

**Municipal Building  
625 52nd Street – Room 204**

***HOME Program Commission  
Agenda***

**April 7, 2014  
5:00 p.m.**

*Alderman Curt Wilson - Chairman, Alderman Daniel Prozanski, Jr. - Vice Chairman,  
Alderman Anthony Kennedy, Alderman Tod Ohnstad, Anita Faraone, Ron Frederick and Anderson Lattimore*

Call to Order and Roll Call

*Approval of Minutes from March 3, 2014*

1. Community Housing Development Organization Agreement Through the HOME Investment Partnerships (HOME) Program By and Between the City of Kenosha, Wisconsin and Habitat for Humanity of Kenosha, Inc.

Public Comments

Commissioner Comments

Staff Comments

*Adjournment*

**HOME PROGRAM COMMISSION**  
**Minutes**  
**March 3, 2014**

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MEMBERS PRESENT: Alderperson Curt Wilson, Alderperson Anthony Kennedy,  
Anita Faraone, Ronald Frederick and Anderson Lattimore

MEMBERS EXCUSED: Alderperson Daniel Prozanski and Alderperson Tod Ohnstad

STAFF PRESENT: Mike Maki

The meeting was called to order at 5:00 p.m. by Alderperson Wilson and quorum was present.

A motion was made by Mr. Lattimore and seconded by Alderperson Kennedy to approve the minutes from December 2, 2013. The motion passed. (Ayes 5; Noes 0)

**1. Amendment to the 2014 HOME Program Description.**

Mike Maki, Community Development Specialist, said Staff is recommending additional language to the 2014 Program Description that would support new construction of homebuyer properties by a Community Housing Development Organization (CHDO) or sub-recipient. Staff is currently working with Habitat for Humanity to become a CHDO. Each year 15% of the HOME funds are set aside for an eligible CHDO to use. These funds have not been used since 2010.

Mr. Frederick asked if funds must be used for new construction or rehabilitation. Mr. Maki said funds can be used for both, but Habitat prefers to use them for new construction.

Alderperson Kennedy asked how much money are we looking at? Mr. Maki said in 2009 and 2010 the funds were reserved for the CHIP Program. The funds have not been used since mid 2010 so there is approximately \$300,000 available. Mr. Maki added that there are also CHDO operating funds to be used for Staff costs and other overhead expenses. The operating funds amount to just under \$33,000.

A motion was made by Alderperson Kennedy and seconded by Mr. Frederick to approve the additional language to the Program Description.

Ms. Faraone asked about foreclosures in City of Racine and the Racine Habitat homes. Mr. Maki responded that he did not have that information and added the home owner would make their monthly payment to Habitat. These people would not qualify for a loan to purchase a City home.

Alderperson Kennedy noted that the HOME Program Description currently offers support to four other types of activities that would help with the purchase of a home through a realtor.

Mr. Frederick said this is a splendid opportunity to partner with the Habitat organization and provide affordable housing.

The motion passed. (Ayes 5, Noes 0)

### **Public Comments**

No public comments.

### **Commissioner Comments**

No Commissioner comments.

### **Staff Comments**

This Amendment will go to the Common Council for approval on March 20, 2014. There will be an Agreement between Habitat and the City, potentially on April 7, 2014 at a HOME Program Commission, Finance and Common Council agendas.

A motion to adjourn was made by Ms. Faraone and seconded by Alderperson Kennedy. The motion passed. (Ayes 5; Noes 0) The meeting adjourned at 5:17 p.m.

*Meeting Minutes Prepared by: Kay Schueffner, Community Development & Inspections*

<p><i>Community Development Division</i>  625 52nd Street  Kenosha, WI 53140  262.653.4030</p>	<p><i>HOME Program Commission</i></p> <p><b>FACT SHEET</b></p>	<p>April 7, 2014</p>	<p>Item 1</p>
<p><b><i>Community Housing Development Organization Agreement Through the HOME Investment Partnerships (HOME) Program By and Between the City of Kenosha, Wisconsin and Habitat for Humanity of Kenosha, Inc.</i></b></p>			

**ANALYSIS:**

- The attached Agreement between the City of Kenosha and Habitat for Humanity of Kenosha, Inc. reserves Community Housing Development Organization (CHDO) set-aside funds as required by the HOME Program, and provides CHDO Operating funds to help support administrative expenses.
- The HOME Program requires that 15% of our annual HOME Program allocation be used exclusively for CHDO's to produce affordable rental or homeownership units and/or direct financial assistance for homebuyers of HOME-assisted housing sponsored or developed by a CHDO with HOME funds.
- The City has not had a certified CHDO since the termination of the Carpenter's Home Improvement Program through KUSD in June, 2010. Since the City does not have a certified CHDO, we have not been able to use our HOME CHDO funds since that date.
- The City is required to commit HOME Entitlement funds, including reserving CHDO funds for a certified CHDO, within 2 years of receiving HOME funds from HUD.
- The City will lose the ability to use FY 2010 through FY 2012 CHDO funds if we do not have a certified CHDO with an approved agreement by April 30, 2014. CHDO funds that are not reserved by the deadline will be reallocated to another community based on HOME rules.
- The approval of Habitat for Humanity as a certified CHDO through the attached agreement will allow the City to reserve the required CHDO Set-aside funds by April 30.
- The agreement designates up to \$199,547.22 of HOME CHDO Set-aside funds to be used for construction or rehabilitation of owner-occupied affordable housing units. The agreement also provides Habitat for Humanity with up to \$36,395.20 (5% of the City's HOME Program allocation for FY 2012 and FY 2013) for administrative expenses.
- A separate Project Agreement will be required for each project identified by Habitat for Humanity in order to use the Set-aside funds. Also, the City will require plans to be approved by Staff prior to approval of Project Agreements
- The CHDO Operating Funds will be paid on a quarterly reimbursement of eligible expenses incurred by Habitat for Humanity.
- Habitat for Humanity will be responsible for meeting all required HOME Program rules, including, but not limited to, homebuyer income limits, maximum sales price, affordability periods, record retention and use of funds.
- Habitat for Humanity will be allowed to retain CHDO Proceeds which can be partially used for additional administrative expenses, and the balance of such funds to be used for additional projects.
- Habitat for Humanity will be required to be re-certified as an eligible CHDO on an annual basis, and at the time of identification of each project.

Community Development Division  
625 52nd Street  
Kenosha, WI 53140  
262.653.4030

HOME Program Commission

FACT SHEET

April 7, 2014

Item 1

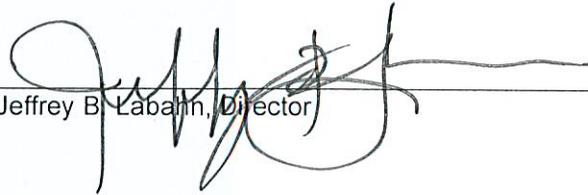
**Community Housing Development Organization Agreement Through the HOME Investment Partnerships (HOME) Program By and Between the City of Kenosha, Wisconsin and Habitat for Humanity of Kenosha, Inc.**

**RECOMMENDATION:**

A recommendation is made to approve the attached Agreement between the City and Habitat for Humanity.



Mike Maki, AICP, Community Development Specialist



Jeffrey B. Labahn, Director

/u2/acct/cp/ckays/1HOME PROG/2014/APR7/fact-chdo-habitat.odt

## COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS

### CHDOs are Special Nonprofits.

A Community Housing Development Organization (CHDO) is a private nonprofit, community-based, service organization that has, or intends to obtain, staff with the capacity to develop affordable housing for the community it serves.

### There are Many Benefits of Working with CHDOs.

The HOME Program guarantees CHDOs funds. At least 15 percent of a HOME participating jurisdiction's (PJ's) annual allocation must be set aside for affordable housing activities to be undertaken by CHDOs. These *set-aside funds* must be invested in *eligible housing*.

When a PJ works with CHDOs it increases the availability of affordable housing in the jurisdiction. In addition, it:

- Builds partnerships with organizations that have demonstrated long-term commitment to public service.
- Improves its overall capacity to develop affordable housing by strengthening partners' capacity.
- Can develop the capacity of new partners in order to increase the pool of providers.
- Creates a systematic process for involving community members in making decisions about affordable housing investments.

### HOME Requirements Facilitate CHDO Partnerships.

In addition to the CHDO set-aside, other HOME requirements are designed to facilitate the development of working relationships between PJs and CHDOs:

- PJs have up to 24 months to identify and designate the CHDOs they plan to work with, and to reserve funds for the CHDOs' use.
- PJs may use HOME funds to provide special assistance to support and build the capacity of CHDOs, including CHDO operating assistance, forgivable pre-development loans, and technical assistance.
- PJs are able to invest more than the 15 percent set-aside in CHDOs, and may also use other HOME funds to use CHDOs to administer other HOME program activities.

### Successful CHDO Partnerships Get Started Right.

There are many ways to form successful partnerships with CHDOs:

- Smart PJs select the right organizations to become CHDOs.** Existing local nonprofit organizations are an ideal source of potential CHDOs. PJs can recruit groups to participate by advertising the benefits of being a CHDO, meeting with local groups and leaders, assessing their strengths and weaknesses, and identifying with the organizations that show the most potential.
- Smart PJs build the capacity of existing organizations to become CHDOs.** Some promising organizations may need help to meet the CHDO *qualifying requirements*.
- Smart PJs get extra help when needed.** HUD provides technical assistance and training through consultants and national intermediaries. PJs can request assistance for CHDO capacity building from the local field office.
- Smart PJs look to the future.** The HOME CHDO set-aside is an annual requirement, so forward-thinking PJs will build a pool of qualified CHDOs with whom to work now and in the future.

Building a successful long-term partnership between PJs and CHDOs requires planning for future-year set-aside allocations, creating a pool of qualified CHDOs to ensure capacity to carry out the level of HOME activity that will be generated, and establishing a shared vision.

## THE HOME PROGRAM

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### Learn More About the HOME Program.

To obtain more information on the HOME Program, visit the HOME Program website at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home>, or contact the Community Planning and Development (CPD) Office of U.S. Department of Housing and Urban Development. To locate the field office nearest you, go to <http://www.hud.gov/directory/ascdir3.cfm>.

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## UNDERSTANDING CHDOS Terms and Requirements

### Set-Aside Funds

Under HOME Program rules, at least 15 percent of a PJ's annual HOME allocation must be set aside for CHDO activities in eligible housing. These funds are called set-aside funds.

### Eligible Housing

Set-aside funds must be invested in housing that is owned, sponsored, or developed by the CHDO. This means the CHDO serves in at least one of the following roles:

- Owner.** The CHDO holds valid legal title to or has a long-term leasehold interest in the rental property. The CHDO may be an owner with more than one individual, corporations, partnerships, or other legal entities.
- Sponsor.** The CHDO develops or owns a property and agrees to convey ownership to another nonprofit organization.
- Developer.** The CHDO either owns a property and develops a project, or has a contractual obligation to a property owner to develop a project.

### Eligible Set-Aside Activities

When using set-aside funds in eligible housing, the CHDO may perform one of the following activities:

- Acquisition, rehabilitation or new construction of rental housing,
- Acquisition, rehabilitation or new construction of homebuyer properties, and
- Direct financial assistance to purchasers of HOME-assisted housing sponsored or developed by a CHDO with HOME funds.

### Ineligible Set-Aside Activities

Set aside funds may not be used for tenant-based rental assistance, existing homeowner rehabilitation, or direct homebuyer assistance. PJs may, however, provide non-set-aside funds to CHDOs to carry out these activities.

### Key CHDO Qualifying Requirements

To qualify as a CHDO, a nonprofit must demonstrate that meets certain requirements regarding its:

- Legal and tax-exempt status,
- Financial management capacity and accountability,
- Staff capacity to carry out HOME-funded activities,
- Experience serving the community,
- Board representation by community members, with at least one-third of its members low-income, and
- Lack of for-profit or public control.

## THE HOME PROGRAM

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### Eligible CHDO Capacity-Building Activities

In addition to its 15 percent set-aside, PJs may use HOME funds to provide special assistance to support and build the capacity of CHDOs. This assistance includes:

- Project pre-development loans.** A PJ may loan CHDOs up to 10 percent of its annual allocation for up-front eligible project expenditures, seed money, or site control. Pre-development loans count toward the CHDO set-aside if the project moves forward; they are forgivable if the project does not move forward.
- Operating assistance.** PJs may provide up to 5 percent of its annual HOME allocation for salaries, wages, employee education and training, rent and utilities, taxes and insurance, and materials. Assistance may not exceed the greater of \$50,000 or 50 percent of the CHDO's total annual operating expenses for that year.
- Use of HOME project proceeds.** At the discretion of the PJ, a CHDO may be authorized to retain some or all of the proceeds generated from development activity to support additional HOME-eligible activities or other low-income housing activities. A PJ must stipulate in its written agreement with the CHDO whether the CHDO may retain project proceeds.
- Capacity-building assistance.** Within the first two years of becoming a PJ, PJs that cannot identify a sufficient number of capable CHDOs may commit a limited amount of HOME funds for capacity-building assistance.

**COMMUNITY HOUSING DEVELOPMENT ORGANIZATION AGREEMENT  
THROUGH THE HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM**

**BY AND BETWEEN**

**THE CITY OF KENOSHA, WISCONSIN,  
A Municipal Corporation,**

**and**

**HABITAT FOR HUMANITY OF KENOSHA, INC.,  
A Wisconsin Non-stock Corporation**

**THIS AGREEMENT** made and entered into by and between the **CITY OF KENOSHA, WISCONSIN**, a municipal corporation duly organized and existing under the laws of the State of Wisconsin, with offices at 625 52nd St., Kenosha, Wisconsin (“**CITY**”) and **HABITAT FOR HUMANITY OF KENOSHA, INC.**, a Wisconsin Non-stock corporation (“**CHDO**”).

**WHEREAS**, the **CITY** is the recipient of HOME Investment Partnership Program Funds (“**HOME**”) from the U.S. Department of Housing and Urban Development (“**HUD**”), including funds that are reserved for the use of Community Housing Development Organizations (CHDO's); and

**WHEREAS**, the **CHDO** has met the requirements established by the Federal Government and has been certified as a Community Housing Development Organization by the **CITY**, pursuant to the National Affordable Housing Act of 1990, as amended; and

**WHEREAS**, the **CITY** and **CHDO** desire to sign an agreement which sets forth terms and conditions for the use and acceptance of unexpended FY 2010 through FY 2012 HOME CHDO Set-aside funds, not to exceed \$199,547.22, as well as FY 2012 and FY 2013 CHDO Operating Funds (CO), not to exceed \$36,395.20; and

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by and among the undersigned intending to be legally bound hereby, as follows:

**PART I – SPECIFIC TERMS AND CONDITIONS**

**1. Source and Use of Funds**

**a. Sources of Funds.** The sole source of funding from the **CITY** for payment of services performed under this Agreement is the HOME Investment Partnership Program

entitlement provided to the **CITY** by **HUD**. The **CHDO** agrees that in the event that the HOME Investment Partnership Program entitlement is reduced or withheld by **HUD**, the **CITY** shall not be liable for payment of contracted services from any **CITY** fund or source other than the HOME Investment Partnership Program entitlement, in which case the **CHDO** further agrees that the maximum sum payable under this Agreement may be reduced by the **CITY**. In the event **HUD** determines that the **CITY** or the **CHDO** have not fulfilled their obligation under the HOME Investment Partnership entitlement requirements, or the **CITY** determines that the **CHDO** has not fulfilled its obligation under the HOME Investment Partnership Program requirements, **HUD** or the **CITY** may demand, in writing, reimbursement of expenses paid under this Agreement. The **CHDO** shall provide said reimbursement from non-federal sources within ten days of said notice from the **CITY**.

Funding for this Agreement shall consist of unexpended FY 2010 through FY 2012 HOME CHDO Set-aside funds, not to exceed \$199,547.22, as well as FY 2012 and FY 2013 CHDO Operating Funds (CO), not to exceed \$36,395.20.

The **CHDO** further acknowledges that this Agreement is necessary to comply with the requirements of 24 CFR Part 92 – HOME Investment Partnership Program incorporated herein by reference, and agrees that it will comply with, and will require all subcontractors, subgrantees and assigns to comply with all terms and conditions of said 24 CFR Part 92 and this Agreement, as amended. It shall be the **CHDO**'s responsibility to ensure that it has the latest version of all applicable laws and regulations in its possession to ensure compliance with their provisions.

**b. Use of Funds.** The **CHDO** shall utilize its **HOME** allocation as an owner-developer to provide housing for families at or below 80% of the area median income in accordance with policies established by **HUD**. The **CHDO** shall use the CHDO Set-aside funds for the construction or rehabilitation of owner-occupied affordable housing units. Any such project shall be implemented in accordance with this Agreement and related Project Agreement. No **HOME** CHDO Set-aside funds will be advanced to the **CHDO**, and no costs may be incurred, until the **CITY** has conducted an environmental review of the proposed project site as required under 24 CFR Part 58. Notwithstanding any provision of this Agreement, the **CHDO** acknowledges 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 release of funds from the U.S. Department of Housing and Urban Development (HUD).

**2. Program Requirements.** The **CHDO** shall comply with all requirements of 24 CFR Subparts E & F pertaining to Program and Project Requirements for affordable housing including, but not limited to:

**a. Minimum/Maximum per Unit Subsidy/Value.** The minimum per-unit subsidy amount for **HOME** entitlement funds invested shall not be less than One Thousand dollars (\$1,000). The maximum per-unit subsidy/value of units assisted with **HOME** funds shall not exceed the per-unit dollar limit established for mortgages under Section 221 (d)(3)(ii) of the

National Housing Act as established for all Wisconsin Participating Jurisdictions (Elevator Type).

**b. Affordability Period.** Housing units sold to homebuyers by the **CHDO** shall provide for a minimum affordability period as noted below (“**AFFORDABILITY PERIOD**”). The **CHDO** shall execute a **HOME** Program Lien to ensure a minimum **AFFORDABILITY PERIOD** upon sale of a housing unit. The **CHDO** shall use the “Recapture” option to control the resale of a unit during the **AFFORDABILITY PERIOD**. The **AFFORDABILITY PERIOD** is determined by the amount of **HOME** assistance provided the homebuyer in purchasing the unit, including, but not limited to, a reduction in the purchase price from the fair market value, financing loans provided by the **CHDO**, and/or downpayment or closing cost assistance, (“**RECAPTURE AMOUNT**”). During the **AFFORDABILITY PERIOD**, the total **RECAPTURE AMOUNT** shall be based upon the total of financing provided by the **CHDO**, plus any amount that reduced the purchase price from the fair market value, subject to net proceeds. Upon the expiration of the **AFFORDABILITY PERIOD**, the **RECAPTURE AMOUNT** shall be limited to the balance of the **CHDO** loan provided to the homebuyer, subject to net proceeds. Net proceeds is defined as the sale price minus any loan repayment (other than **HOME** funds) and closing costs.

Amount of Assistance Per Unit	Minimum Affordability Period
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15

**c. Income Restrictions.** The homebuyer’s income shall not exceed 80 percent of the City of Kenosha area median income.

The **CHDO** shall be responsible for initially determining and verifying the income eligibility of the homebuyer's income. The **CITY** shall verify all income determinations prior to the **CHDO** entering into a written agreement with the homebuyer. The **CHDO** agrees to cooperate with **CITY** in obtaining any information required by **CITY** in making its verification of the homebuyer's income eligibility.

**d. Required Information to be Provided to Homebuyers.** The **CHDO** shall provide all homebuyer applicants with information concerning:

- i. Income eligibility information;
- ii. Terms and conditions of the first mortgage including residency requirement; and
- iii. Overview of Recapture provisions and **AFFORDABILITY PERIOD**.

**e. Duration of Restrictions.** The provisions of 24 CFR Subpart F, as it may be amended, shall survive termination of this agreement for any reason.

**f. Housing Quality Standards.** All new and rehabilitated housing units constructed or rehabilitated by **CHDO** shall meet all applicable local codes, rehabilitation standards, and ordinances in accordance with 24 CFR Part 92.251; as well as the Model Energy Code published by the Council of American Building Officials (newly constructed units), or the Cost Effective Energy Conservation and Effectiveness Standards in 24 CFR Part 39 (substantially rehabilitated units, defined as having a rehabilitation cost of greater than or equal to \$25,000), and the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. All work funded under this Agreement shall be performed by properly licensed and qualified contractors in accordance with applicable state, county and city laws and codes.

**g. Housing Inspections.** The **CHDO** maintains that all units assisted with **HOME** funds are decent, safe and sanitary and meet the Standards listed in Part I, Section 2.e. of this Agreement. Further, the **CHDO** agrees that it shall make all records and property assisted with **HOME** funds available for inspection within a reasonable period of any request by **CITY**.

**h. Site Sensitivity.** The **CHDO** shall not undertake any activity that may adversely affect historic or environmentally sensitive sites; and shall mitigate any findings identified in the environmental checklist. The **CITY** shall be responsible for ensuring the proposed projects meet the requirements listed in 24 CFR Part 58.

**i. Property Management.** The **CHDO** shall be responsible for the maintenance and upkeep of all property subject to this Agreement and maintain insurance as set forth herein at Part II, Section 19 of this Agreement.

**j. Audit.** The **CHDO** shall, at any time during normal business hours and as often as the **CITY** and/or Comptroller General of the United States and/or any of their duly authorized representatives may deem necessary, make available for examination all of the **CHDO**'s records, books, documents, papers, and data with respect to all matters covered by this Agreement and shall permit the **CITY** and/or the Comptroller General to audit and examine all books, documents, papers, records and data related to this Agreement.

**k. CHDO Board Composition.** The **CHDO** will maintain a Board of Directors in compliance with the **HOME** CHDO regulations. The **CHDO** agrees to notify the **CITY** within fifteen (15) days of any change to the composition of the **CHDO** Board of Directors. The Board of Directors shall have a minimum of one-third of its members represented by the following:

**i.** Residents living in low-income neighborhoods, excluding public officials and employees of **CITY**; and/or

ii. Residents who are low-income, excluding public officials and employees of CITY; and/or

iii. Elected representatives of low-income neighborhood organizations, excluding public officials and employees of CITY.

In no case shall the composition of the Board of Directors have a maximum greater than one-third of its members represented by public officials or employees of CITY.

**l. Principal Residency Requirement.** During the AFFORDABILITY PERIOD, the CHDO shall be responsible for determining each unit sold continues to be the homebuyer's principal place of residency.

**m. HOME Match Documentation.** The CHDO shall provide documentation to the CITY, on forms acceptable to the CITY, concerning eligible Project contributions made from nonfederal resources in which the CITY may utilize towards its required match of HOME funds. Eligible match shall consist of the following:

i. Cash contributions from nonfederal sources;

ii. Donated property not acquired with Federal resources;

iii. The reasonable value of donated site preparation and construction materials, not acquired with Federal resources;

iv. The reasonable rental value of donated use of site preparation or construction equipment;

v. The value of donated or voluntary labor or professional services in connection with provision of affordable housing;

vi. The value of sweat equity provided to a homebuyer project; and

vii. The direct cost of homebuyer counseling services provided to buyers of a HOME-assisted unit.

**n. Required CITY Approval Prior to Sale of Homebuyer Units.** In addition to income documentation, the CHDO shall provide to the CITY the estimated settlement statement; a reconciliation statement; and a copy of the Mortgage, Note and HOME Program Lien. The Reconciliation Statement shall include the pro-ration of HOME funds invested into the project, funds to be provided to the buyer as buyer subsidies secured by a HOME mortgage and note, and the amount of CHDO proceeds to be retained from settlement funds or to be repaid through principal and interest payments of a HOME mortgage loan.

### 3. Method of Payment.

**a. CHDO Set-aside Funds Allocation.** Both parties agree that the total sum to be paid hereunder for actual expenses incurred shall be no more than ONE HUNDRED NINETY-NINE THOUSAND FIVE HUNDRED FORTY-SEVEN AND 22/100 DOLLARS (\$199,547.22). The funds provided shall be derived from the 15% CHDO set-aside through FY 2010, 2011 and 2012 **HOME** Program funds.

The funds will be expended in accordance with the terms and conditions of this Agreement and related Project Agreements. Funds reserved for the **CHDO** may increase or decrease, subject to production standards. Any project funds not expended shall revert to the **CITY**. Funds shall be paid in accordance with the projected accomplishments and budget descriptions.

**b. CHDO Operating Funds Allocation.** Both parties agree that the total sum to be paid hereunder for actual expenses incurred shall be no more than THIRTY-SIX THOUSAND THREE HUNDRED NINETY-FIVE AND 20/100 DOLLARS (\$36,395.20). The funds provided shall be derived from the FY 2012 and 2013 **HOME** Program funds.

Such sums shall be paid on a reimbursement basis for operating expenses. The **CHDO** shall be required to make quarterly submissions for reimbursement of operating expenses. Documentation shall include, but is not limited to, time sheets, invoices, bills and statements showing the operating expenses incurred by the organization. Such documentation shall be in the name of the **CHDO**. CHDO Operating Funds shall not exceed the greater of \$50,000, or 50% of the **CHDO's** operating expenses per fiscal year.

Operating expenses are defined as reasonable and necessary costs for the operation of the **CHDO**. Operating expenses are more particularly described under 24 CFR Part 92.208 and CPD Notice 06-01, and include:

- Salaries, Wages, and Other Employee Compensation and Benefits
- Employee Education, Training and Travel
- Rent and Utilities
- Communication Costs
- Taxes and Insurance
- Equipment, Materials and Supplies

The **CHDO** should review OMB Circular No. A-122, Attachment B for the principles that are to be applied in establishing the eligibility of the above costs.

CHDO Operating Funds are contingent on the expectation that the **CHDO** shall receive and request disbursements of CHDO Set-aside funds within 24 months of the date of this Agreement. Such disbursement of CHDO Set-aside funds shall be in accordance with an approved **CHDO** Project Agreement(s) and 24 CFR 92.208.

**c. Development Fee.** The CITY shall pay the CHDO, as compensation or fee for the services performed under this Agreement, fifteen (15%) of the total development cost per rehabilitated or constructed unit. Such fee shall be paid as progress payments not to exceed the following maximum percentages:

Milestone	Percentage of Development Fee
Construction Initiation (Issuance of Building Permits)	33%
50% Construction Completion (Rough-in Inspections)	33%
Certificate of Occupancy	34%

**4. Return on Investment.**

**a. CHDO Proceeds.**

**i. Definition.** “CHDO Proceeds” are defined as funds that result from the sale of CHDO developed homebuyer units and the principal and interest payments from a loan to a buyer of CHDO developed homebuyer units.

**ii. Allowable Uses of Proceeds.** Any eligible use of HOME funds, as defined in 24 CFR Parts 91 and 92 of the HOME Final Rule shall be an allowable use under this Agreement and as follows, so long as the allowable use results in or supports the creation of new units of affordable single family housing for purchase by qualified homebuyers. Use of CHDO Proceeds, excluding Proceeds used for administrative expenses as allowed in Section a) below, shall require approval from the CITY prior to use. Requirements pertaining to the use of CHDO Proceeds shall continue to apply to the use of such funds upon the expiration of this Agreement.

**a)** Up to \$5,000 an an annual basis may be allocated by the CHDO for the general administration (salaries, benefits and/or administration costs) of the CHDO for the support of affordable housing.

**b)** The remainder of CHDO Proceeds shall be restricted for land acquisition, site development, demolition, construction or rehabilitation of affordable housing units for owner-occupants and homebuyer financing and/or grants.

**iii. Accounting.** The CHDO shall retain proceeds in a separate bank account, with the exception of Proceeds used for administrative expenses as authorized through Part I, Section 4.a. and shall provide an accounting of the use of proceeds to the CITY on a quarterly basis. The auditor of the CHDO shall review the CHDO Proceeds account at each annual audit and shall include specific language in the audit that the CHDO has complied with the terms of this Agreement.

**b. Recaptured Funds.** Funds recaptured, because housing no longer meets the affordability requirements under 24 CFR Part 92.254, are subject to the requirements of Part 92,

and must be properly identified and returned to the **CITY**.

**5. Project Approval Process.** For each Project, the **CHDO** shall submit a completed project proposal package to the **CITY** that includes all of the required documents referenced in this document and demonstrates compliance with the HOME Program regulations stated in the Final Rule, 24 CFR Part 92. Upon approval by **CITY** of the proposed project, the **CITY** shall prepare a Project Agreement. The **CHDO** shall not proceed with the project until the CHDO Project Agreement is approved by the **CITY**.

## **6. Program Evaluation and Monitoring.**

**a. Program Goals.** The annual performance under this Agreement shall be measured against the program goals set forth in the **CHDO's** Project Application.

**b. Program Monitoring.** The **CITY** has the right to monitor and evaluate all aspects of activities carried out by the **CHDO**. Such evaluations shall consist of the review of reports submitted by the **CHDO** and monitoring visits of the **CHDO** by the **CITY**. The **CITY** shall be entitled to conduct monitoring/site visits throughout the term of the Agreement.

**c. Program Records.** The **CHDO** shall maintain monthly bank statements of the **CHDO's** HOME Account, records, reports, data and information as may be required by HUD in 24 CFR Part 92.508 or the **CITY**.

**d. Project Files.** The **CHDO** shall maintain accurate individual project files with detailed records for each property, including:

**i.** Acquisition, construction or renovation costs and operating costs attributed to a project, identifying direct assistance funded through **HOME** funds, CHDO Proceeds, project revenue or other sources;

**ii.** A copy of the executed note and mortgage on the property;

**iii.** Set-up/Completion reports on the property. Completion reports must be submitted to the **CITY** within sixty (60) days of completion of rehab/construction;

**iv.** The **CHDO's** annual report verifying ownership and household income for each completed **HOME** project assisted unit throughout the **AFFORDABILITY PERIOD**; and

**v.** Documentation substantiating compliance with Equal Opportunity, Fair Housing and Affirmative Marketing, and other contractual requirements. The **CHDO** shall maintain a summary of this information and shall submit this information to the **CITY** upon request. These records shall be made available to **HUD** and/or representatives of the Comptroller General of the United States for audit, inspection or copying purposes during normal business hours.

**e. Activities Report.** A quarterly activity report shall be completed and submitted by the tenth working day of April, July, October and January summarizing **HOME** funded, and other low-income housing activities, during the previous three (3) months. The report shall detail property acquisitions, construction project status, sales of property, **CHDO** Proceeds and a description of the fund activity in the **CHDO's HOME** account. This report must include a monthly bank statement of the **HOME** Account and copies of prior month checks written against this account during the quarter. The **CHDO** shall also provide the **CITY** with a copy of all Closing documents for property sold within the quarter including the signed copies of the mortgage, note, **HOME** Program Lien and settlement statement.

**f. Records Retention.** The **CHDO** shall retain all records pertaining to this Agreement, including, but not limited to financial, statistical, property and programmatic records, for five years from the last day of the **CITY's** fiscal year (December 31) in which this Agreement expires; or five years after the **AFFORDABILITY PERIOD**; or is terminated. All records, which are subject to audit findings, shall be retained until the latter of five years or until an ongoing audit is completed and all issues raised by the audit are resolved. Nothing herein shall be construed to allow destruction of records that may be required to be retained longer by federal, state or local law. These records shall be made available to **HUD** and/or representatives of the Comptroller General of the United States for audit, inspection or copying purposes during normal business hours.

**g. Reversion of Assets.** The **CHDO** certifies that immediately upon the earliest of: 1) the event of default under the terms and conditions of this Contract; 2) dissolution of the **CHDO**; 3) termination of any program described herein; or 4) the expiration or termination of this Agreement, any **HOME** funds remaining in the **CHDO's HOME** Account and/or all proceeds or assets attributable to the use of the **HOME** funds, shall revert to the **CITY**. In the event that the balance of funds held in the **CHDO's HOME** Account is not sufficient to repay the **HOME** funds drawn by the **CHDO** on open **HOME** projects, the **CHDO** must provide a written explanation to the City at least twenty (20) working days prior to the sale of any **CHDO** property.

## **7. Time of Performance.**

**a. Annual CHDO Recertification.** The **CHDO** shall submit to the **CITY** by April 1 of each year of this Agreement the **CHDO** Recertification documentation which shall clearly demonstrate that the **CHDO** continues to meet the definition of a **CHDO**. The **CHDO's** failure to time provide the Recertification documentation may result in the **CITY** declining to recertify the **CHDO**.

**b. Commencement and Term.** Services described in this Agreement shall commence upon execution of this Agreement and shall continue in effect for a two (2) year term from the execution date ("Effective Date"). A project shall be identified by the **CHDO** within six (6) months of the Effective Date of this Agreement. This Agreement may be extended for an additional year, with approval of the **CITY**, subject to recertification of the **CHDO** by the **CITY**.

and the **CHDO** is making significant progress toward the performance of the goals stipulated in related Project Agreements.

**c. Reallocation of Funding.** Upon renewal of this Agreement, the **CITY** shall evaluate the performance of the **CHDO** in comparison to the goals defined in the Project Agreements. In the event the **CHDO's** performance is unsatisfactory, the **CITY** has the right to divide the funding stipulated in this Agreement among other qualified CHDOs.

## **PART II – GENERAL TERMS AND CONDITIONS**

### **1. Religious Organizations.**

**a.** The **CHDO** shall not discriminate against any person seeking assistance from the **CHDO** on the basis of religion and will not limit services or give preference to persons on the basis of religion;

**b.** The **CHDO** shall provide no religious instruction or counseling, conduct no religious workshops or services, engage in no religious proselytizing, and exert no other religious influence on any client or employee of the **CHDO**;

**c.** No property, for which services are provided under this Agreement, shall contain religious symbols for decoration for the term of this Agreement and the term of any mortgage and/or promissory notes issued pursuant to this Agreement; and

**d.** The **CHDO** shall include subparagraphs a-c, above, in any subcontracts pursuant to this Agreement.

**2. Other Program Requirements.** The **CHDO** shall comply with all the requirements of 24 CFR Subpart H, including, but not limited to:

#### **a. Equal Employment Opportunity.**

**i.** The **CHDO** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). The **CHDO** 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 **CHDO** 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.

**ii.** The **CHDO** will, in all solicitations or advertisements for employees placed by or on behalf of the **CHDO**, state that all qualified applicants will receive consideration

for employment without regard to race, color, religion, sex, or national origin.

iii. The **CHDO** 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**, advising the labor union or worker's representative of the **CHDO**'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.

iv. The **CHDO** 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.

v. The **CHDO** 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 **HUD** and the Secretary of Labor for purposes of ascertaining compliance with such rules, regulations, and order.

vi. In the event the **CHDO** is found to be in noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the **CHDO** 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.

vii. The **CHDO** will include the provisions of paragraphs (i) through (vii) 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 **CHDO** will take such action with respect to any subcontract or purchase order as the **CITY** may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the **CHDO** becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the **CHDO** or the **CITY**, the **CHDO** may request the United States to enter into such litigation to protect the interest of the United States.

viii. In order to maintain statistical data on the use and participation of minority and women owned business enterprises as contractor/subcontractors in **HOME** Program contracting activities, the **CHDO** shall be required to identify projects which have been bid by, and contracted and/or sub-contracted to minority owned, women owned, and/or small or disadvantaged businesses, by project dollar value. The **CHDO** shall provide certification of compliance with all federal requirements under equal opportunity legislation including, but limited to:

a) The requirements of Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended, (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and title VI of the Civil Rights Act of 1964 (U.S.C. 2000d) (Nondiscrimination in Federal Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C.6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 50 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;

c) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR chapter 60.

**b. Section 3 Requirements.**

i. Any contract exceeding \$200,000 and any subcontract exceeding \$100,000 shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The **CHDO** shall comply with HUD's Regulations in 24 CFR Part 135, which implement Section 3, and shall include the following clause, referred to as the Section 3 clause, in all subcontracts resulting from the commitment of funds under this Agreement: "The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by **HUD** assistance or **HUD**-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of **HUD** assistance for housing".

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

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

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

v. The contractor will certify that any vacant employment positions, including training positions that are filled after the contractor is selected, but before the contract is signed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

vi. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from further HUD assisted contractors.

c. The requirements of Executive Order 11625 concerning Minority Business Enterprise and 12138 concerning Woman's Business Enterprise be consistent with HUD's responsibilities under these orders, necessitate each applying entity make efforts to encourage the use of minority and women business enterprises in connection with HOME funded activities. The CHDO must prescribe procedures acceptable to the CITY to establish activities it uses to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women. To encourage the use of women and minority owned businesses in bids for the Program, the CITY will provide, on request, the latest list of such businesses.

**3. Fair Housing/ Affirmative Marketing.** The CHDO shall comply with all HUD and CITY fair housing and affirmative marketing requirements and policies, as set forth:

a. The CHDO shall be required to use affirmative fair housing marketing practices in soliciting clients, determining eligibility and concluding transactions, and affirmatively further fair housing efforts according to CFR Part 570.904(c).

b. The CHDO shall solicit applications for vacant units from persons in the housing market who are least likely to apply for rehabilitated or new housing units without benefit of special outreach efforts. Persons who are not of the race/ethnicity of the residents of the neighborhood in which the rehabilitated or new building is located shall be considered those least likely to apply.

c. The CHDO's advertising of vacant units shall include an equal opportunity logo or statement. Advertising media may include newspapers, radio, television, brochures, leaflets, or a sign on the property. The CHDO may use community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, social service centers or medical service centers as resources for this outreach.

d. The CHDO shall maintain a file containing all marketing efforts (i.e. copies of

newspaper ads, memos of phone calls, copies of letters) to be available for inspection when requested by the **CITY**. The **CITY** shall be entitled to assess the affirmative marketing efforts of the **CHDO**.

e. The **CHDO** shall maintain a list of all families residing in each homebuyer unit.

f. The **CITY** shall be entitled to assess the efforts of the **CHDO** during the marketing of the units by use of a compliance certification or personal monitoring visits of the project at least once a year.

g. Those participating entities requesting **HOME** funds for developments containing five or more units shall provide a description of intended actions that will inform and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market to the available housing. In such cases, the **CHDO** shall provide the **CITY** with an annual assessment of the affirmative marketing program. Said assessment shall include:

i. Methods used to inform the public and potential owners about federal fair housing laws and affirmative marketing policy (i.e. the use of the Equal Housing Opportunity logotype or slogan in print advertising);

ii. Methods used to inform and solicit applications from persons in the housing market who are not likely to apply without special outreach; and

iii. Records describing actions taken by the participating entity and/or owner to affirmatively market units; and record the results of said actions.

**4. Anti-displacement.** The **CHDO** shall not cause permanent displacement of current residents under the terms of this Agreement nor shall it acquire any property that would result in the displacement of existing tenants. The **CHDO** further agrees that if involuntary or economic displacement occurs as a result of the **CHDO** actions, the **CHDO** shall bear all the costs of relocation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979, as amended, and Section 104(d) of the Housing and Community Development Act of 1994, as amended. The **CHDO** shall also inform sellers of properties that it does not have the power of eminent domain and will not acquire any property unless a mutually agreeable price can be negotiated.

**5. Labor Standards.** Projects to be constructed or rehabilitated which contain 12 or more **HOME** assisted units, shall comply with the Davis/Bacon Act, applicable provisions of the Contract Work Hours and Safety Standards Act, and other applicable federal laws and regulations pertaining to Labor Standards.

**6. Lead-Based Paint.** Housing assisted with **HOME** funds constitutes HUD-Assisted housing for the purpose of the Lead-Based Paint Poisoning Act and is therefore, subject to 24 CFR Part 35, and shall require each buyer of subject Properties to execute the "Watch Out for

Lead Based Poisoning” notifications. All such executed notifications shall be maintained in the CHDO’s project file and a copy submitted to the CITY upon request.

**7. Conflict of Interest.** The CHDO, as an owner/developer/sponsor of any project funded with HOME funds, shall ensure that it agrees to abide with the provisions of 24 CFR 570.611 with respect to conflicts of interest and covenants that it presently has no financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The CHDO further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the CHDO hereunder. These conflict of interest provisions apply to any person who is an employee agent, consultant, officer or elected official or appointed official of the CHDO, or of any designated public agencies or Subrecipient receiving funds under the HOME Program.

No employee, agent, consultant, elected official or appointed official of the CHDO 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 provision extends to any member of Congress of the United States, official or employee of HUD, or official or employee of the CITY. This prohibition includes the following:

a. Any interest in any contract, subcontract or agreement with respect to HOME assisted project or program administered by the CHDO, or the proceeds thereunder; or

b. Any unit benefits or financial assistance associated with HOME projects or programs administered by the CHDO, including:

i. Purchase or occupancy of a homebuyer unit in a HOME assisted project;

ii. Receipt of HOME homebuyer acquisition assistance; or

iii. Receipt of HOME owner-occupied rehabilitation assistance.

**8. Debarment and Suspension.** The CHDO warrants and attests that it has not been debarred, suspended, proposed for debarment, or ineligible from participating in federally funded projects, and acknowledges that it shall not employ, award, or fund any contractors or subcontractors that have been debarred, suspended, proposed for debarment, or ineligible from participating in the federally funded projects.

**9. Flood Insurance.** In the event that properties are located in a Flood Zone, this Agreement is predicated upon the CHDO certifying that either the cost of rehabilitation necessary to meet all applicable codes and standards does not exceed 50 percent of the appraised value of the property improvements, or that the lowest habitable floor level is at or above the allowable flood level based upon a valid survey, prepared by a licensed surveyor. If projects can be financed with HOME funds as a result of compliance with either of these requirements, buyers shall maintain flood insurance for full replacement value as a condition of their mortgage.

**10. Lobbying Prohibited.** The **CHDO** certifies, to the best of its knowledge or belief, that:

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

b. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member 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 **CHDO** shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, with a copy of said submittal provided to **CITY** within ten (10) days of submission.

c. The **CHDO** shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements), and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000.

**11. Additional Federal Regulations.**

a. The **CHDO** 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.

b. The **CHDO** 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 the AGENCY of Labor regulations (29 CFR, Part 5), as amended.

c. The **CHDO** further warrants and agrees to include or cause to be included the criteria and requirements of paragraphs (a) through (b) of this section in every nonexempt subcontract. The **CHDO** also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

**12. Procurement Standards.** The **CHDO** shall establish procurement procedures to

ensure that materials and services are obtained in a cost-effective manner. When procuring for services to be provided under this Agreement, the CHDO shall comply at a minimum with the nonprofit procurement standards at 24 CFR 84.40 through 84.48.

**13. Compliance with Federal, State and Local Laws.** The CHDO 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 HOME.

The CHDO 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 CHDO 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 CHDO also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

**14. Enforcement.** The CHDO shall comply with all provisions of 24 CFR, Part 92. The CITY may terminate this Agreement, as follows:

**a. Termination of Contract for Cause.** If, through any cause, either party shall fail to fulfill in a timely and proper manner its obligation under this Agreement, or shall violate any of the covenants, agreements, or stipulations of this Agreement, the other party shall have the right to terminate this Agreement by giving written notice to said party of such termination and specifying the effective date thereof, at least five (5) days prior to the effective date of such termination. In such event, assets shall become the property of the CITY in accordance with Part I, Section 6.g. of this Agreement. Notwithstanding the above, the CHDO shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by the CHDO. The CITY may withhold any payments to the CHDO for the purpose of set-off until such time as the exact amount for damages due to the CITY from the CHDO is determined.

**b. Force Majeure.** This Agreement may not be terminated if the failure to perform rises from unforeseeable causes beyond the control and without the fault or negligence of either party. Such causes may include, but are not restricted to: acts of God; acts of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault and negligence of either party. In the event of default, lack of compliance or failure to perform on the part of the CHDO, the CITY reserves the right to exercise corrective or remedial actions, to include, but are not

limited to:

i. Requesting additional information from the **CHDO** to determine reasons for, or extent of noncompliance or lack of performance;

ii. Issuing a written warning advising the **CHDO** of deficiency and advising the **CHDO** that more serious sanctions may be taken if situation is not remedied;

iii. Advising the **CHDO** to suspend, discontinue or not incur costs for activities in question;

iv. Withholding payment for services provided; or

v. Requiring the **CHDO** to reimburse the **CITY** for the amount of costs incurred for any items determined to be ineligible.

**c. Termination for Convenience.** The **CITY** may terminate this Agreement at any time, by giving written notice to the **CHDO** of such termination and specifying the effective date of such termination, at least fifteen (15) days before the effective date thereof. In that event, assets shall become the property of the **CITY** in accordance with Part I, Section 6. g. of this Agreement. If this Agreement is terminated by the **CITY** as provided herein, the **CHDO** will be paid an amount equal to the services actually performed, less payments of compensation previously made.

**15. Assignment and Subcontracting.** The **CHDO** shall not assign or otherwise transfer any interest in this Agreement nor enter into any subcontract pursuant to this Agreement without submitting said proposed subcontract to the **CITY** and without the prior written approval of the **CITY**. Subcontractors shall be required to comply with all federal requirements/regulations with which the **CHDO** is obligated to comply under this Agreement. It shall be the **CHDO**'s responsibility to ensure that all federal requirements/regulations are included in said subcontracts and that all subcontractors abide by said requirements. The **CITY** shall have the right to withhold approval at its sole discretion.

**16. HUD Requirements.** Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by **HUD** at any time.

**17. CHDO Indemnification.** The **CHDO** shall indemnify, defend and hold harmless the **CITY**, its officers, employees and agents from and against any and all claims, liability, loss, charges, damages, costs, expenses, judgment, settlement expenses and attorneys fees, which any of them may hereafter sustain, incur or be required to pay arising out of or in any way related to the design, construction and installation of projects funded through this Agreement and related Project Agreements. Upon filing with the **CITY** of a claim for damages arising out of the acts which the **CHDO** herein agrees to indemnify, defend and hold **CITY** and others harmless, the **CITY** shall notify the **CHDO** of such claim and in the event that the **CHDO** does not settle or

compromise such claim, the **CHDO** shall undertake the legal defense of such claim both on behalf of the **CHDO** and/or the **CITY** and its officers, employees and agents. It is specifically agreed that the **CITY**, at the **CHDO'S** cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, which may be rendered against the **CITY** or any of its officers, employees or agents for any cause for which the **CHDO** is liable, shall be conclusive against the **CHDO** as to liability and the amount of damages.

**18. Construction Bonding and Insurance.** All construction contracts or subcontracts over \$100,000 let as the result of this Agreement shall include the following requirements:

- a. a bid guarantee, such as a bid bond, cashier's check or certified check, from each bidder equivalent to five percent of the bid price;
- b. a performance bond for 100 percent of the contract price; and
- c. a payment bond for 100 percent of the contract price.

All such bonds obtained must be from companies listed in Treasury Circular 570, and provided to the **CITY** prior to commencement of construction.

**19. Insurance.** The **CHDO** shall maintain insurance coverage in the amount deemed adequate by the **CITY** for all risks inherent in the functions and aspects of its operation including but not limited to risks of fire, casualty, automobile liability coverage, workmen's compensation insurance as required by law, and liability insurance for personal injury and property damage.

a. At a minimum, the **CHDO** shall maintain insurance policies in the following minimum limits, which shall be written and enforceable in accordance with the laws of the State of Wisconsin.

- i. Commercial General Liability: Bodily Injury, \$1,000,000 each occurrence; \$2,000,000 aggregate
- ii. Automobile Liability - \$1,000,000 combined single limit
- iii. Worker's Compensation – Statutory limits
- iv. Umbrella Excess Liability - \$1,000,000 aggregate

b. Said insurance coverage shall be verified by a Certificate of Insurance issued to the **CITY**, c/o Department of Community Development & Inspection, 625 52<sup>nd</sup> Street, Room 308, Kenosha, Wisconsin 53140. The policy/policies shall provide that should the described policies be canceled, terminated, or not renewed before the expiration date thereof, the issuing insurer shall mail thirty (30) days advance, written notice to the **CITY**. The policy/policies shall name the **CITY** as an additional insured and the **CHDO** shall provide the **CITY** with a copy of the endorsement.

c. The **CHDO** shall obtain, and keep in full force and effect during the entire progress of construction and extending through the conveyance of the property builder's risk and/or homeowner's insurance providing property damage insurance upon all structures constructed with **HOME** funds, for the full insurable value of such structures, against loss of fire, lightning, windstorm, vandalism and all other extended coverage perils customarily insured against. Such insurance policy shall name the **CITY** as an additional insured.

**20. Copyrights and Patents.** If this Agreement results in a book or other copyright materials or patent materials, the **CHDO** may copyright or patent such, but the **CITY** and the United States Government reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use such materials and to authorize others to do so.

## **21. City Responsibilities.**

a. The **CITY** shall provide to the **CHDO** information regarding its requirements for projects either partially or wholly funded with **HOME** funds, including its Minimum Housing Rehabilitation Standards.

b. The **CITY** shall provide the **CHDO** with any changes in **HOME** regulations or program limits that affect any project funded through this Agreement, including but not limited to income limits, property value limits and subsidy limits.

c. The **CITY** shall provide the **CHDO** with a copy of the mortgage, mortgage note and **HOME** Program Lien forms to be used in the sale of homebuyer units.

d. The **CITY** shall conduct the required environmental review and request a release of funds for all projects funded through this Agreement as required under 24 CFR Part 58.

e. The **CITY** shall conduct progress inspections of work completed to protect its interests as regulatory authority for the project, and will provide information to the **CHDO** regarding any progress inspections or monitoring to assist it in ensuring compliance.

f. The **CITY** shall review and approve the income determination completed by the **CHDO**, mortgages, notes, **HOME** Lien documents and written agreements prior to scheduling of a closing with homebuyers. Should any said documents not be approved by **CITY**, the **CHDO** agrees to make changes to said documents as requested by **CITY**. Upon acceptance of each mortgage and **HOME** Lien documents, they shall be recorded at the Kenosha County Register of Deeds.

g. The **CITY**'s review and approval of the projects funded through this Agreement will relate only to overall compliance with the general requirements of this Agreement, **HOME** regulations under 24 CFR Part 92, and all **CITY** regulations and ordinances. Nothing contained herein shall relieve the **CHDO** of any responsibility as provided under this Agreement nor shall it be relieved of its duty to review its obligations under 24 CFR Part 92, as

may be amended.

**h.** The **CITY's** failure to complete one or more of its responsibilities pursuant to this section shall not create any liability on the part of the **CITY**.

**22. Notices.** All notices and other communications required or permitted hereunder shall be in writing and delivered either by hand or certified mail, return receipt requested, addressed to the **CITY** or the **CHDO**, as the case maybe, at the address therefor set forth below, or at such other address as either party shall hereafter designate by like notice. Notice shall be effective as of the date of delivery, if by hand, or mailing if by certified mail.

If to **CITY**, then to:

City of Kenosha  
Department of Community Development &  
Inspection  
625 52nd Street, Room 308  
Kenosha, Wisconsin 53140

with a copy to:

City Attorney  
Municipal Building, Room 201  
625 52nd Street  
Kenosha, Wisconsin 53140

If to the **CHDO**, then to:

President  
Habitat for Humanity of Kenosha, Inc.  
6203 28<sup>th</sup> Avenue  
Kenosha, WI 53143

**23. Modification.** Neither this Agreement nor any term or condition hereof may be modified or amended, except by an agreement in writing, executed and delivered by the party against whom enforcement of such modification or amendment is sought. Notwithstanding the above, 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 Kenosha County, 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.

**24. Title and Paragraph Headings.** The titles and headings of sections and subsections of this Agreement are for convenient reference and shall in no way affect the construction of any of the terms or conditions hereof.

**25. Choice of Law and Forum.** The parties hereto agree that this Agreement shall be

construed and enforced according to the laws of the State of Wisconsin.

**26. Waiver.** No extension of time, forbearance, neglect or waiver on the part of a party with respect to any one or more of the covenants, terms or conditions of this Agreement shall be construed as a waiver of any of the other covenants, terms or conditions of this Agreement, or as an estoppel against the party, nor shall any extension of time, forbearance or waiver on the part of a party in any one or more instance or particulars be construed to be a waiver or estoppel in respect to any other instance or particular covered by this Agreement.

**27. Representation of Authority.** Each of the undersigned hereby represents and warrants that: (a) such party has all requisite power and authority to execute this Agreement; (b) the execution and delivery of this Agreement by the undersigned, and the performance of its terms thereby have been duly and validly authorized and approved by all requisite action required by law; and (c) this Agreement constitutes the valid and binding agreement of the undersigned, enforceable against each of them in accordance with the terms of the Agreement.

**28. Independent Contractor.** The CHDO 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.

**29. Effective Date.** This Agreement shall be in effect upon approval and execution by the CITY and the CHDO. This Agreement shall be effective on the date of last execution (the "Effective Date").

*Signature pages follow*

IN WITNESS WHEREOF, the parties hereto have herein executed this Agreement on the dates below given.

**CITY OF KENOSHA, WISCONSIN,  
A Wisconsin Municipal Corporation**

BY: \_\_\_\_\_  
KEITH G. BOSMAN, Mayor  
Date: \_\_\_\_\_

BY: \_\_\_\_\_  
DEBRA L. SALAS  
City Clerk/Treasurer  
Date: \_\_\_\_\_

STATE OF WISCONSIN )  
                                  :SS.  
COUNTY OF KENOSHA)

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, **KEITH G. BOSMAN, Mayor**, and **DEBRA L. SALAS, City Clerk/Treasurer**, of the **CITY OF KENOSHA, WISCONSIN**, a municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said City, by its authority.

\_\_\_\_\_  
Notary Public, Kenosha County, WI.  
My Commission expires/is: \_\_\_\_\_

**HABITAT FOR HUMANITY OF  
KENOSHA, INC.  
A Wisconsin Non-stock Corporation**

BY: \_\_\_\_\_  
Joyce Pavlina, President

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

BY: \_\_\_\_\_  
Kevin Pratt, Secretary

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

**STATE OF WISCONSIN )  
  :SS.  
COUNTY OF KENOSHA )**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, Joyce Pavlina , and Kevin Pratt, of Habitat for Humanity of Kenosha, Inc., a Wisconsin Non-stock corporation, to me known to be such President and Secretary of said Wisconsin corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said Corporation, by its authority.

\_\_\_\_\_  
Notary Public, Kenosha County, WI.  
My Commission expires/is: \_\_\_\_\_