correction of the deficiency by the CONTRACTOR;
 - B. Disallow (that is, deny both use of funds and matching credit for) all or part of the activity or action not in compliance;
 - C. Wholly or partially suspend or terminate, pursuant to Article VIII, the current award for the CONTRACTOR's program;
 - D. Withhold further awards for the program; or
 - E. Take other remedies that may be legally available.
 - F. Require repayment of all HOME funds provided to the project.
8. **TERMINATION OF CONTRACT FOR CAUSE:** In addition to the procedures set forth in 24 CFR § 85.43, if, through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner his 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 days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials related to the services prepared by the CONTRACTOR under this Contract, and all equipment purchased with federal funds administered by the City of

Milwaukee Community Development Grants Administration shall, at the option of the CITY, become the property of the CITY. 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 to the CITY from the CONTRACTOR is determined.

9. TERMINATION FOR CONVENIENCE - 24 CFR §85.44.

- A. The CITY may terminate this Contract in whole or in part with the consent of the CONTRACTOR, in which case the parties shall agree upon termination conditions, including the effective date and in the case of a partial termination, the portions to be terminated, or
- B. The CONTRACTOR may terminate this Contract upon written notification to the awarding agency, setting forth the reasons for such termination and the effective date; in the case of partial termination, if the CITY determines in its sole discretion that the remaining portion of the award will not accomplish the purposes for which the award was made, the CITY may terminate the award in its entirety under either Article VIII or paragraph (A) of this article.

10. CHANGES. All project requests for change in performance and/or compensation will be directed in writing to the City as set forth in Article IV. The Community Development Grants Administration will then approve or disapprove the request in accordance with approved City policies and procedures established under Common Council Resolutions governing the administration of the Grant Program.

11. METHOD OF PAYMENT. Requests for Disbursement of Funds. The HOME Program operates on a reimbursement basis. All claimed costs must be paid before submission of reimbursement requests. Any act(s) of non-compliance will require the entire amount of HOME subsidy to be repaid to the HOME Investment Partnership Account as required by 24 CFR part 92. The CONTRACTOR may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs, as more specifically set forth in Paragraph E of Attachment D. The amount of each request must be limited to the amount needed.

A. The CITY agrees that, subsequent to the full and complete performance of this Contract and satisfactory performance of the services in accordance with the "work schedules" set forth in the CDGA Project Activity Report referenced under Article II herein, to pay the amount or amounts as hereinafter set forth. In the event of a dispute as to the services performed or the compensation to be paid, the decision of the Community Development Grants Administration or its designee shall prevail. The conditions of payment are as follows:

- 1. Acquisition activities: Requests for reimbursement involving acquisition of property using HOME funds must be accompanied by the following documents: (1) HPG-13 – Payment Request and (2) Closing Statement.
- 2. Other Draws (Rehab, Holding, Taxes, etc.): Requests for reimbursement for rehab, holding, taxes and other draws, must be accompanied by the following documents: (1) HPG-13 (Payment Request) and (2) CDA-71 - Schedule of Paid Costs.
- 3. Final Payment: The final 10% of the appropriated amount HOME funds will be withheld until the "Certificate of Occupancy" or the "Certificate of Code Compliance" is received by CDGA.

4. Summary of Costs: Those development projects that involve HOME assistance to only a portion of the total number of units developed must provide a documented summary of costs. This summary will reflect all sources of revenue and expenditure as well as the ratio of HOME costs to Total Development Costs.
- B. All disbursements of HOME funds for hard costs in connection with Housing Production activities shall be made pursuant to an escrow disbursing agreement with a Title Company selected by CDGA.
- C. Compensation and/or reimbursement for services required under this Contract shall be contingent upon each activity being reviewed for approval by the CDGA approving officer.
- D. Payment Reimbursement - Cost Reports are due by the 10th day of each month and must include the following supporting documentation for reimbursement/payment:
 1. Cost Report and Schedule of Paid costs
 2. Project Activity Report and Direct benefits Status Report
 3. Property List and Status of Activity
- E. All items described in **Attachment C** titled "2013 Reporting Dates for Fiscal and Programmatic Documents," attached to and made a part of this Contract, are due to CDGA by the due date(s) as specified in Attachment C.
- F. The CITY agrees to compensate the CONTRACTOR only for activity undertaken which is reasonable and directly related to activity and completed as described in Article II.
- G. If not otherwise restricted by Federal, State or local statutes, regulations or procedures, the CONTRACTOR may incur costs for the activity(ies) described in the Scope of Services set forth in Attachment A and Article II of this Agreement, provided such costs are allowable under federal regulations governing the use of Grant Program funds.
- H. If the CONTRACTOR receives CDBG or HOME funds for the purposes of acquiring, rehabilitating and selling affordable housing, or new construction of affordable housing, any reimbursements received pursuant to this Contract shall be subject to the terms and conditions set forth in the Escrow Fund Disbursing Agreement, relating to the specific affordable housing property involved and entered into between the CITY, CONTRACTOR, and a title insurance company selected by the CITY.
- I. The CONTRACTOR shall provide the CITY the source and amount of all non-Grant Program funds utilized in the performance of project activities. If a Cost Allocation plan is required under **Attachment A**, it must have the review and approval of the City Comptroller.
- J. The CONTRACTOR shall not use any of the Federal funds provided by this Contract for the payment of liabilities or costs incurred prior to January 1, 2013.
- K. All property costing \$300.00 or more per unit must be approved by CDGA. A CDGA property record form and all supporting documentation such as invoices must be submitted with the cost report in order to be reimbursed for the cost of the property.
- L. The CITY will only make reimbursement to the CONTRACTOR for sub-contractor expenses provided under the following conditions:
 1. The CONTRACTOR has properly procured the sub-contractor under Procurement requirements described in this Agreement; and,

2. An executed copy of the subcontract is on file with City Comptroller and the CITY's Community Development Grants Administration.
- M. Payment under this Contract is subject to the Prompt Payment Policy established in Common Council File No. 101137.
- N. Final Cost Reports
1. Final Cost and Program Activity Reports for 2012, including documentation and data sources on Performance Outcome Measurements, are due no later than 4:00 P.M. on January 17, 2014 at the CDGA office.
 2. All accrued costs reported on the Final Cost Report must be submitted for reimbursement to CDGA no later than 4:00 P.M. on February 7, 2014.
- O. **Prior to** disbursement of any Grant funds for the purpose of construction, acquisition or rehabilitation work on a specific property, the property and the amount of Grant funds allocated to each such property must be approved by the CITY and set-up in HUD's IDIS system.
- P. The final 10% of the project development budget 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, the following documents should be submitted 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) Census long form Calculation of Income Worksheet

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.

12. REVERSION OF ASSETS. Upon expiration of this agreement, the CONTRACTOR will transfer to the CITY any HOME funds on hand at the time of expiration and attributable to the use of HOME funds and any accounts receivable attributable to the use of HOME funds.
13. DEFENSE OF SUITS. Except in the event that the CONTRACTOR is an agency or department of the City of Milwaukee, in case any action is brought against the CITY or any of its officers, agents or employees for any act or omission of the CONTRACTOR to perform any of the covenants, acts, matters or things by this Contract undertaken, or for injury or damage caused by the alleged acts or omissions of the CONTRACTOR, its officers, agents or employees, whether intentional or by negligence, the CONTRACTOR shall indemnify and save harmless the CITY and its officers, agents and employees from all losses, damages, costs, expenses, judgments, decrees, and fees, including attorney's fees, arising out of such action. The CITY shall tender the defense of any claim or action at law or in equity to the CONTRACTOR or CONTRACTOR'S insurer, and upon such tender, it shall be the duty of the CONTRACTOR and CONTRACTOR'S insurer to defend such claim or action without cost or expense to the CITY or its officers, agents or employees. The CONTRACTOR shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this Contract and for the results therefrom.

14. PERSONNEL.

- A. Except in the event that the CONTRACTOR is an agency or department of the City of Milwaukee, the CONTRACTOR represents that it has or will secure all personnel required in performing the services under this Contract. Such personnel shall not be employees of nor have any contractual relationship with the CITY.
- B. All of the services required hereunder will be performed by the CONTRACTOR or under its supervision. Such personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
- C. If any work or services are subcontracted, it shall be specified by written contract or agreement and shall be subject to each provision of this Contract. The CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it, as it is for the acts and omissions of persons directly employed by it.

15. ASSIGNABILITY. To the extent permitted by law, the CONTRACTOR shall not assign any interest in this Contract nor shall it transfer any interest in same (whether by assignment, substitution of parties or any other manner), without the prior written consent of the CITY, provided, however, that claims for money due or to become due the CONTRACTOR from the CITY under this Contract may be assigned to a bank, trust company or other financial institution without such approval. Notices of any such assignment or transfer shall be furnished promptly to the CITY.

16. REPORTS. The CONTRACTOR agrees to submit reports as may be required by the CITY at such times as may be scheduled for submittal as described in HUD Notice CPD 12-007 (Operating Guidance for Implementing FY 2012 HOME Appropriation Requirements), set forth as **Attachment M** hereto. These data-collection instruments will be a part of CDGA's monitoring and evaluation of the CONTRACTOR's activities. Reimbursement requests will be held until specific report deadlines are met.

- A. All reports, studies, analyses, memoranda and related data and material as may be developed during the performance of this Contract shall be submitted to and be the exclusive property of the CITY, which shall have the right to use same for any purpose without any further compensation to the CONTRACTOR other than hereinafter provided. All of the aforesaid documents and materials prepared or assembled by the CONTRACTOR under this Contract are confidential and the CONTRACTOR agrees that he/she will not, without prior written approval from the CITY, submit or make same available to any individual, agency, public body or organization other than the CITY, except as may be otherwise herein provided.
- B. The aforesaid documents and material prepared in whole or in part under this Contract shall not be made the subject of any report, book, writing or oral dissertation by the CONTRACTOR other than as herein specifically provided. If this Contract is terminated for cause or for any other reason, all finished or unfinished documents or materials prepared under this Contract shall be immediately transmitted to the CITY at the effective date of such termination.
- C. Agencies must acknowledge the receipt of Federal funds in literature and promotional materials in the following manner: "This project is funded in part through a grant administered by the City of Milwaukee Community Development Grants Administration," or similar acknowledgement. The use of the CDGA Department logo is also acceptable and can be obtained by contacting CDGA.

17. RECORDS.

UNIFORM ADMINISTRATIVE REQUIREMENTS. The CONTRACTOR will comply with the applicable uniform administrative requirements as described in 24 CFR §92.505, including OMB Circular A-122 and the following requirements of 24 CFR part 84: 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73.

- A. Establishment and Maintenance of Records. Records shall be maintained in accordance with requirements prescribed by the CITY with respect to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of 5 years after the affordability period terminates after receipt of the final payment under this Contract.
- B. Documentation of Costs. All costs shall be supported by properly executed and approved payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of other accounting documents pertaining in whole or in part to this Contract and shall be clearly identified and readily accessible.
- C. Client/Beneficiary records. CONTRACTOR shall maintain records of all individuals and families served. This information shall include name, address, income level, racial makeup, and these shall be made available upon request.
- D. Other Program Requirements. The CONTRACTOR shall carry out each activity under this agreement in compliance with all federal laws and regulations described in subpart H of 24 CFR part 92 (except that the CONTRACTOR does not assume the City's responsibilities for environmental review under §92.352 and the intergovernmental review process in §92.357 does not apply).

18. REPORTS AND INFORMATION. In addition to the reports and information provided for in **Attachment C** hereto, at such times and in such forms as the CITY may require, there shall be furnished the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Contract.

19. AUDITS AND INSPECTIONS. At any time during normal business hours and as often as the CITY (or if federal or state grants or aids are involved, the appropriate federal or state agency) may deem necessary, the CONTRACTOR shall make available to the CITY or such agency for examination all of its records with respect to all matters covered by this Contract and will permit the CITY or such agency and/or representatives of the Comptroller General to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract.

20. FINDINGS CONFIDENTIAL. Except as required by section 19.35, Wis. Statutes (the Public Records Law), all of the reports, information, data, etc., prepared or assembled by the CONTRACTOR under this Contract are confidential and the CONTRACTOR agrees that they shall not be made available to any individual or organization, other than an appropriate agency of the United States government, without the prior written approval of the CITY. The City shall comply with the Public Records Law (Section 19.35 Wis. Stats) in connection with such records and the CONTRACTOR shall cooperate with the City in responding to any such requests.

21. CONFLICT OF INTEREST (pursuant to 24 CFR 570.611, 24 CFR 85.36 and OMB Circular A-110).

- A. Interest in Contract. No officer, employee or agent of the CITY who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Contract pertains, shall have any financial interest, direct or indirect, in this Contract.
- B. Interest of Other Local Public Officials. No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Contract, shall have any financial interest, direct or indirect, in this Contract.
- C. Interest of CONTRACTOR and Employees. The CONTRACTOR covenants that no person described in Article XXI, A and B above, who presently exercises any functions or responsibilities in connection with the Contract has any financial interest, direct or indirect, in this Contract. The CONTRACTOR further covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his/her services hereunder. The CONTRACTOR further covenants that in the performance of this Contract no person having any conflicting interest shall be employed. An interest on the part of the CONTRACTOR or his/her employees must be disclosed to the CITY. Provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation by residents of the area.

CONFLICT OF INTEREST with respect to HOME Funds (pursuant to 24 CFR § 92.356)

- A. In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the CONTRACTOR covenants and agrees that it will comply with the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of paragraph (B) below shall apply.
- B. Conflicts prohibited. The CONTRACTOR covenants and agrees that no persons described in paragraph (C) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, shall obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- C. Persons covered. The conflict of interest provisions of paragraph (B) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the CITY or the CONTRACTOR.
- D. Owners and Developers. The CONTRACTOR covenants and agrees that 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) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when

acting as an owner, developer or sponsor) shall occupy a HOME-assisted affordable housing unit in a project. 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.

E. LOBBYING.

1. The CONTRACTOR agrees that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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.
2. The CONTRACTOR agrees that 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

22. DISCRIMINATION PROHIBITED.

- A. EXECUTIVE ORDER 11246 - AFFIRMATIVE ACTION. The CONTRACTOR agrees that it will be bound by the Equal Opportunity Clause as set forth in its entirety in **Attachment D** hereto, with respect to its own employment practices when it participates in federally assisted construction work. However, if the CONTRACTOR so participating is a state or local government, the Equal Opportunity Clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on, or under this Contract.
- B. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES. The CONTRACTOR agrees to comply with the provisions of the Rehabilitation Act of 1973, 29 USC §§793 and 794), as set forth in **Attachment E** hereto.
- C. The CONTRACTOR agrees to comply with the provisions of the Americans With Disabilities Act, 42 U.S.C. 12101, et. seq., and agrees to require the same of any subcontractor.
- D. The CONTRACTOR will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- E. FAITH-BASED ORGANIZATIONS. In providing services under this Agreement:
 1. The CONTRACTOR shall not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the services provided and funded under this agreement. Any such activities must be offered separately, in time or location, from the services performed and funded under this

agreement, and participation must be voluntary for the beneficiaries of the services performed and funded under this agreement.

2. The CONTRACTOR shall not, in performing services under this agreement, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- F. Affirmative Marketing. The CONTRACTOR agrees to comply with the affirmative marketing responsibilities in accordance with 24 CFR §92.351, if the HOME funds administered pursuant to the contract will be used for housing containing five or more assisted units.
- G. SEXUAL ORIENTATION, GENDER IDENTITY AND MARITAL STATUS. In providing services under this agreement:
1. All determinations of eligibility for housing shall be made in accordance with the eligibility requirements provided for the CDBG program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.
 2. The CONTRACTOR is prohibited from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD–assisted housing or housing whose financing is insured by HUD, whether renter- or owner-occupied, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.
23. WORKERS' COMPENSATION INSURANCE. The CONTRACTOR, and all subcontractors, if any, shall provide to the CITY an affidavit or other satisfactory proof which the CITY may require evidencing that the CONTRACTOR and all subcontractors have obtained Worker's Compensation insurance for all persons performing any work or services under the Contract or subcontract as is required by the Worker's Compensation Act of the State of Wisconsin. No payments or disbursements under the Contract shall be made if such proof has not been furnished.
24. WITHHOLDING OF SALARIES. If in the performance of this Contract there is any underpayment of salaries by the CONTRACTOR or by any subcontractor thereunder, the CITY shall withhold from the CONTRACTOR out of payments due to it an amount sufficient to pay to employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the CITY for and on account of the CONTRACTOR or subcontractor, if any, to the respective employees to whom they are due.
25. INSURANCE. The CONTRACTOR must provide the CITY with proof of insurance coverage as prescribed by the City Attorney of the City of Milwaukee and set forth in **Attachment G**. Should the CONTRACTOR's insurance expire at anytime during the term of this Contract, the CITY will terminate the contract as prescribed in Article VIII of this Contract.

26. PROGRAM INCOME. "Program income" means gross income received by the CONTRACTOR directly generated from the use of HOME funds and as further detailed in 24 CFR 570.503. When such income is generated by an activity that is only partially assisted with HOME funds, the income shall be prorated to reflect the percentage of HOME funds used:
- A. All program income generated from the use of HOME funds under any contract with the City of Milwaukee is the sole property of the CITY. Any reuse of HOME program income is governed by the authority granted by the Community and Economic Development Committee under its current Revolving Fund Policies (attached to and made a part of this Contract).
 - B. During or upon expiration of this Contract, all program income as defined in 24 CFR 570.503 must be returned to the CITY unless otherwise authorized by CDGA.
 - C. Notwithstanding the foregoing, if CONTRACTOR is engaged in Housing Production activities under this Agreement, all program income generated by CONTRACTOR from the sale of a property may be retained by CONTRACTOR for the use on other eligible housing activity **with Prior approval by CDGA**. In order to retain such program income, the CONTRACTOR must reflect the sale of the property on the monthly cost report, and submit the following documents to the Community Development Grants Administration within 30 days of the date of sale (closing) for each property:
 - 1. Closing statement showing purchase price of house
 - 2. Loan document(s) from bank indicating total amount of loan
 - 3. Amount of agency funds invested in property identified by check number, date and vendor name, description and dollar amount
 - 4. Amount of grant funds invested in property
 - D. Notwithstanding the foregoing, if CONTRACTOR is designated by the CITY as a Community Housing Development Organization (CHDO) under a CHDO Agreement for the program year covered by this Agreement, any program income which constitutes "CHDO Proceeds" under the terms of such CHDO Agreement shall be governed by the terms and provisions of that CHDO Agreement.
27. EQUIPMENT. The CONTRACTOR shall grant the City a first priority security interest in any item of equipment costing \$1,000.00 or more per unit for which reimbursement of the purchase price is requested pursuant to this agreement. Documentation of the grant of such security interest and the filing of a UCC financing statement with respect thereto shall be provided to the City at the time reimbursement is requested. The CONTRACTOR may not assign or otherwise encumber in any way the equipment and supplies purchased using Federal funds without prior written consent of the CITY. This provision shall be binding upon respective successors or assignees.
28. AUDITS. If the CONTRACTOR expends \$500,000 or more in total Federal Funds during the CONTRACTOR'S fiscal year, the CONTRACTOR is required to have an audit conducted in accordance with the requirements of OMB Circular A-133, as in effect at the close of the calendar year in which this Contract is awarded. All audits are required to be completed and delivered to the CITY-CDGA no later than six (6) months following the end of the CONTRACTOR'S fiscal year. In the event the CONTRACTOR is not funded for a subsequent year, the CONTRACTOR must provide the CITY with a signed commitment from a Certified Public Accounting firm to conduct such an audit. This commitment must be provided prior to the expiration of the current Contract. Failure to provide this commitment will result in the CITY withholding from the current Contract a sum sufficient in the CITY'S judgment to enable the completion of such an audit.

Pursuant to OMB Circular A-133, the CITY hereby gives notice that the U.S. Department of Housing and Urban Development is providing the grant funds subject to this agreement. The CFDA number for HOME funds is 14.239.

29. FEDERAL MANAGEMENT AND BUDGET REQUIREMENTS AND PROCUREMENT STANDARDS

- A. Procurement Procedures: Proper procurement procedures must be followed in order to secure any goods and services to be purchased (or reimbursed) with City funds, including the selection of contractors, suppliers and related vendors. As such, City of Milwaukee funded housing production agencies must adhere to the following procurement procedures:
1. Contracts and Purchases under \$1,000 - An agency shall select the source that provides the most appropriate product, at a price most reasonable for the project. In addition, a Property records form must be completed and submitted to CDGA for all purchases of \$300 or greater.
 2. Contracts and Purchases From \$1,000 to \$10,000- An agency must document that it has contacted at least three bonafide sources and has selected the source that provides the most appropriate product, at a price most reasonable for the project.
 3. Contracts and Purchases From \$10,001 to \$50,000 - Agencies must request proposals from at least three bonafide sources. Requests for proposals must be in writing and provide all contractors, vendors, and suppliers the same information and opportunity to “walk-through” a project, if appropriate. Additionally, copies of all bids received and a bid tabulation sheet that justifies contractor selection must be maintained for each project. In order for a bid to be acceptable, it should be from bonafide contractors, licensed in the City of Milwaukee, be signed and dated, and include a complete list of activities to be performed, and/or materials and services to be provided.
 4. Contracts and Purchases Greater than \$50,000 - All Requests for Proposals greater than \$50,000 must be advertised in either the Milwaukee Journal Sentinel or the Daily Reporter. Additionally, copies of all bids received and a bid tabulation sheet that justifies contractor selection must be maintained for each project. In order for a bid to be acceptable, it must be from bonafide contractors, licensed in the City of Milwaukee, be signed and dated, and include a complete list of activities to be performed, and or materials and services to be provided. Failure to follow these procurement procedures will result in a Finding during a CDGA monitoring visit and may require the agency to “payback” all Federal funds disbursed using non-Federal funds.
 5. Contracts and Purchases Exceeding \$100,000 – All contracts exceeding \$100,000, must adhere to 24 CFR Part 85.36(d)(2) and subsequent paragraphs. (See Attachment I) In addition, adherence to section 84.44(e)(2), and 84.48(c) if applicable.
 6. Any deviation from these standards will/shall 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.

7. Notwithstanding the foregoing, if CONTRACTOR is designated by the CITY as a Community Housing Development Organization (CHDO) under a CHDO Agreement for the program year covered by this Agreement, procurement standards and procedures shall be governed by the terms and provisions of such CHDO Agreement.

B. Contractor Award Criteria: City of Milwaukee funded housing agencies should 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 must comply with all Federal, State, and Local laws, rules and regulations, in addition to the provisions of Section II.D. of this Agreement. 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 Agency 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 Only the eligibility of the prime contractor must be verified and documented. Subcontractor clearance is the responsibility of the prime contractor
2. The contractor/vendor will provide products and service that meet the appropriate specifications, including start and completion time requirements.
3. The firm is a bona fide business with experience in the work they are proposing to do.
4. The company has a good record of doing business and/or a good reputation with customers, peers, and suppliers.
5. The business has all required licenses, certifications, and qualifications.
6. The price is competitive, reasonable and market-based (as explained in paragraph 8 below).
7. Utilize to the greatest extent possible, a Minority, Women-Owned, or Disadvantaged Business Enterprise.
8. CDGA 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.***
9. 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.

C. OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-102: The CONTRACTOR will comply with all applicable provisions of OMB Circular A-102 and 24 CFR § 85.36, (as amended) relating to procurement procedures with federal grant funds, as more specifically set forth in Attachment I hereto. (CIRCULAR A-102 may be amended from time to time.

- D. BONDING and INSURANCE (RE: OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-110 as amended 09-30-1999)
1. A state or local unit of government which requires contracting for construction or facility improvement shall follow its own requirements relating to bid guarantees, performance bonds and payments bonds except for contracts exceeding \$100,000, the minimum requirements shall be as follows:
 - a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 - b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- E. CONTRACTOR shall comply with all applicable provisions of the Standards for Grantee Financial Management System. (Subpart C.21) RE: OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-110, as amended 09-30-1999.
- F. CONTRACTOR shall comply with all applicable provisions of the Property Management Standards (Subpart C.32). RE: OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-110, as amended 09-30-1999.
- G. CONTRACTOR shall comply with all applicable provisions of the Cost Principles for State and Local Government. RE: OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-87, as amended.
- H. CONTRACTOR shall comply with all applicable provisions of the Cost Principles for Nonprofit Organizations. RE: OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-122, as amended 05-10-2004.

30. OTHER PROVISIONS.

- A. COPYRIGHTS. If this Contract results in book or other copyright-able materials, the author is free to copyright the work, but the appropriate federal agency involved reserves a royalty-free nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use all copyrighted material and all materials which can be copyrighted.
- B. PATENTS. Any discovery or invention arising out of or developed in the course of work aided by this Contract shall be promptly and fully reported to the appropriate federal agency involved for determination by it as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereupon, shall be disposed of and administered, in order to protect the public interest.

- C. "SECTION 3" OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (12 U.S.C. 1701(u)). The CONTRACTOR agrees to comply with the provisions set forth in **Attachment H** hereto relating to Section 3 of the Housing and Urban Development Act of 1968.
- D. COMPLIANCE WITH AIR AND WATER ACTS. With respect to non-exempt transactions to carry out the purposes of the Housing and Community Development Act of 1974, the CONTRACTOR shall be required to provide:
1. A stipulation by the CONTRACTOR or subcontractor that any facility to be utilized in the performance of any non-exempt Contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
 2. Agreement by the CONTRACTOR to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1657c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318), relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 208, and all regulations and guidelines issued thereunder.
 3. A stipulation that as a condition for the award of the Contract prompt notice will be given of any notification received from the Director, Office of Federal Activities EPA, indicating that a facility utilized or to be utilized for the Contract is under consideration to be listed on the EPA list of Violating Facilities.
 4. Agreement by the CONTRACTOR that it will include or cause to be included the criteria and requirements in paragraphs 1 through 4 of this section in every non-exempt subcontract and requiring that the CONTRACTOR will take such action as the government may direct as a means of enforcing such provisions.
31. FAIR HOUSING. The CONTRACTOR will comply with all requirements of 24 CFR Part 14.
32. FEDERAL LABOR LAWS.
- A. 40 USC § 3701 (formerly the Contract Work Hours and Safety Standards Act). All contracts in an amount in excess of \$100,000 shall include a provision mandating compliance with section 40 U.S.C. section 3701 concerning Contract Work Hours and Safety Standards.
 - B. Copeland Anti-Kickback Act. All contracts for construction and repair shall include a provision mandating compliance with the Copeland "Anti-Kickback" act (42 USC 874) as supplemented by Department of Labor Regulations (29 CFR Part 3).
 - C. Davis-Bacon Act. Except with respect to the rehabilitation and /or new construction of residential property designed for residential use for less than twelve Units, the CONTRACTOR and any subcontractors engaged under contracts for the construction, execution, completion or repair of any building or work financed in whole or in part with HOME funds under this Contract shall comply with the Davis-Bacon Act (40 USC 276a) governing the payment of minimum wages, as supplemented by the regulations of the Department of Labor (29 CFR Part 5); however, if wage rates higher than those required under such regulations are imposed by State or Local law, nothing hereunder is intended to relieve the CONTRACTOR of its obligations, if any, or require payment of higher rates.

33. Operating Guidance for Implementing FY 2012 HOME Appropriation Requirements (HUD Notice CPD 12-007). The CONTRACTOR shall comply with all applicable provisions set forth in HUD Notice CPD 12-007 (Operating Guidance for Implementing FY 2012 HOME Appropriation Requirements), a copy of which is set forth in **Attachment M** hereto), including but not limited to the following:
- A. HOME funds used for projects not completed within 4 years of the commitment date, as determined by the CITY, shall be repaid to the CITY on demand.
 - B. Any homeownership unit funded with HOME funds which is not sold to an eligible homeowner within 6 months of project completion shall be rented to an eligible tenant.
 - C. Upon completion, each project must meet the property standards requirements set forth in 24 CRR 92.251, including State and local residential and building codes and the following HUD requirements, and must continue in compliance for the duration of any applicable period of affordability:
 - 1. Lead-based paint pursuant to 24 CFR Part 35;
 - 2. Accessibility pursuant to 24 CFR Part 8;
 - 3. Disaster mitigation; housing constructed to mitigate the impact of potential disasters in accordance with State and local codes, requirements, or such other requirements as HUD may establish;
 - 4. Written standards established by the CITY.
 - D. The CONTRACTOR shall submit a detailed Project Description of each proposed development. All development consisting of 5 or more units will trigger the CITY's obligation for the Request for Release of Funds under 24 CFR 92.353. The CONTRACTOR may not expend any funds (HOME or otherwise) for the activities defined in this Agreement until it has received notification from the CITY that the environmental review is complete. Additional guidance is provided in the CITY's Housing Production Guide and the CITY's NIP Manual.
 - E. The CONTRACTOR shall charge no fees for servicing, origination, or other costs of administering the HOME program.
 - F. The CONTRACTOR shall comply with all applicable requirements set forth in 24 CFR Subpart H.
 - G. The CONTRACTOR shall comply with all project requirements in 24 CFR Subpart F, as applicable in accordance with the type of project assisted.
 - H. The CONTRACTOR acknowledges that it has reviewed and will comply with all applicable standards and requirements set forth in **Attachment M** hereto, HUD Notice CPD 12-007 (Operating Guidance for Implementing FY 2012 HOME Appropriation Requirements).
 - I. For rental projects, the initial rents and the procedures for rent increases, the number of HOME units, the size of HOME units, the designation of HOME units as fixed or floating, and the requirement to provide the addresses of each HOME unit no later than the time of completion shall all be established consistent with the CITY's Housing Production Guide and NIP Manual.

34. COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS OF THE GOVERNMENT. In addition to the requirements as set forth herein, the CONTRACTOR or subcontractor performing any work or furnishing any materials hereunder shall comply with all applicable federal laws and regulations, all applicable state laws and regulations, and all applicable state laws and ordinances of the City of Milwaukee with respect to equal employment opportunities, minimum wage, anti-kickback regulations, federal labor standards, the Hatch Act (U.S. Code Title 5 §§1501 - 1508), and any other requirements imposed by the Secretary of HUD or the Secretary's representative. Contractors and subcontractors shall be required to furnish performance bonds, non-collusion affidavits, affidavits of no interest, indemnity agreements or any other protective legal instruments or other protective documents which may be required under applicable laws, ordinances, resolutions or regulations.
35. ATTACHMENTS AS PART OF CONTRACT. In addition to the requirements as set forth herein, the CONTRACTOR shall comply with the terms and provisions of each and every Attachment appended hereto as if such provisions were fully set forth herein.
36. HOUSING PRODUCTION AND NEIGHBORHOOD IMPROVEMENT PROJECTS (NIP) ADDITIONAL PROJECT REQUIREMENTS

Housing Production - The objective of this Project is to construct new housing units and/or to acquire, rehabilitate, and dispose of units of housing (as described in Attachment A to this Agreement) in a targeted neighborhood. The goal of the Project is to assist low and moderate income families in their obtaining housing that is affordable. An additional goal is to stabilize specific blocks within the targeted neighborhood.

A. **As a housing producer, the CONTRACTOR agrees to the following:**

1. To follow all operating procedures as detailed in the appropriate housing handbook for both the use of CDBG and HOME funds; (to be provided by CDGA)
2. To attend and participate in the annual housing production meeting and other training programs to be held in 2012 as directed by CDGA;
3. To attempt to develop ten percent (10%) of this year's units as handicap accessible units;
4. To provide HUD approved lead based paint notifications to each unit occupant;
5. To include the following information in its project records:
 - a. Address of the property;
 - b. Number of residential dwelling units occupied by assisted households;
 - c. The type of Housing Assistance provided;
 - d. The program funding source(s) and amount(s) of Federal assistance provided; and
 - e. The name of the household or person assisted:
 - (1) The income category (i.e., very low-income (0 to 30% of CMI), low-income (31 to 50% of CMI) or low-moderate income (51 to 80% of CMI); and
 - (2) The head of household's racial/ethnic group identification.
6. To provide a Project Setup Checklist containing the following information for each HOME-assisted project:
 - (1) Project Description

- (2) A Completed Planning Review from DCD
- (3) Rehabilitation plans and Scope of Work
- (4) Photographs of the property and street scene
- (5) Offer to Purchase
- (6) Lender/Financing Commitment Letter
- (7) Proforma or operating statement
- (8) Monthly payment analysis for prospective purchaser
- (9) Detailed Rehabilitation cost estimate
- (10) Development budget which identifies all expenses and sources of funds
- (11) As-is and After Rehab appraisal
- (12) Relocation strategy
- (13) Seller notification letter
- (14) Tenant information for occupied units
- (15) HP-24 Form
- (16) HUD Setup Form (HUD 40096)

7. To provide a Project Completion Checklist containing the following information for each HOME-assisted project:

- (1) Homebuyer/Homeowner Rehab Completion Form (HUD40096) must include all units rehabbed at the property.
- (2) Certificate of Code Compliance (All Units)
- (3) Copy of Executed Covenant
- (4) Loan/mortgage/deed restriction documents, when required by CDGA
- (5) Copy of Loan Agreement (Rental Only)
- (6) Calculation of Income Worksheet
- (7) Certification of Household Size and Income
- (8) Home Regulatory Checklist

1. **Neighborhood Improvement Project (NIP)** – The objective of this Project is to rehabilitate owner occupied properties in CDBG target area. The goal of the Project is to assist low-income families in maintaining and staying in their homes by correcting municipal code violations, addressing lead-based hazards and providing security items to protect occupants. An additional goal is to stabilize neighborhoods within the target area.

B. As a NIP Provider, THE CONTRACTOR agrees to the following:

1. To follow all operating procedures as detailed in the **Neighborhood Improvement Project Handbook for both the use of CDBG and HOME funds**; (to be provided by CDGA);
2. To attend and participate in the annual NIP meeting and other training programs to be held in 2012 as directed by CDGA;
3. To provide HUD approved lead based paint notifications to each unit occupant;
4. To include the following information in its project records:
 - a. Address of the property;
 - b. Number of residential dwelling units occupied by assisted households;
 - c. The type of Housing Assistance provided;
 - d. The program funding source(s) and amount(s) of Federal assistance provided;
 - e. The name of the household or person assisted:
 - (1) The income category (i.e., very low-income (0 to 30% of CMI), low-income (31 to 50% of CMI) or low-moderate income (51 to 80% of CMI));

(2) The head of household's racial/ethnic group identification.

5. To provide a Project Setup Checklist containing the following information for each HOME- assisted project:
 - a. Client Application
 - b. Signed Release of Information Statement from applicant
 - c. Notarized financial status form for persons claiming to have no income
 - d. Tenant information form, if applicable
 - e. Proof of paid property taxes or taxes being paid on a current installment plan
 - f. Statement from Mortgage Company showing that the mortgage is current
 - g. If mortgage has been paid off, a copy of the Mortgage satisfaction document
 - h. Proof of current Homeowners Insurance (declaration page)
 - i. Proof of ownership of property (copy of deed)
 - j. Income Verification-Source documents: most recent tax returns, W2 forms, 3 months of most recent check stubs, pension and SSI statements, rental income, etc. (additional documents may include Assets information, savings, checking, 401K, etc.)
 - k. Copies of most recent utility bills. (if in arrears an acceptable payment arrangement must be made by customer and a copy placed agency for client file)
 - l. Lead test results
 - m. Copy of death certificate if an owner on title is deceased
 - n. Copy of divorce papers if there is a question of joint ownership
 - o. Completed and Notarized Eligibility Affidavit
 - p. NIP Setup Form
 - q. Copy of Setup letter
 - r. Homeowner Rehab Setup and Completion Form (Sections A-E).

6. To provide a Project Completion Checklist containing the following information for each HOME assisted project:
 - a. Project Rehab Completion Form (CDA-36, and HPG-13 with DNS sign-off). Must include all units rehabbed at the property.
 - b. Job Cost Report Form 1a and 1b, if applicable
 - c. Satisfactory Lead test Results from City of Milwaukee Health Department, if applicable
 - d. Copy of Executed Covenant, and Regulatory Agreement, if applicable
 - e. Loan/mortgage/deed restriction documents, as required by CDGA
 - f. Homeowner Rehab Setup and Completion Form (Sections F-I).
 - g. Home Regulatory Checklist

C. LOW AND MODERATE INCOME HOUSING REQUIREMENTS

In connection with this contract, THE CONTRACTOR will utilize HOME funds to provide subsidy for housing development for low and moderate income families. As a condition of the use of HOME funds the Project agrees to comply with all relevant HOME regulations as found in 24 CFR Part 92 and in the Handbook for Housing Producers(to be provided by CDGA). The following conditions apply to all HOME funds expended or accepted after May 27, 1992. These conditions are binding during the applicable period of affordability for all HOME assisted properties. Evidence of agreement to these conditions, signed by the CONTRACTOR/Owner, shall be recorded at Register of Deeds of Milwaukee County and kept on file for all HOME assisted properties. The CONTRACTOR acknowledges that it has received, and agrees that it shall comply with all applicable requirements set forth in, the CITY's Housing Production Guide for low and moderate income housing requirements.

1. Period of Affordability. The HOME rule at §92.254(a)(4) establishes the period of affordability for all homebuyer housing. How to calculate the amount of HOME assistance in each unit and therefore the applicable period of affordability varies depending on whether the unit is under resale or recapture provisions.

a. Period of Affordability Under Resale Provisions

Under resale, §92.254(a)(5)(i) of the HOME rule states that the period of affordability is based on the *total* amount of HOME funds invested in the housing. Any HOME program income used to assist the project is included when determining the period of affordability under a resale provision.

b. Period of Affordability Under Recapture Provisions

For HOME-assisted homebuyer units under the recapture option, the period of affordability is based upon the *direct HOME subsidy* provided to the homebuyer that enabled the homebuyer to purchase the unit. Any HOME program income used to provide direct assistance to the homebuyer is included when determining the period of affordability. The following table outlines the required minimum affordability periods.

The total HOME investment (resale) or direct subsidy (recapture) in the unit determines the period of affordability as follows:

Under \$15,000: 5 years
Between \$15,000 and \$40,000: 10 years
Over \$40,000: 15 years
New construction rental: 20 years

D. RESALE PROVISIONS

The *HOME resale requirements* are established in the HOME rule at §92.254(a)(5)(i). Under HOME resale provisions, the PJ is required to ensure that, when a HOME-assisted homebuyer sells his or her property, either voluntarily or involuntarily, during the affordability period,

- 1) The property is sold to another low-income homebuyer who will use the property as his or her principal residence;
- 2) The original homebuyer receives a fair return on investment, (i.e., the homebuyer's downpayment plus capital improvements made to the house); and
- 3) The property is sold at a price that is "affordable to a reasonable range of low-income buyers."

If the CITY only provides HOME assistance to develop the unit and HOME funds are not used to lower the purchase price from fair market value to an affordable price, resale provisions must be used.

Ensuring Long term Affordability

The HOME rule at §92.254(a)(3) requires that all HOME-assisted homebuyer housing be acquired by an eligible low-income family, and the housing must be the principal residence of the family throughout the period of affordability. If the housing is transferred, voluntarily or otherwise, during the period of affordability, it must be made available for subsequent purchase *only* to a buyer whose family qualifies as low-income, and will use the property as its principal residence. The HOME resale provisions must enforce these

requirements as any housing assisted with HOME funds must remain affordable for the duration of the period of affordability.

Fair Return on Investment

The City's resale requirements must ensure that, if the property is sold during the period of affordability, the price at resale provides the original HOME-assisted homebuyer a fair return on investment (including the original homebuyer's initial investment and certain capital improvement).

Presumption of Affordability

In certain neighborhoods, housing can be presumed to provide a fair return to an original homebuyer upon sale, to be available and affordable to a reasonable range of low-income homebuyers, and to serve as the primary residence of a low-income family during the period of affordability. In such cases, the City will not impose resale restrictions because the characteristics of the neighborhood make it probable that these requirements will be met without the imposition of the restrictions. Instead, §92.254(a)(5)(i)(B) of the HOME rule states that the City may identify certain neighborhoods with housing and income conditions that will:

- 1) Provide ongoing affordable home prices,
- 2) Ensure that the sales price of a home will provide a fair return to the original homebuyer, and
- 3) Provide a pool of income-eligible homebuyers from the residents of the neighborhood.

E. RECAPTURE PROVISIONS

The HOME recapture provisions are established at §92.253(a)(5)(ii), and unlike the resale provisions, the original homebuyer can sell the property to any willing buyer during the period of affordability while the City is able to recapture all or a portion of the HOME-assistance provided to the original homebuyer.

Recapture provisions cannot be used when a project receives only a development subsidy and is sold at fair market value, because there is no direct HOME subsidy to recapture from the homebuyer. Instead, resale provisions must be used.

Recapture Method

The City will utilize a shared net proceeds, in combination with the pro rata reduction over time method to calculate the recapture amount. The amount recaptured by the City cannot exceed what is available from net proceeds.

Shared Appreciation

The buyer of housing developed/assisted with HOME funds must agree to repay to the City any appreciation realized on the sale of the property prior to the expiration of the period of affordability. This obligation will be enforced through written agreements between the homebuyer and the City in forms approved by CDGA. (These may include loan agreements, promissory notes, and/or mortgages and restrictive covenants)

2. Occupancy Controls – Rental Units

- A. If the Property contains rental units. Each unit must have occupants that when combined, have a household income below the 80% CMI limit. Not less than 90% of the assisted units at initial lease up during the affordability period may have households earning more that 60% CMI and at least 20% of the assisted units must be leased to households earning no more than 50% CMI. See www.HUDuser.org for current household income limits.
- B. Initial Annual Income Re-Certification - The CONTRACTOR agrees to conduct initial annual income re-certifications upon the request of CDGA, or at the option of CDGA, to grant CDGA access to its records and the units to conduct such reviews. The CONTRACTOR will provide documentation, subject to CDGA approval, that incomes of tenants have been checked and meet program income eligibility requirements. This documentation shall be received by CDGA upon initial occupancy of the tenant(s) no later than thirty days after occupancy and should include all units occupied. This provision shall not apply to the City's Department of City Development which is required to conduct its own income certifications and submit the information to CDGA on or before September 30, 2013. Notice to tenant of review shall be contained in the lease.
- C. Annual Income Re-Certifications: Rent Reviews- As required by the U.S. Department of Housing & Urban Development under the HOME program, the City of Milwaukee-Department of Neighborhood Services will conduct annual rent reviews. The CONTRACTOR agrees to conduct annual rent reviews upon the request of CDGA, or at the option of CDGA, to grant CDGA access to its records and the units to conduct such reviews. These rent reviews will certify that the rents charged are within the allowable HOME program limits of the U. S. Department of Housing and Urban Development. The certification documentation shall be submitted by DNS along with the Annual Income Re-certification and is due to CDGA at the end of the program year. This provision shall not apply to the City's Department of City Development which is required to conduct its own income re-certifications and submit the information to CDGA.
- D. Reporting of Tenant Information: The CONTRACTOR when conveying housing developed/assisted with HOME funds agrees that the deed shall contain a recorded restriction in a form approved by CDGA. The recorded restriction shall require the buyer to annually report not later than October 15 of each successive year the name, address, level of income, family size, unit size, and the rent charged for each unit(s) claimed. This information shall be reported by the CONTRACTOR to the Community Development Grants Administration no later than November 1, of the same year. All purchasers of housing developed/assisted with HOME funds must agree to the recording of an lien or encumbrance on the property, (in a forms approved by CDGA, which may include loan agreements, promissory notes, and/or mortgages and restrictive covenants) which will require repayment of HOME funds if the property is sold or transferred before the expiration of the Period of Affordability.
- E. Equal Opportunity and Fair Housing- The CONTRACTOR agrees to not discriminate against or deny participation of any person(s) in any HOME assisted activity as provided in 24 CFR part 92 of the HOME Regulations.
- F. Inspections - HOME assisted projects with rental units will be inspected by the City of Milwaukee-Department of Neighborhood Services (DNS), for compliance with City of Milwaukee building codes according to the following schedule:

1-4 Units = Every 3 Years
5-24 Units = Every 2 Years
25 Units or more = Annually

G. Tenant and participant protections. (Sec. 92.253)

- (1) Lease. The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.
- (2) Prohibited lease terms. The lease may not contain any of the following provisions:
 - (a) Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
 - (b) Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
 - (c) Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
 - (d) Waiver of notice. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
 - (e) Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
 - (f) Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
 - (g) Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
 - (h) Tenant chargeable with cost of legal actions regardless of outcome. A agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- (3) Termination of tenancy. An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.
- (4) Tenant selection. An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that:
 - (a) Are consistent with the purpose of providing housing for very low-income and low-income families;
 - (b) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;

- (c) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
- (d) Give prompt written notification to any rejected applicant of the grounds for any rejection.

[61 FR 48750, Sept. 16, 1996, as amended at 67 FR 61756, Oct. 1, 2002]

F. **METHOD OF PAYMENT.**

Reimbursement Basis. The HOME Program operates on a reimbursement basis. All claimed costs must be paid before submission of reimbursement requests. Any act(s) of non-compliance will require the entire amount of HOME subsidy to be repaid to the HOME Investment Partnership Account as required by 24 CFR part 92.

1. **Acquisition:** For the acquisition of property using HOME funds the following documents are required for the processing of requests for reimbursement: HPG-13 (Payment Request) and closing statement.
2. **Other Draws (Rehab, Holding, Taxes, etc.):** For rehab, holding, taxes and other draws, a HPG-13 (Payment Request) and CDA-71 (Schedule of Paid Costs) are required for processing.
3. **Final Payment:** The final 10% of the project development budget shall be withheld until the "Certificate of Occupancy" or the "Certificate of Code Compliance" is received by CDGA:

Housing Production: The following documents must be provided to CDGA for each HOME-assisted project within 30 days of property sale/closing:

- a. HPG-13 HOME Payment Request
- b. Homebuyer/Homeowner Rehab Completion Form (HUD40096) must include all units rehabbed at the property.
- c. Certificate of Code Compliance (All Units)
- d. Copy of Executed Covenant
- e. Loan/mortgage/deed restriction documents, when required by CDGA
- f. Copy of Loan Agreement (Rental Only)
- g. Census Long Form Calculation of Income Worksheet
- h. Home Regulatory Checklist

In addition, the HUD 1 settlement statement should be submitted by the close of the next business day following property sale/closing.

4. **Summary of Costs:** Those development projects that involve HOME assistance to only a portion of the total number of units developed must provide a documented summary of costs. This summary will reflect all sources of revenue and expenditure as well as the ratio of HOME costs to Total Development Costs.
5. All disbursements of HOME funds for hard costs in connection with Housing Production activities shall be made pursuant to an escrow disbursing agreement with a Title Company selected by CDGA.

G. **LEAD-BASED PAINT REGULATIONS.**

The contractor will comply with all applicable laws and regulations, whether federal, state, or local, relating to lead-based paint in HOME-assisted properties. Applicants must utilize State of Wisconsin lead-certified subcontractors and/or rehabilitation crews and supervisors. All work must be performed in a lead safe manner as per the CDGA Lead Reduction Policy. All completed work must have a lead wipe test conducted with subsequent clearance by the City's Health Department.

H. **CONFLICT WITH CDGA PROGRAM PROVISIONS.**

To the extent that any CDGA Program provision of this contract conflicts with any HOME provision, the HOME provision of this contract shall control.

I. **FORECLOSURE.**

In the event there is instituted a proceeding to foreclose any mortgage or other lien encumbering the Property, on the part of any holder thereof, the CONTRACTOR shall have a written agreement with the Owner providing that the Owner shall be liable to repay that portion of the HOME Program Note equal to the net sale proceeds available to the City after the Property is sold and all senior liens are paid and satisfied in full.

37. **WAIVER OF REQUIREMENTS.** The CITY may, in the event of a change in any applicable laws or regulations, waive any requirement of this Agreement. Any such waiver shall be evidenced in writing, shall pertain only to requirements specifically waived, and shall not otherwise modify and other term or provision of this agreement

CITY OF MILWAUKEE,
A Municipal Corporation

By: _____
(Community Development Grants Administration Director, CDGA)

Date: _____

CONTRACTOR:

DUNS Number: _____

By: _____ Title: _____ Date: _____

By: _____ Title: _____ Date: _____

Countersigned:

(City Comptroller)

Date: _____

Examined and approved as to form
and execution this _____ day of
_____, 201____.

Assistant City Attorney

CERTIFICATE REGARDING CORPORATE AUTHORITY

The undersigned hereby certify, represent and warrant that they are the duly elected Board Officer(s) or member of the Board of Directors of _____, a corporation organized and existing under the laws of the State of _____ (the "Corporation"), incumbent in the offices set forth below their respective signatures, and as such officers they are familiar in general with the Corporation's affairs, properties and records and in particular with the contract to which this Certificate relates.

Reference is made to that certain Contract for Services ("Contract"), dated as of _____, 201____, between the Corporation and the City of Milwaukee, Wisconsin (the "City").

As an inducement for the execution and delivery of the Contract by the City, the undersigned, on behalf of the corporation, do hereby certify to the City as follows:

1. The Corporation is a corporation duly organized and validly existing in good standing under the laws of the State recited in the first paragraph of this Certificate.
2. The Corporation is licensed or authorized to do business in Wisconsin.
3. The Corporation has full corporate right, power and authority to enter into, execute and deliver the Contract and to perform its obligations thereunder.
4. The execution, delivery and performance by the Corporation of the Contract has been authorized by all necessary corporate action on the part of the Corporation.
5. The person named below was on the date hereof, and was on the dates of the execution of the Contract, the duly elected (or appointed) and qualified incumbent of the office of the Corporation set for below with his/her signatures:

Name	Title	Signature
_____	_____	_____
_____	_____	_____

The Contract has been duly executed and delivered on behalf of the Corporation by such person, who is authorized so to do, and the Contract constitutes a legal, valid and binding obligation of the Corporation in accordance with its terms.

6. No authorization, approval, consent or license of any regulatory body or authority, not already obtained, is required on the part of the Corporation for the valid and lawful authorization, execution and delivery of the Contract and the assumption by the Corporation of the obligations represented thereby.
7. The execution and delivery of the Contract and the assumption by the Corporation of the obligations represented thereby will not conflict with, violate or constitute a breach of, or default under the Corporation's Articles of Incorporation or Bylaws or any commitment, indenture, agreement, instrument or court or regulatory order to which the Corporation is a party or by which it or any of its properties are bound.

8. On the date hereof, the Corporation has delivered to the Parties certain Resolutions of its Board of Directors. These Resolutions were in full force and effect on the dates of the execution and delivery of the Contract and continue to be in full force and effect on the date hereof.

Dated this _____ day of _____, 201____.

(NAME OF CORPORATION)

By: _____

Title: _____

By: _____

Title: _____

(CORPORATE SEAL)

LIST OF ATTACHMENTS

- Attachment A:** Scope of Services
- Attachment B:** Administrative Policies and Procedures for the City of Milwaukee's Community Development Grants Program
- Attachment C:** Required Reports
- Attachment D:** Executive Order 11246; Equal Opportunity Clause
- Attachment E:** Rehabilitation Act of 1973
- Attachment F:** Insurance Requirements
- Attachment G:** Program Income (Revolving Fund Policy)
- Attachment H:** Section 3 of the Housing and Urban Development Act of 1968 - 12 USC §1701(u)
- Attachment I:** Federal Management and Budget Requirements and Procurement Standards
- Attachment J:** Cash Advance Policy
- Attachment K:** Affirmative Marketing Policy
- Attachment L:** Performance – Based Measurement System
- Attachment M:** Operating Guidance for Implementing FY 2013 HOME Appropriation Requirements (HUD Notice CP 12-007)

ATTACHMENT A

SCOPE OF SERVICES

In accordance with the CITY's Final Statement of Community Development Objectives and projected use of funds for the Community Development Block Grant Program as approved under Common Council Files, 120323, 120691, 120692, 120693, 120694, 120695, and 120861; which are incorporated herein by reference, and all applicable Community Development Program Regulations promulgated by the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD") under Title I of the Housing and Community Development Act of 1974 (as amended), the CONTRACTOR shall in a satisfactory, timely and proper manner, undertake and complete the following project: