



# RESOLUTION NO. 15-358

## OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

### RESOLUTION APPROVING EXECUTION OF STANDARD AGREEMENT NUMBER 14-HOME-10037 BETWEEN THE COUNTY OF NEVADA AND THE STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD) FOR THE HOME GRANT, AND AUTHORIZING A GENERAL FUND ADVANCE OF \$130,000

WHEREAS, the California Department of Housing and Community Development is authorized to allocate HOME Investment Partnerships Program (HOME) funds; and

WHEREAS, in response to the 2014 NOFA, the County of Nevada HHSA - Housing Division, submitted an application to the HOME Program to receive an allocation in the amount of \$1,000,000 as indicated below; and

PROGRAM	ACTIVITIES	AMOUNT
HOME	ADMINISTRATION	\$ 25,000
	FIRST TIME HOMEBUYER	\$ 721,500
	TENANT-BASED RENTAL ASSISTANCE	\$ 253,500
	TOTAL	\$1,000,000

WHEREAS, the application was successful, and an executed standard agreement is required by the State prior to accessing these HOME funds; and

WHEREAS, the Nevada County Board of Supervisors desires to make available the HOME First Time Home Buyer program to low-income residents as efficiently as possible; and

WHEREAS, a revolving General Fund Advance of \$130,000 to HHSA - Housing Division would allow for the efficient and effective HOME First Time Home Buyer program operation and service delivery to the local community.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the Board of Supervisors, of the County of Nevada that:

1. Standard Agreement 14-HOME-10037 by and between the County of Nevada and the State Department of Housing and Community Development be and hereby is approved in substantially the form attached hereto, and the Chair of the Board of Supervisors be and hereby is authorized to execute Standard Agreement 14-HOME-10037 on behalf of the County of Nevada.
2. The Health and Human Services Agency, Housing Division Director, or his designee, is authorized to sign all other documents or instruments necessary or required by the Department of Housing and Community Development for participating in the HOME Program.
3. The Auditor-Controller is directed to make cash advances to Fund 1621 in fiscal years 15/16, 16/17 and 17/18 up to, but not to exceed, \$130,000. The General Fund shall be reimbursed upon receipt of State funds, when funds are not required for immediate use by HOME First Time Homebuyer Program.

Funds to be deposited into account: 1621- 50604- 451- 2014/446690.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 11th day of August, 2015, by the following vote of said Board:

Ayes: Supervisors Nathan H. Beason, Edward Scofield, Dan Miller, Hank Weston and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER  
Clerk of the Board of Supervisors

By: 

  
Edward C. Scofield, Chair

8/11/2015 cc: HHSA(6)  
AC\*(hold)

8/26/2015 cc: HHSA\*  
AC\*(release)

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

AGREEMENT NUMBER  
**14-HOME-10037**  
REGISTRATION NUMBER

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

STATE AGENCY'S NAME  
**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**  
CONTRACTOR'S NAME  
**County of Nevada**

2. The term of this Agreement is: **Upon HCD Approval through 11/30/2032**

3. The maximum amount of this Agreement is: **\$1,000,000.00**

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

Exhibit A - Authority, Purpose and Scope of Work	4
Exhibit B - Set-up and Payment Provisions	3
Exhibit C - State of California General Terms and Conditions*	GTC - 610
Exhibit D - HOME Terms and Conditions	21
Exhibit E - Special Terms and Conditions	1
Exhibit F - Additional Provisions	0

**TOTAL NUMBER OF PAGES ATTACHED:** **29 pages**

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.documents.dgs.ca.gov/ols/GTC-610.doc>

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

**CONTRACTOR**

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

**County of Nevada**

BY (Authorized Signature)

DATE SIGNED (Do not type)

  
PRINTED NAME AND TITLE OF PERSON SIGNING

**Edward C. Scofield, Chair, Board of Supervisors**

ADDRESS  
**950 Maidu Avenue, Nevada City, CA 95959**

**STATE OF CALIFORNIA**

AGENCY NAME

**Department of Housing and Community Development**

BY (Authorized Signature)

DATE SIGNED (Do not type)

  
PRINTED NAME AND TITLE OF PERSON SIGNING

**Lindy Suggs, Contracts Manager, Business & Contract Services Branch**

ADDRESS

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

**California Department of  
General Service  
Use Only**

**AUG 13 2015**

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

**EXHIBIT A**

**AUTHORITY, PURPOSE AND SCOPE OF WORK**

**1. Authority & Purpose**

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

**2. Scope of Work**

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

B. The Work shall consist of:

Project Location	Type of Activity	HOME Activity Funds	Total Units	HOME Units
County of Nevada	Tenant-Based Rental Assistance Program	\$253,500	240	240
	First-Time Homebuyer Program	\$721,500	11	11
	State Recipient Administration	\$25,000		



**EXHIBIT A**

**3. Term of Agreement and Deadlines**

- A. All Program funds shall be expended by: November 30, 2017.
- B. All Drawdown Requests shall be submitted by: January 31, 2018.
- C. This Agreement shall expire on: November 30, 2032.

No payments shall be made for drawdown requests received after January 31, 2018. Any funds not drawn down by January 31, 2018, shall be disencumbered.

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

**4. Contract Amount**

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

Tenant-Based Rental Assistance Program	\$253,500.00
First-Time Homebuyer Program	\$721,500.00
State Recipient Administration	\$25,000.00

**5. Activity Delivery Costs**

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

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

**EXHIBIT A**

These amounts may be modified by HOME Management Memo. The total amount of ADC drawn down during the entire contract term must be for actual costs incurred according to OMB Circulars A-87 and A-122 and have documentation in each project file.

**6. Other Funding Sources**

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

**7. Department Contract Coordinator**

The coordinator of this Agreement for the Department is the Chief of the HOME Program, Division of Financial Assistance, or the Chief's designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class or priority mail to the Department Coordinator at the following address:

State HOME Program Chief  
Department of Housing and Community Development  
Division of Financial Assistance  
P. O. Box 952054  
Sacramento, California 94252-2054  
Phone: (916) 263-2939

**8. HOME Program Contract Coordinator**

The HOME Recipient's contact for this Agreement may vary; therefore you will be contacted directly by your assigned representative. The State Recipient Representative jurisdiction lists, which are different for Program Activities and Projects, are also available at [www.hcd.ca.gov/fa/home](http://www.hcd.ca.gov/fa/home).

**EXHIBIT A**

Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be sent by first class mail to the contact at the following address:

Name: HOME Program Representative  
Phone: (916) 263-2939  
Fax: (916) 263-3394  
Email: HOME@hcd.ca.gov  
Address: Department of Housing and Community Development  
Division of Financial Assistance  
P.O. Box 952054  
Sacramento, CA 94252-2054

**EXHIBIT B**

**SET-UP AND PAYMENT PROVISIONS**

**HOME Recipient - Programs**

**1. Definitions**

- A. "Activity Delivery Costs" means "related soft costs" as this term is defined in the HOME Final Rule 24 CFR 92.602(b)(3). The Activity Delivery Costs are included in the "HOME Activity Funds". The HOME Recipient may expend up to the indicated Activity Delivery Cost as identified in Exhibit A, 5. HOME funds for Activity Delivery Costs and Home Activity Funds shall be drawn down at the same time. If the activity is not completed, and a Project Completion Report for the full amount drawn down is not filed, all HOME funds, including ADC must be repaid to the Department.
- B. "Project Set-Up" refers to the forms and process required to reserve HOME funds in IDIS for a specific HOME assisted project.
- C. "Project Disbursement" refers to the forms and process required to request the drawdown of HOME funds from IDIS for a project's previously reserved HOME funds.
- D. "Project Completion Report" refers to the form and process required to report a project "complete". The Project Completion Report must be submitted to HCD within 60 days of the final draw request. If the activity is not complete, and a Project Completion Report for the full amount drawn down is not filed, all HOME funds for the particular project must be repaid to the Department.
- E. "Administration" refers to eligible administrative and planning costs as provided in 24 CFR 92.207.

**2. General Set-Up Requirements**

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

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

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

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

**EXHIBIT B**

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

**4. Project Disbursement Requirements**

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

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

**5. Project Completion Requirements**

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

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

**6. General Conditions of Disbursement**

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



**EXHIBIT B**

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

EXHIBIT D

HOME TERMS AND CONDITIONS

1. Effective Date and Commencement of Work

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

2. Sufficiency of Funds

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

3. Disencumbrance of Funds and Termination

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

EXHIBIT D

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

4. **Litigation**

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

5. **Waivers**

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

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

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

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

The HOME Recipient agrees to comply with all federal laws and regulations applicable to the HOME Program.

**EXHIBIT D**

**8. Uniform Administrative Requirements**

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

**9. Project Requirements**

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

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

In accordance with 24 CFR 92.250 and Section 8207 of the State HOME Regulations, the HOME Recipient shall demonstrate to the Department, in a format identified by the Department, that the amount of HOME funds invested on a per-unit basis shall not exceed the limits established under section 221(d)(3) of the National Housing Act (12 USC 17151) for elevator-type projects that apply to the area where the housing is located, and that the HOME funds in combination with other financing and assistance, is not more than is necessary to provide housing to low-income households. The HOME Recipient shall provide a formal certification concerning the governmental assistance provided or to be provided to a project. If no such governmental assistance is to be provided at the time of the application or in the future, the HOME Recipient shall certify to that fact. The HOME Recipient shall also certify that should other governmental assistance be sought in the future, the Department shall be promptly notified. Activities assisted under this Agreement are subject to the underwriting and subsidy layering requirements established by the Department for each activity pursuant to the requirements of 24 CFR 92.250 and 92.254.

For all First-Time Homebuyer activities, the HOME Recipient shall submit the final HUD-1 (settlement statement from the escrow company) at the same time the Individual Project Set-Up Report is submitted to the Department.

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

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

## EXHIBIT D

### C. Property Standards

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

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

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

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

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

The HOME Recipient shall ensure that manufactured housing assisted with HOME funds complies with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of "reconstruction" must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.43f(c)(i). All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of "reconstruction" must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability. In HOME-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of



**EXHIBIT D**

local or state codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285. Manufactured housing that is rehabilitated using HOME funds must meet HOME property standards requirements of this section, as applicable. The HOME Recipient shall document this compliance in accordance with inspection procedures established pursuant to 24 CFR 92.251, as applicable.

**D. Affordability**

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

1) Rental New Construction Activities:

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

2) Rental Rehabilitation Activities:

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

3) Homeowner Activities:

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

**EXHIBIT D**

**E. Income Determination**

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

**F. Fees and Other Project-Related Soft Costs**

Pursuant to 24 CFR 92.214, fees such as loan servicing fees, origination fees, or other fees related to the cost of administering HOME funds cannot be charged to low-income beneficiaries except as expressly authorized by the Department pursuant to the requirements of this section.

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

**G. Written Agreements**

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

**H. Providing Additional HOME Funds to a Project**

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

**I. Repayment of Funds**

If a HOME Recipient does not complete a project within four years of the date of commitment of funds, the project is considered to be terminated in IDIS and the HOME Recipient must repay the funds to the Department for repayment to the State's HOME Investment Trust Fund in accordance with 24 CFR 92.503(b). The Department may

## EXHIBIT D

request a one-year extension of this deadline in writing, by submitting information about the status of the project, steps being taken to overcome any obstacles to completion, proof of adequate funding to complete the project, and a schedule with milestones for completion of the project for HUD's review and approval.

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

### J. Tenant-Based Rental Assistance

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

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

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

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

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

## 10 Equal Opportunity Requirements and Responsibilities

### A. Executive Order 11063 (1962)

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

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

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

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

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

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

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

**E. Affirmative Marketing**

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

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

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

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

During the performance of this Agreement, the HOME Recipient assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, familial status, religion, or belief, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 USC 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975 and all implementing regulations.

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

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

**I. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or more.**

All solicitations for bids and all construction contracts and subcontracts of \$10,000 or more issued by the HOME Recipient are required to include the following:



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- 1) The Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246) The HOME Recipient furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts as required by Executive Order 11246;
- 2) The Standard Equal Opportunity Clause (41 CFR 60 - 1.4); and,
- 3) The Standard Equal Employment Opportunity Construction Contract Specifications (41 CFR) 60 - 4.3).

**11. Environmental Review**

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

First-Time Homebuyer Acquisition with Rehabilitation (FTHB):

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

Owner-Occupied Rehabilitation (OOR):

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

**12. Displacement, Relocation, and Acquisition**

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

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**13. Labor Standards/Prevailing Wage**

**A. Federal Requirements**

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

**B. Department Requirements**

- 1) When funds provided through this Agreement are used for construction work, or in support of construction work, the HOME Recipient shall ensure that the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of the State of California Labor Code (State Labor Code) (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- 2) For the purposes of this requirement "construction work" includes, but is not limited to, rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part with HOME funds. All construction work shall be done through the use of a written contract (the "construction contract") with a properly licensed building contractor incorporating these requirements. When the construction contract is between the HOME Recipient and a licensed

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contractor, the third party shall serve as the "awarding body." The construction contract and any amendments thereto shall be subject to the prior written approval of the Department. Prior to any disbursement of funds, including but not limited to, release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid as required by Section 1720 of the State Labor Code.

**14. Lead-Based Paint Hazards**

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

**15. Conflict of Interest**

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

**16. Interest of Certain Federal Officials**

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

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

- A. The HOME Recipient shall require that the language of this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.
- C. "The undersigned certifies, to the best of his or her knowledge and belief, that:

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- 1) No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions."

**18. Bonus or Commission Prohibition**

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

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

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

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- 3) Comply with the applicable Labor Standards/Prevailing Wage Provisions of Paragraph 12 of this Exhibit;
- 4) Comply with the applicable Equal Opportunity Requirements described in Paragraph 9 of this Exhibit;
- 5) Maintain at least the minimum State-required Workers' Compensation Insurance for those employees who shall perform the Work or any part of it; and,
- 6) Maintain, if so required by law, unemployment insurance, disability insurance and liability insurance in an amount to be determined by the Department, which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the contractor or any subcontractor in performing the Work or any part of it.

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

- A. Preamble: As a condition of receipt of federal funds under this Agreement, the HOME Recipient and all of its contractors and their subcontractors are required to provide the certification set forth below in Paragraph E, and include this certification in their contracts.
- B. This certification is required by the federal government and contains terms defined in Executive Order 12549, a copy of which is available from the Department. Generally speaking, for purposes of this Agreement: (1) "prospective lower tier participant" refers to the HOME Recipient and any other party or person that shall receive funds from this Agreement, such as general contractors and their subcontractors; (2) "lower tier transaction" refers to contracts let by the HOME Recipient or HOME Recipient's contractors utilizing funds provided through this Agreement; and (3) "this proposal" refers to the HOME Recipient's HOME application and any bid or application from a prospective lower tier participant.
- C. By signing this Agreement, the HOME Recipient is providing the certification set forth below. The HOME Recipient shall provide immediate written notice to the Department if at any time the HOME Recipient learns that its certification was erroneous when submitted or has become erroneous.
- D. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
  - 1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  - 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.



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- E. By signing this Agreement the HOME Recipient agrees that it shall not knowingly enter into any lower tier transaction with a person or entity that is proposed for debarment under 48 CFR 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
- F. By signing this Agreement, the HOME Recipient agrees that it shall include the above certification in all lower tier transactions to which it is a part; and it shall require that each of its contractors include the certification in their subcontracts.

**21. Faith-Based Activities**

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

**22. Insurance**

- A. The HOME Recipient shall have and maintain in full force and effect during the term of this contract:
  - 1) Comprehensive general liability insurance in the amount of not less than one million dollars (\$1,000,000);
  - 2) Worker's compensation insurance; and,
  - 3) Other forms of insurance, at such levels, as may be determined by the HOME Recipient and the Department to be necessary for specific components of the Work listed in Exhibit A.
- B. The HOME Recipient agrees to furnish satisfactory evidence of the above listed insurance coverage to the Department upon request. Insurance coverage shall not be canceled or changed unless written notice is sent to the State thirty (30) days prior to the effective date of the action. The Department reserves the right to waive or modify these insurance coverage requirements upon demonstration of cause satisfactory to the Department, and contingent upon the HOME Recipient providing evidence of an alternative to conventional insurance sufficient to provide equivalent protection.

**23. Records**

- A. The HOME Recipient shall maintain the program, project, financial, program administration, and federal requirement records specified in 24 CFR 92.508 for inspection by the Department.

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- B. All records specified in 24 CFR 92.508 shall be retained for the time periods specified in Section 28 below. These records shall include, but are not limited to the following: (i) a full description of each project assisted with HOME funds, including the location (address of each unit), form of HOME assistance, and the units or tenants assisted with HOME funds; (ii) the source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20; and records to document the eligibility and permissibility of the project costs; (iii) records demonstrating that each project meets the minimum per-unit subsidy amount of 92.205(c), the maximum per-unit subsidy amount of 92.250(a), and the subsidy layering and underwriting evaluation adopted in accordance with 92.250(b); (iv) records (e.g., inspection reports) demonstrating that each project meets the property standards of 92.251 at project completion; (v) records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of 92.209 (c), including any targeting requirements, the rent reasonableness requirements of 92.209 (f), the maximum subsidy provisions of 24 CFR 92.209(h), property inspection reports and calculation of the HOME subsidy and (vi.) records (written agreements) demonstrating compliance with the written agreement requirements in 92.504.
- C. If so directed by the Department upon termination of this Agreement, the HOME Recipient shall cause all records, accounts, documentation and all other materials relevant to the Work to be delivered to the Department as depository.

**24. Reporting**

- A. Commencing with the effective date of this Agreement and continuing through the acceptance of the Project Completion Report in IDIS and no later than thirty (30) days after the end of each calendar quarter, the HOME Recipient shall submit a quarterly performance report to the Department on forms provided by the Department.
- B. For "Rental Project" and "First-Time Homebuyer Project" activities, commencing with the effective date of this Agreement and continuing through the acceptance of the Project Completion Report in IDIS and no later than the tenth business day of the following month, the HOME Recipient shall submit a "State HOME Project Monthly Status Report " to the Department on forms provided by the Department.
- C. Upon project completion, and annually thereafter during the required period of affordability, the HOME Recipient shall submit on an annual basis to the Department all HOME monitoring documentation necessary to ensure that HOME Recipients are in continued compliance with federal and State regulations. Such documentation requirements and the annual submission deadline shall be provided by the Department.
- D. Upon acceptance of the Project Completion Report in IDIS and throughout the affordability period, the HOME Recipient shall submit on July 1, and no later than July 31, an Annual Performance Report on a form provided by the Department.

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**25. Breach and Remedies**

A. The following shall constitute a breach of this Agreement:

- 1) HOME Recipient's failure to comply with the terms of this Agreement.
- 2) HOME Recipient's failure to comply with, or HOME Recipient's failure to assure that all recipients of HOME funds comply with, applicable state and federal HOME rules and regulations.
- 3) Use of, or permitting the use of, HOME funds provided under this Agreement for any ineligible costs or for activities not approved under this Agreement.
- 4) Any failure to comply with the deadlines set forth in Exhibit A.
- 5) HOME Recipient's failure to assure that the appropriate security documents and lien agreements applicable to the Work are executed and, where appropriate, recorded.
- 6) HOME Recipient's failure to monitor the progress of the Work and the activities of any recipient of HOME funds provided under this Agreement in a commercially reasonable manner.
- 7) HOME Recipient's failure to exercise commercially reasonable due diligence in the enforcement of the security documents and lien agreements.
- 8) Lack of continued capacity to carry out the approved Work either on behalf of the HOME Recipient or by the HOME Recipient named in this Agreement.

B. In addition to any other remedies that may be available to the Department in law or equity for breach of this Agreement, the Department, after written notice and reasonable time to cure, may:

- 1) Bar the HOME Recipient from applying for future HOME funds;
- 2) Revoke any other existing HOME award(s) to the HOME Recipient;
- 3) Withhold any funds remaining undisbursed under this Agreement;
- 4) Require the return of any unexpended HOME funds disbursed under this Agreement;
- 5) Require repayment of HOME funds disbursed and expended under this agreement;
- 6) Require the immediate return to the Department of all funds derived from the use of HOME funds including, but not limited to program income, recaptured funds and returned funds; and,

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7) Require the HOME Recipient to assign the security documents and lien agreements for the Work to the Department.

C. All remedies available to the Department are cumulative and not exclusive.

**26. Inspections**

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

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

**27. Project Site**

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

**28. Security Documents and Lien Agreements**

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

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

A. The HOME Recipient agrees that the Department or its designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement. The HOME Recipient agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and

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other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Government Code Section 8546.7. The HOME Recipient further agrees to maintain such records for a period of five (5) years after final payment under this Agreement, unless a longer period of records retention is stipulated.

- B. The HOME Recipient further agrees to retain all records for a period of five (5) years after the final payment under this Agreement, or as specifically stipulated below.
- 1) Rental housing project records shall be retained for five (5) years after the project completion date. The records that specify individual tenant income verifications, project rents and project inspections must be retained for five (5) years after the affordability period terminates. Tenant-based rental assistance project records shall be retained for five (5) years after the period of rental assistance terminates.
  - 2) Homeownership housing project records shall be retained for five (5) years after the project completion date. The documents imposing recapture/resale restrictions must be retained for five years after the affordability period terminates.
  - 3) All written agreements must be retained for five (5) years after this Agreement terminates.
  - 4) Records covering displacements and acquisition must be retained for five (5) years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment.
  - 5) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained until completion of the action and resolution of all issues which arise from it.
  - 6) The HOME Recipient also agrees to include in any contract that it enters into in an amount exceeding \$10,000, the Department's right to audit the contractor's records and interview their employees. The HOME Recipient shall comply with the caveats and be aware of the penalties for violation of fraud and for obstruction of investigation as set forth in California Public Code Section 10115.10.
- C. The determination by the Department of the eligibility of any expenditure shall be final.
- D. Pursuant to 24 CFR §85.26 and OMB Circular A-133, a HOME Recipient who received in excess of \$500,000 in federal funds annually, shall cause to be performed an annual single or program-specific audit conducted for that year by the close of each fiscal year in which this Agreement is in effect, of the following:
- 1) The financial statements and a schedule of federal awards and the auditor's report on the statements and the schedule;
  - 2) A written report of the independent auditor's understanding of the internal control structure and the assessment of control risk;

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- 3) The auditor's report on compliance; and,
  - 4) Other items as stipulated in OMB Circular A-133.
- E. The audit shall be performed by an independent certified public accountant. Selection of an independent audit firm shall be consistent with procurement standards contained in 24 CFR 85.36.
- F. The HOME Recipient shall notify the Department of the auditor's name and address immediately after the selection has been made. The contract for audit shall allow access by the Department to the independent auditor's working papers.
- G. The HOME Recipient shall submit three copies of all required audit reports to the State Controller's Office within 30 days after receipt of the auditor's report, nine months after the end of the required audit period, unless a longer period is agreed to in advance, to:

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

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

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

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



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30. **Signs**

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

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

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

32. **Conditional Reservation of Funds**

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

33. **Federal Property Management Standards**

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

34. **Eligible Uses of Program Income**

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

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

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**SPECIAL CONDITIONS**

These Special Conditions are specific for this Standard Agreement.

1. None.