

**CITY OF FORT COLLINS DEVELOPMENT CONTRACT
FOR HOME INVESTMENT PARTNERSHIP FUNDING**

PART A. – Agreement Information

Parties	City of Fort Collins, a Colorado municipal corporation (“City”) and _____, a Colorado nonprofit corporation (“Owner”)		
City Address and Contract Representative	Affordable Housing Program Social Sustainability Department City of Fort Collins PO Box 580 (222 Laporte Ave, 80521) Fort Collins, CO 80522-0580		
Owner Address and Contract Representative	Executive Director Owner Organization Name Address City, State, Zip		
CHDO <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Developer <input type="checkbox"/> Sponsor <input type="checkbox"/> Owner	CHDO Name (if not Owner):		
Owner DUNS Number			
Federal ID Number (EIN)			
“Effective Date”	Date of last signature below.		
Dates of City’s obligation to provide funding	Start Date:		End Date: _____
Funded Amount (“Loan ”)			
Payment to be made by:	<input type="checkbox"/> Advance payment; OR <input type="checkbox"/> Reimbursement.		
“Repayment Amount”			
Funding Source & CFDA #	Source _____ CFDA# _____		
HOME Eligible Activity	<input type="checkbox"/> New Construction; <input type="checkbox"/> Rehab; <input type="checkbox"/> Acquisition		
Basic Total Number Units			
Number of HOME Units			
Name of Project (“Project”)			
Type of Project			
Project Location			
Project “Completion Date”			
Project “Affordability Period”	Twenty (20) years from Completion Date		
HOME Fiscal Year			
Is Contract subject to Davis-Bacon requirements in Exhibit E?	<input type="checkbox"/> Yes <input type="checkbox"/> No If YES, reason: _____ [e.g., HOME funds will be expended and the Project has 12 HOME units or more]		
Compliance Required with C.R.S. § 24-76.5-101 (HB1023) (Proof of Lawful Presence)	<input type="checkbox"/> Yes <input type="checkbox"/> No If YES, Exhibit C applies.		

Exhibits attached and incorporated into this Agreement by reference (check all that apply):

- Exhibit A** – Scope of Services (# of pages): ___
- Exhibit B** – Project Budget (# of pages): ___
- Exhibit C** – Proof of Lawful Presence (# of pages): 2
- Exhibit D** – Additional Federal Requirements (# of pages): 6
- Exhibit E** – Davis-Bacon and Related Acts (# of pages): 2
- Exhibit F** – HOME Occupancy & Rent Report (# of pages): 1
- Exhibit G** – Monitoring Procedures: Real Property Acquisition & Uniform Relocation Act (# of pages): 3
- Exhibit H** – Section 3 Compliance Form (# of pages): 1

Part B. – Agreement Terms and Conditions

THIS DEVELOPMENT CONTRACT (“**Contract**”) is entered into by and between the City and the Owner and shall be effective on the Effective Date. The City has applied for and received funds from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383 and under Title II of the Cranston-Gonzales National Affordable Housing Act (“**HOME Funds**”), and wishes to engage the Owner to assist the City in utilizing such funds.

NOW, THEREFORE, in consideration of the mutual promises of the parties, it is agreed as follows:

I. Scope of Services/Performance Monitoring.

A. The Scope of Services to be rendered by the Owner as a condition of receiving the Loan is attached as **Exhibit A** hereto and made a part of this Contract. The Owner will develop the Project on the “**Project Property**”, as described in Exhibit A. Owner agrees to perform the work described in Exhibit A in compliance with all provisions of this Contract. Owner warrants and represents that it has the requisite authority and capacity to perform all terms and conditions on Owner's part to be performed hereunder.

B. The City will monitor the performance of the Owner against the goals and performance standards stated in this Contract. Substandard performance as determined by the City will constitute non-compliance with this Contract. If the Owner does not take action to correct such substandard performance within thirty (30) days after being notified by the City, the City may initiate contract suspension or termination procedures.

II. Term of Contract and Time of Performance.

A. Except as provided in Section VI, H, below, this Contract shall be in effect (the “**Term**”) until the earlier of: (i) repayment to the City of the Loan; or (ii) expiration of the Affordability Period (as defined on Exhibit A hereto). The City's obligation to provide funding under this Contract shall be contingent upon full compliance by Owner with all terms and conditions set forth herein.

B. The Project shall commence upon the full and proper execution of this Contract and shall be completed on or before the Completion Date listed in Part A above. However, the Project time of performance may be extended by letter, subject to mutual agreement of the City and the Owner and approval of the City's Human Services and Housing Funding Board, in its sole discretion. To initiate this process, a written request shall be submitted to the City by the Owner at least sixty (60) days prior to the Completion Date and shall include a full justification for the extension request. In no case may the time of performance be extended more than two (2) years beyond the Completion Date.

III. Payment.

A. Funding Amount. If the Owner is not in default hereunder, and subject to the City's receipt from the Department of Housing and Urban Development of the HOME Funds, and provided that the Contract and Scope of Services are eligible expenditures of the HOME Funds, the City agrees to pay the Loan to the Owner.

B. Advance Payment. The City will pay the Owner in advance its allowable costs for the Project as identified in this Contract, not to exceed the Loan amount, upon presentation of properly executed forms as provided or approved by the City, if the Owner is considered a low-risk grantee and the Owner maintains or demonstrates the willingness to maintain:

- (1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Owner, and
- (2) Financial management systems that meet the standards for fund control and accountability as established in 2 CFR Part 200, including the ability to track and remit interest amounts over \$500 per year earned on advance payments.

Advance payments must be limited to the minimum amounts needed and timed to be in accordance with the Owner's actual, immediate cash requirements in carrying out the Project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the Owner for direct Project costs and the proportionate share of any allowable indirect costs. The Owner may not request disbursements when not required for payment of eligible costs. The Owner must make timely payment to contractors in accordance with the contract provisions.

C. Reimbursement. If the Owner is not able to meet the requirements for advance payments, or if the Owner requests payment by reimbursement, the City shall reimburse the Owner its allowable costs for the services identified in this Contract, not to exceed the Loan amount, upon presentation of invoices which Owner certified are true and correct copies of payments due on behalf of the Owner, for an activity covered by this Contract and made in accordance and compliance with the Scope of Services. The Owner may not request reimbursements under this Contract until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

D. Allowable Costs. Allowable costs shall mean those necessary and proper costs identified in the Owner's application and approved by the City unless any or all such costs are disallowed by the State of Colorado or the United States Department of Housing and Urban Development

E. Priority of Funds. The Owner agrees to utilize funds available under this Contract to supplement rather than supplant funds otherwise available. To the extent available, the Owner must disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments. Such payments or reimbursements shall constitute full and complete payment by the City under this Contract. In no event

shall the City's obligation to make payment to the Owner hereunder exceed the Loan amount stated in Part A.

F. Withholding or Cancellation of Funds. The City reserves the right to withhold payments pending timely delivery of program reports or documents as may be required under this Contract. The Owner agrees that funds determined by the City to be surplus upon completion of the Project will be subject to cancellation by the City. The City shall be relieved of any obligation for payments if funds allocated to the City cease to be available for any cause other than misfeasance of the City itself. Payment may be suspended by the City in the event of a default by Owner. Payments may also be contingent upon the Owner's financial management system meeting the requirements of 2 CFR Part 200.

G. Retainage. For projects funded with HOME dollars, the City will withhold a retainage of 10% of the Loan amount until the Owner has successfully completed development of the Project through rental of all units and submittal to the City of all required documentation.

H. Funds Provided as a Loan. The Loan is provided as a "due-on-sale loan", except as otherwise specified in the Scope of Services, Promissory Note or Deed of Trust. The Loan shall not bear interest except that the Owner shall pay five percent (5%) of the total Loan amount as interest to cover the cost of administering the loan, which payment shall be made to the City upon repayment of the Loan. The "Repayment Amount" in Part A reflects the total amount owing. The Loan is due in full upon sale or transfer of the Project Property, unless such sale or transfer is to another qualified entity approved in advance by the City in its reasonable discretion, and this Contract is assigned to and assumed by such entity. The Loan is also due in the event the Project fails to meet the affordability requirements specified on Exhibit A, or a national objective, and such failure is not cured within sixty (60) days of receipt of written notice from the City, or if the Owner commits fraud, deceit or misrepresentation in applying for or obtaining funding.

IV. Notices.

Notices required to be given under this Contract shall be in writing and hand delivered or sent by U.S. Mail or overnight commercial courier and directed to the addresses listed in Part A. Notices shall be deemed received upon delivery if delivered by hand, the next business day if sent by commercial courier, or on the third business day after mailing if sent by U.S. Mail.

V. Special Conditions.

A. Prohibition Against Employing Workers Without Authorization [Not Applicable After June 30, 2022.]

In compliance with C.R.S. § 8-17.5-101, Owner represents and agrees that:

(a) As of the date of this Contract, Owner does not knowingly employ or contract with a worker without authorization who will perform work under this Contract; and Owner will participate in the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program (the "E-verify Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

(b) Owner shall not knowingly employ or contract with a worker without authorization to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Owner that the

subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this Contract.

(c) Owner has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through either the E-verify Program or the employment verification program established by the State of Colorado, pursuant to Section 8-17.5-102(5)(c), C.R.S. (the "Department Program").

(d) Owner is prohibited from using the E-verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

(e) If Owner obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with a worker without authorization, Owner shall:

(i) Notify such subcontractor and the City within three days that Owner has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and

(ii) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the worker without authorization; except that Owner shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

(f) Owner shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

(g) If Owner violates any provision of this Contract pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City may terminate this Contract. If this Contract is so terminated, Owner shall be liable for actual and consequential damages to the City arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

(h) The City will notify the Office of the Secretary of State if Owner violates this provision of this Contract and the City terminates the Contract for such breach.

(i) The requirements of this paragraph V.A. will terminate on July 1, 2022.

VI. General Conditions.

A. Compliance with Laws. The Owner, in performance of this Contract, agrees to comply with all applicable Federal, State and Local laws, regulations and ordinances, and other policies and guidelines established for the City of Fort Collins including, but not limited to, the rules and regulations promulgated by the U.S. Department of Housing and Urban Development (HUD), including the requirements of 24 CFR, Part 92, the HUD regulations concerning the Home Investment Partnership (HOME) Program; 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, adopted by HUD at 2 CFR Part 2400; all federal regulations and policies issued pursuant to these regulations; Title II of the Cranston-Gonzales National Affordable Housing Act and all provisions of the Americans with Disabilities Act, and all regulations interpreting or enforcing such Acts; and the specific federal requirements listed in **Exhibit D**. The Owner further agrees to comply with all state and local laws relating to non-discrimination. These include, but

are not limited to: Chapter 13, Article II, of the City Code and Title 24, Article 34, Parts 3 through 7 of the Colorado Revised Statutes.

All references in this Contract to federal, state or local laws, regulations or policies shall be deemed to refer to such laws, regulations or policies as are in effect as of the date of this Contract or as may hereafter be amended.

B. Independent Contractor.

Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Owner shall at all times remain an independent contractor with respect to the services to be performed under this Contract. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation insurance as the Owner is an independent contractor.

C. Liability.

As to the City, Owner agrees to assume the risk of all personal injuries, including death resulting therefrom, to persons, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in connection with or arising out of the performance or nonperformance of this Contract by Owner or by the conditions created thereby. Owner further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against any and all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Contract or out of any violation by Owner of any statute, ordinance, rule or regulation.

D. Workers' Compensation.

The Owner shall provide Workers' Compensation insurance coverage for all its employees involved in the performance of this Contract.

E. Insurance and Bonding.

The Owner shall carry sufficient insurance coverage to protect Contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum, shall purchase blanket fidelity bond covering all of Owner's employees in an amount equal to cash advances from the City. Specifically, the Owner will protect the City's investment by providing Property Insurance, Workers Compensation and Employer's Liability Insurance, if applicable, Commercial General Liability Insurance and All Risk Property Damage Insurance.

F. Grantor Recognition.

The Owner shall ensure recognition of the role of the City in providing services through this Contract. All activities, facilities and items utilized pursuant to this Contract shall be prominently labeled as to funding source. In addition, the Owner will include a reference to the support provided herein in all publications made possible with funds made available under this Contract. Such labeling and/or reference shall include the following credit line: "This project is partially supported by Community Development Block Grant and/or HOME funding from the City of Fort Collins."

G. Amendments.

The City and Owner may amend this Contract at any time, provided that such amendments make specific reference to this Contract and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Contract, nor relieve or release the City or Owner from its obligations under this Contract, except as expressly provided therein.

The City may, in its discretion, amend this Contract to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the Scope of Services, or schedule of the activities to be undertaken as part of this Contract, such modifications will be incorporated only by written amendment signed by both the City and Owner.

H. Suspension or Termination and Default.

1. Owner may terminate this Contract at any time by giving written notice to the City of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. Partial terminations of the Scope of Service may only be undertaken with the prior approval of City. If the Owner terminates this Contract prior to completion of Scope of Services, including any required period of affordability, all funds previously paid to Owner by the City pursuant to this Contract must be repaid to the City upon such termination.
2. The City may also suspend or terminate this Contract, in whole or in part, if Owner materially fails to comply with any term of this Contract, or with any of the rules, regulations or provisions referred to herein, after the thirty (30) day notice and cure period set forth in section VI.H.5; and the City may declare the Owner and/or affiliates of the Owner ineligible for any further participation in City Competitive Process contracts for funding, in addition to other remedies as provided by law. In the event there is probable cause to believe the Owner is in noncompliance with any applicable laws, rules, or regulations, the City may withhold up to one hundred (100) percent of said Contract funds until such time as the Owner is found to be in compliance by the City or is otherwise adjudicated to be in compliance, or may exercise the City's rights under any security interest of the City arising hereunder.
3. In the event of any termination pursuant to this section, the Owner shall remit to the City all monies previously paid by the City to the Owner under this Contract, and all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by Owner under this Contract shall, at the option of the City, become the property of the City, provided, however, that Owner shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.
4. This Contract, and the City's obligations under it, will automatically terminate in the event of suspension or non-receipt of HOME Funds by the City.
5. Default is defined in this Contract as noncompliance with requirements as contained in the Contract, use of funds for something other than the stated purpose or material breach of the terms and conditions of funding. In particular a default will occur if the housing

acquired or improved by City funding does not meet the affordability requirements for the duration of the Term and/or ceases to meet a national objective for the duration of the Term.

6. Remedies: If Owner fails to cure a default following written notice by the City and a period of thirty (30) days within which to cure, the City reserves the right to (1) direct the Owner to prepare a corrective action plan and timetable to correct the default, (2) direct the Owner to reimburse the City for any amounts provided and impose monetary fines or penalties; or (3) terminate this Contract and pursue any remedies available to it at law or in equity, including, without limitation, damages, specific performance, and criminal remedies.

I. Repayment of Funds

Affordability requirements remain with the Project Property regardless of change of ownership during the Affordability Period. Payment in full is required in the event of: sale or transfer of the Project Property encumbered by the Loan; or in the event the Project fails to meet eligibility requirements; or if the Owner commits fraud, deceit or misrepresentation in obtaining funding.

If the Project includes development of property to be sold to an owner-occupant at a later date, and involves funding by the HOME program, HOME recapture rules apply.

J. Restrictive Covenants

An Agreement of Restrictive Covenants detailing affordability requirements in a form reasonably acceptable to the City ("**Restrictive Covenants**") will be placed on all properties that receive Project funding from the City, which Restrictive Covenants will be used to enforce the affordability requirements of the Project as specified in Exhibit A.

K. Third-Party Beneficiaries. This Contract is entered into by and between the City and the Owner, and except as provided herein, is solely for the benefit of such parties and their respective successors in interest and assigns and does not create rights or responsibilities in any third parties except as expressly described herein.

VII. Administrative Requirements.

A. Financial Management.

1. Accounting Standards.

The Owner agrees to comply with, and administer the Project in conformance with, 2 CFR Part 200, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls and maintain necessary source documentation for all costs incurred.

2. Suspension and Debarment.

By executing this Contract, Owner verifies and affirms that it has not been suspended or debarred from participating in or receiving federal government contracts, subcontracts, loans, grants or other assistance programs.

B. Documentation and Record-keeping.

1. Records to be Maintained.

The Owner shall maintain all records necessary for Owner to comply, and to allow the City to comply, with federal HOME requirements and that are pertinent to the activities to be funded under this Contract. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken including the location of the Project, the form of assistance provided and the per-unit subsidy;
- b. Records required to determine the eligibility of activities, including minimum and maximum per-unit subsidy limits, household income, and lease requirements and tenant protections for each household;
- c. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with HOME assistance;
- d. Records documenting compliance with the fair housing and equal opportunity components of the HOME program;
- e. Financial records as required by 2 CFR Part 200, including documents to substantiate sources and uses of all funds in the Project, and disbursement of all funds; and
- f. Other records necessary to document compliance with Subpart H of 24 CFR 92 including Section 3 actions, affirmative marketing and minority-owned and female owned business data, displacement records, Davis-Bacon records, lead paint compliance records and records supporting exceptions to the conflict-of-interest prohibition.

2. Retention.

The Owner shall retain all records pertinent to expenditures incurred under this Contract for a period of five (5) years after the termination of all activities funded under this Contract, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Contract shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after he/she has received final payment.

3. Client Data.

The Owner must maintain the following data for the most recent five (5) year period, until five (5) years after the Affordability Period terminates:

- a. Client data demonstrating client eligibility for services provided, including, but not limited to:
 - client name and address,
 - income level or other basis for determining eligibility,
 - description of service provided,

- racial and ethnic data and single head-of-household data (to the extent Owner can, with reasonable efforts, obtain such information from the client);
- b. Data on affordability and income targeting for each household;
 - c. Records of individual tenant income verifications;
 - d. Project rents; and
 - e. Project unit inspections.

All information described in this paragraph 3 shall be made available to City monitors or their designees for review upon request.

4. Property Records.

The Owner shall maintain real property inventory records which clearly identify Project properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria.

5. Close-outs.

The Owner's obligations to the City shall not end until all close-out requirements are completed including completion of the Affordability Period. Activities during this close-out period may include (as applicable), but are not limited to: making any final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.

6. Audits and Inspections.

- a. All Owner records with respect to any matters covered by this Contract shall be made available to the City, its designee or the Federal Government, at any time during normal business hours, as often as the City deems necessary, to audit, examine and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the City within thirty (30) days after receipt by the City. Failure of the Owner to comply with the above requirements will constitute a violation of this contract and may result in the withholding of future payments.
- b. Owner acknowledges that the federal funds subgranted to it are subject to the Single Audit of the City. The City, the U.S. Department of Housing and Urban Development, the Comptroller General of the U.S. or any of their duly authorized representatives or auditors, shall have access to any books, documents, papers and records of the Owner or its auditors which are directly pertinent to the Contract for the purpose of the City's Single Audit. All financial records pertaining to this Contract upon completion shall remain the property of the City.
- c. If Owner expends \$750,000 or more of federal awards (including, but not limited to funds received from the City pursuant to this Contract), within any of its fiscal years during which this Contract is in force, Owner agrees to have a Single Audit performed, at no cost to the City, in accordance with the requirements of 2 CFR Part 200 Subpart F. If the expenditures of \$750,000 or more indicated above are all pursuant to this Contract, Owner may elect to have a program-specific audit

conducted in accordance with 2 CFR Part 200 Subpart F. Said audit shall be submitted to the Office of the Controller of the City within the earlier of 30 calendar days after receipt of the auditor's report, or nine (9) months after the end of Owner's fiscal year for which the audit is performed.

C. Monitoring and Evaluation.

The City reserves the right and is required to monitor and evaluate the progress and performance of the Owner to assure that the terms of this Contract are being satisfactorily met in accordance with City and other applicable monitoring and evaluating criteria and standards. Owner shall cooperate with City relating to such monitoring and evaluation, and make available to the City any documents or other information requested by the City or relevant to the City's monitoring and evaluation.

D. Reporting and Payment Procedures.

1. Budgets.

The specific use of the funds provided to Owner under this and other City grant programs is included in Exhibit A (Scope of Services), and a detailed contract budget is attached as **Exhibit B** and incorporated herein by this reference. The City and the Owner may revise the budget from time to time in accordance with existing City policies, by amendment of this Contract.

2. Program Income.

To the extent required under 2 CFR Part 200, the Owner shall report to the City yearly all program income generated by activities carried out with the Loan, including, but not limited to, any rental income or income derived from the sale of the Project Property. The use of Program Income by the Owner shall comply with the requirements set forth at 24 CFR Part 92 Subpart K. By way of further limitations, the Owner may use such income during the Contract funding period for activities described in the attached Scope of Services and shall report any such Program Income received and the portion attributed to the Project, and reduce requests for additional funds by the amount of any such Program Income balances on hand. All program income not used in accordance with this Section shall be returned to the City at the end of the Contract period. Any interest earned on cash advances from the U.S. Treasury is not Program Income and shall be remitted promptly to the City.

3. Indirect Costs.

If indirect costs are charged, the Owner will develop an indirect cost allocation plan for determining the appropriate City share of administrative costs and shall submit such plan to the City for approval prior to submission of requests for any payments for the same.

4. Payment Procedures.

The City will pay to the Owner funds available under this Contract based upon information submitted by the Owner and consistent with any approved budget and City policy concerning payments. With the exception of advance payments, payments will be made

for eligible expenses actually incurred by the Owner, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund and program income balances available in Owner accounts. In addition, the City reserves the right to liquidate funds available under this Contract for costs incurred by the City on behalf of the Owner.

5. Progress Reports.

The Owner shall submit regular Progress Reports to the City on a quarterly basis until Project completion and on a yearly basis thereafter or as required by the Scope of Services. Quarterly reports shall include a narrative description of progress, percentage of work completed, funds expended, and any issues or problems. During any required period of affordability, the recipient will submit a yearly occupancy report in substantially the form attached as **Exhibit F**, and the City may require submission of a yearly audit.

E. Procurement.

1. Compliance.

To the extent required under 2 CFR Part 200, Owner shall comply with current City policy concerning the purchase of equipment using federal dollars and shall maintain an inventory record of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City if this Contract is terminated by either party prior to the expiration of the Term and the Loan is not repaid upon such termination, except as otherwise specifically provided.

2. Applicable Standards.

The Owner shall procure, utilize and dispose of materials in accordance with the procurement standards set forth in 2 CFR Part 200 Subpart D.

3. Property Acquired With Program Funds.

Owner agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with the Loan, as set forth in Exhibit A. In the event Owner ceases to use a personal asset or real property acquired or improved with the Loan, the Owner shall either repay the Loan or transfer the personal asset or real property to the City, or pay to the City a sum equal to its fair market value, less any portion of the value attributable to expenditures of non-Loan funds for the acquisition of, or improvement to, the asset or property. The Owner shall transfer to the City any amount of the Loan on hand at the time of expiration of this Contract and any accounts receivable of Loan funds.

4. Liens on Items or Property.

Owner agrees to promptly provide to the City, through an appropriate lien, deed of trust, or other security instrument, evidence of such security interest in any personal or real property listed in Exhibit A acquired using funds provided under this Contract as the City may deem appropriate, based upon the nature of the Property, the Scope of Services, the potential term of the security interest, and such other reasonable considerations as the City may deem appropriate in protecting its interest in the Loan. Owner further agrees

that in addition to or in lieu of the above, the City may require the execution and recordation of Restrictive Covenants on real property purchased in connection herewith, in order to protect the City's interest in the funds provided hereunder.

VIII. Personnel and Participant Conditions.

A. Access to Records.

The Owner shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD, or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

B. Conduct.

1. Assignability.

This contract has been awarded based on the specific qualifications and representations of the Owner. Therefore, the Owner shall not assign or transfer (a) any interest in this Contract; (b) any of its rights or obligations under this Contract; or (c) its interest in any property obtained using the funds provided under this Contract (including but not limited to the Project Property as described in Exhibit A), without the prior **written** consent of the City; provided, however, that claims for money due or to become due to the Owner from the City under this Contract may be assigned to a bank, trust company or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City. For assignments and transfers requiring City consent, the Owner must give the City no less than thirty (30) days advance notice of the proposed assignment or transfer.

The City hereby consents to the following property transfers (each an "**Approved Disposition**"):

- a. Contingent interests or security interests granted in a deed of trust or other security agreement pursuant to obtaining funds to develop and construct the Project; and
- b. Any transfer by Owner of any interest in the Project or Project Property to a wholly-owned subsidiary or affiliate of Owner.

2. Conflict of Interest.

The Owner agrees to abide by the provisions of 24 CFR 92.356 with respect to conflict of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Owner further covenants that in the performance of this Contract, no person having such a financial interest shall be employed or retained by the Owner 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 City, the Owner, or of any designated public agencies that are receiving funds under the HOME Entitlement Grants.

3. Subcontracts.

a. Approvals.

Except as otherwise permitted herein, the Owner shall not enter into any subcontracts with any agency or individual for the performance of this Contract without the written consent of the City prior to the execution of such contract.

b. Monitoring.

The Owner will monitor all subcontracted services on a regular basis to assure compliance with both this Contract and the applicable subcontract. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content.

The Owner shall cause all of the provisions of this Contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Contract.

d. Selection Process.

The Owner shall undertake to ensure that all subcontracts let in the performance of this Contract shall be awarded in a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City, along with documentation concerning the selection process.

4. Copyright.

If this Contract results in any copyrightable material, the City reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for government purposes.

IX. Entire Agreement/Governing Law.

The provisions set forth in this Contract, all attachments to this Contract; the applicant's corresponding application for the City's Competitive Process, the applicant's verbal presentation before the Human Services and Housing Funding Board, the Promissory Note(s), the Deed(s) of Trust, the Agreement of Restrictive Covenants for Real Property and any other applicable legal documents, constitute the entire agreement between the parties hereto and no statement, promise, conditions, understanding, inducement or representation, oral or written, express or implied, which is not contained herein shall be binding or valid. This Contract shall be binding upon the parties, their agents, representatives, successors and assigns. This Contract shall be governed under the laws of the State of Colorado.

X. Owner Certification

By signing below, the Owner certifies that it understands the requirements of, will comply with, and, during the term of this Contract will remain in compliance with, Title VI of the Civil Rights Act of 1964 (42 USC

2000d) and its implementing regulations, including, but not limited to, Owner's nondiscrimination obligations under Paragraph B.2 on Exhibit B. Owner further certifies that all representations made by the Owner to the City either in this Contract or for the purpose of inducing the City to execute this Contract are true, correct, honest and forthright.

XI. Authority to Sign

The persons executing this Contract on behalf of the Owner represent that one or both of them has the authority to execute this Contract and to bind the Owner to its terms.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date of the most recent signatory.

THE CITY OF FORT COLLINS, COLORADO
A Municipal Corporation

By: _____ Date _____
_____, City Manager

ATTEST:

City Clerk

(Print name)

APPROVED AS TO FORM:

Sr. Assistant City Attorney

(Print name)

[Owner/Agency]

A Colorado nonprofit corporation [type of entity]

By: _____ Date _____
Title: Board president

By: _____ Date _____
Executive Director

Fed. I.D. Number: _____

EXHIBIT A

SCOPE OF SERVICES

1. Project Description and Objectives:

Payment of the funds provided under this Contract is conditioned on Owner using the funding as follows:

2. Number of units in the project and number of accessible units:

3. Legal Description of Project Property:

4. Number of units by bedroom size and the subsidy per unit: The project will contain (XX) units with XX one-bedroom units, and XX two-bedroom units. The project will contain (XX) floating HOME-assisted units with the subsidy per unit broken down as follows: [\$XX.]

The Owner must designate the HOME-assisted units not later than the time of initial unit occupancy and provide this information to the City through the submission of a HOME occupancy report in substantially the form attached as **Exhibit F**. Owner must also provide the City information regarding any unit substitution and filling of vacancies so that the Project remains in compliance with HOME rental occupancy requirements as specified in 24 CFR 92.504.

If a household occupying a HOME-assisted unit exceeds the income limitations described herein, the Owner shall designate the next-available unit as a HOME-assisted unit. Each substituted unit must be comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

5. Affirmative Marketing: Projects with five (5) or more units must have an Affirmative Marketing Plan, including minority and women outreach requirements and outreach to persons with disabilities, submitted to and approved by the City prior to the release of funds. The marketing plan must include a description of the practices that will be required to carry out the plan and the specific procedures to be followed to inform and solicit applications from persons needing special outreach. Records of such actions are to be kept for the duration of the Affordability Period which may be reviewed by the City on an annual basis. The Marketing Plan for the Project was received by the City on [REDACTED], 20[REDACTED].

6. Low and Moderate Income Benefit. The project is New Construction and the units are not currently occupied by households with income below 80% of the area median income. In accordance with the Owner's application for funding, Owner agrees to ensure that XX units are occupied by persons whose household income does not exceed 50% of area median income, XX units are occupied by households with income at or below 40% area median income, and XX units are occupied by households with income at or below 30% area median income. Income limits are listed on **Attachment 1**, attached and incorporated herein by reference, and may be amended as necessary. The Owner shall determine annual income of the Project beneficiaries using Section 8 Housing Program income definitions as per 24 CFR.

7. Affordability – For rental projects receiving HOME Funds: To ensure the housing is affordable to low and moderate income persons, XX% of the HOME-assisted rental units ([X] units) must have rents that meet the requirements of 24 CFR 92.252. Rents shall be the lesser of the Section 8 Fair Market Rents periodically established by HUD for the Section 8 rental assistance program for existing housing pursuant to 24 CFR Sec. 888.111, or rents which are 30% of adjusted income for households at 65% of area median income minus tenant paid utilities. In rental projects with five or more HOME-assisted rental units, at least 20 percent of the HOME-assisted units must be occupied by very low-income families where the rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as adjusted for household size.

For all City funding, regardless of changes in fair market rents and in median incomes over time, the qualifying rents are not required to be lower than the fair market rents for the project in effect at the time of contract execution. Area median incomes and Fair Market Rents are annually adjusted by the department of Housing and Urban Development (HUD). Rent and income levels must be reviewed annually by the City for compliance with the above requirements. The Initial HOME Rent and Utility Allowance schedule for the Project is set forth in **Attachment 2**, attached hereto and incorporated herein by reference. The Owner shall ensure that all of the units in the Project continue to be used to provide housing for low- and moderate- income persons at affordable rents. Any future adjustments to the Rent Schedule must be approved in writing by the City.

The City's required Affordability Period for new construction of affordable housing, whatever the funding source, is twenty (20) years from the date of final project completion regardless of repayment of the Loan and/or transfer or sale of the Project Property or any portion thereof.

8. Restrictive Covenant: The Owner shall be responsible for executing an Agreement of Restrictive Covenants that will ensure the assisted units remain affordable without regard to the term of any mortgage or the transfer of ownership for not less than the Affordability Period.

9. Tenant and Participants Protection: The lease between a tenant and an owner of rental housing must be for not less than one year, unless by mutual agreement between the tenant and the owner. Leases must specify that tenants must receive at least 30 days written notice prior to implementing a rent increase. The lease may not contain any of the prohibited lease terms listed in 24 CFR Part 92.253(b). In addition, all leases must comply with applicable state or local tenant-landlord laws.

10. Program Income: All revenues which result directly from an assisted activity shall be considered Program Income. Program Income includes, but is not limited to, principal and interest payments and proceeds from the sale of acquired assets. All Program Income is subject to all HOME specific to funding sources requirements, and must be reported quarterly by the Owner to the City.

11. Contract Administration. The City is responsible for providing the following information to the Owner yearly as it becomes available: income limits, rent limits, utility allowances and any changes to HUD requirements that may affect the management of the project. The Owner shall be responsible for the timely completion of the Scope of Services requirements.

12. City Monitoring. The City is responsible for the monitoring of this project for the duration of the Loan and required affordability period. The City will conduct on-site monitoring within 1 year of project close-out and every 3 years thereafter.

13. Housing Standards. The units provided by the Project will be built and maintained to, at a minimum, meet HUD's Housing Quality Standards (24 CFR, Section 982.401 and 92.251, incorporated by reference), including installation of broadband infrastructure, lead-based paint requirements at 24 CFR Part 35 and all applicable local and state building codes and standards, including the requirements of the City of Fort Collins Affordable Housing Underwriting Guidelines for rehabilitation or new construction, whichever is applicable. These standards must be met upon Project completion, and throughout the Affordability Period or until the Loan is repaid, whichever comes first.

14. If New Construction: The number of units required to be accessible is five percent of the total dwelling units which equals units for this project. Property standards apply through the Affordability Period.

EXAMPLE ONLY

**ATTACHMENT 1
To Exhibit A**

2021 Income Limits

Income Limits (effective date 6/01/21)
2021 Median Income: **\$95,900**
(Fort Collins/Loveland Metropolitan Statistical Area)
City of Fort Collins

Household Members

Income	1	2	3	4	5	6	7	8
100% AMI	\$67,200	\$76,800	\$86,400	\$95,900	\$103,600	\$111,300	\$119,000	\$126,600
80% AMI*	\$53,700	\$61,400	\$69,050	\$76,700	\$82,850	\$89,000	\$95,150	\$101,250
60% AMI*	\$40,320	\$46,080	\$51,840	\$57,540	\$62,160	\$66,780	\$71,400	\$75,960
50% AMI*	\$33,600	\$38,400	\$43,200	\$47,950	\$51,800	\$55,650	\$59,500	\$63,300
30% AMI*	\$20,150	\$23,000	\$25,900	\$28,750	\$31,050	\$33,350	\$35,650	\$37,950

AMI = Area Median Income

51-80%: Low Income (HOME High Income Limit)
31-50%: Very Low Income (HOME Low Income Limit)
0-30%: Extremely Low Income

**ATTACHMENT 2
To Exhibit A**

Rent and Utility Schedules

EXAMPLE ONLY

EXHIBIT B

PROJECT BUDGET

Please note: The following Project Budget details are from the Final Sources and Uses statement previously provided to the City, which is incorporated herein by this reference:

Funding Available: \$

Eligible Costs:

EXAMPLE ONLY

EXHIBIT C

(Page 1 of 2)

COMPLIANCE WITH C.R.S. § 24-76.5-101: Proof of Lawful Presence [Not Applicable After June 30, 2022.]

Owner acknowledges that the City's Competitive Process funds are a "public benefit" within the meaning of C.R.S. § 24-76.5-102. As such, the Owner shall ensure compliance with C.R.S. § 24-76.5-103 of State statute by performing the required verifications. Specifically, when required the Owner shall ensure that:

a. if the public benefit provided by the funds flows directly to a natural person (*i.e.*, not a corporation, partnership, or other legally-created entity) 18 years of age or older, he/she must do the following:

(i) complete an affidavit like the example on page 2 of this Exhibit C.

(ii) attach a photocopy of the front and back of one of the following forms of identification: a valid Colorado driver's license or Colorado identification card; a United States military card or military dependent's identification card; a United States Coast Guard Merchant Mariner identification card; or a Native American tribal document.

b. If an individual applying for the benefits identified herein executes the affidavit stating that he/she is an alien lawfully present in the United States, Owner shall verify his/her lawful presence through the federal systematic alien verification or entitlement program, known as the "SAVE Program," operated by the U.S. Department of Homeland Security or a successor program designated by said department. In the event Owner determines through such verification process that the individual is not an alien lawfully present in the United States, the Owner shall not provide benefits to such individual with the City's Competitive Process funds.

The City acknowledges that the Scope of Services provided by Owner herein may fall within several exceptions to the verification requirements of C.R.S. § 24-76.5-103 for non-profits. For example, certain programs, services, or assistance such as, but not limited to, soup kitchens, crisis counseling and intervention, short-term shelter or prenatal care are not subject to the verification requirements of C.R.S. § 24-76.5-103.

The requirements of this Exhibit C. shall terminate on July 1, 2022.

EXHIBIT C
(Page 2 of 2)

AFFIDAVIT TEMPLATE FOR PROOF OF LEGAL PRESENCE
Pursuant to Section 24-76.5-103(4)(b), C.R.S.

ONE COPY AND VERIFICATION REQUIRED FOR EACH ADULT AGE 19 AND OLDER

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

_____ I am a United States citizen, or

_____ I am a legal Permanent Resident of the United States, or

_____ I am otherwise lawfully present in the United States pursuant to federal law.

I understand that this sworn statement is required by law because I have applied for a public benefit, as defined by law. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute section 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received. If I checked the second or third option above, I understand that my lawful presence in the United States will be verified through the federal Systematic Alien Verification of Entitlement (SAVE) Program.

Signature

Date

The above affidavit must be accompanied by a copy of one of the following four types of identification*:

_____ A current Colorado driver's license, minor driver's license, probationary drivers' license, commercial driver's license, restricted driver's license or instruction permit; or

_____ A current Colorado Identification Card, issued pursuant to Article 2 of Title 42, C.R.S.; or

_____ A United States military card or a military dependent's identification card; or

_____ A United States Coast Guard Merchant Mariner card; or

_____ A Native American Tribal document.

***For a list of other documents acceptable as proof of lawful presence, visit**

https://www.colorado.gov/pacific/sites/default/files/CPED_WIWO_Documents-Proof-Lawful-Presence.pdf

EXHIBIT D

Additional Federal Requirements

A. Relocation, Acquisition and Displacement.

To the extent required under 2 CFR Part 200, the Owner agrees to comply with 24 CFR 92.353 relating to the acquisition and disposition of all real property utilizing grant funds and to the displacement of persons, businesses, non-profit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds. Any project that includes acquisition and/or relocation will be reviewed using the checklist attached as **Exhibit G** to this Contract, and incorporated herein by reference.

B. Civil Rights.

1. Compliance.

The Owner agrees to comply with all Federal laws and regulations relating to non-discrimination, all as now in effect or hereafter amended. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964, (b) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681 1683, and 1685-1686), (c) Title VIII of the Civil Rights Act of 1968, (d) Section 104(b) and Section 109 of Title 1 of the Housing and Community Development Act of 1974, (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee3), (h) Section 504 of the Rehabilitation Act of 1973, (i) the Americans With Disabilities Act of 1990, (j) the Age Discrimination Act of 1975, and (k) Executive Order 11063, and Executive Order 11246, as amended by Executive Orders 11375, 11478 and 12086.

2. Nondiscrimination.

The Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, actual or perceived sexual orientation, gender identity, marital status, or status with regard to public assistance in accordance with 24 CFR 92.350.

The Owner will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

The Owner will serve all eligible beneficiaries without regard to religion and may not restrict housing to people of a particular religion or by reason of their participation (or lack thereof) in religious activities.

The Owner shall:

(1) Develop and provide to the City in writing, a Title VI Plan describing how the Owner will implement compliance with Title VI, and a Language Access Plan, describing how the Owner will provide meaningful language access to persons with limited English proficiency. Both Plans are subject to approval by the City; and

(2) Post written notice of non-discrimination in its facilities and make available to its clients a Title VI complaint form, in a form reasonably acceptable to the City.

3. Land Covenants.

This Contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 as amended and 24 CFR Part 5. In regard to the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Contract, the Owner shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Owner and the United States are beneficiaries of and entitled to enforce such covenants. The Owner, in undertaking its obligation to carry the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

4. Section 504.

The Owner agrees to comply with any federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any federally-assisted program. The City shall provide the Owner with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Contract. All common spaces must be made accessible in accordance with the Uniform Federal Accessibility Standards.

5. Religious Organization.

The Owner agrees that funds provided under this Contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 5.109. The Owner cannot require a beneficiary to participate in inherently religious activities. However, a faith-based organization may retain its independence to carry out its mission, including allowing a Board of Directors to be selected based on religious practice.

6. Fair Housing.

All housing (for sale or rent) assisted with funding through the City must be made available without discrimination based on race, color, national origin, age, sex, religion, familial status or disability according to Title VIII of the Civil Rights Act of 1968 as amended, Title VI of the Civil Rights Act of 1964 as amended, the Age Discrimination Act of 1975, Executive Orders 11063 and 12259 – Equal Opportunity in Housing, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act.

C. Affirmative Action.

1. Approved Plan.

The Owner agrees that it shall be committed to carry out an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. The Owner shall submit a plan for an Affirmative Action Program for approval as soon as possible after the awarding of funds.

2. W/MBE.

The Owner will take all necessary affirmative steps to assure that small businesses, minority business enterprises, women's business enterprises, and labor surplus area firms are used when possible. As used in this Contract, the term "minority business enterprise" and "women's business enterprise" mean a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are American citizens who are Asian, Black, Hispanic, and/or Native American. The Owner may rely on written representations by Owners regarding their status as minority and women's business enterprises in lieu of an independent investigation.

Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (1) through (5) of this paragraph 2.

3. Notifications.

The Owner will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Owner's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. EEO/AA Statement.

The Owner will, in all solicitations or advertisements for employees placed by or on behalf of the Owner, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions.

The Owner will include the provisions of Paragraphs B., Civil Rights, and C, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each subcontractor or vendor.

D. Lobbying and Employment Restrictions.

1. Prohibited Activity.

The Owner is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage and nepotism activities. In addition, Owner certifies that (1) no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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) Owner will require contractors that apply or bid for an award exceeding \$100,000 to file the certification required by the Byrd Anti-Lobbying Amendment (31 USC 1352); and (3) if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. OSHA.

Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

3. Right to Know.

Participants employed or trained for inherently dangerous occupations, e.g., fire or police jobs, shall be assigned to work in accordance with reasonable safety practices. The Owner will comply with all applicable "Right to Know" Acts.

4. "Section 3" Clause.

a. Compliance.

Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Contract, shall be a condition of the federal financial assistance provided under this Contract and binding upon the City, the Owner and any subcontractors. Failure to fulfill these requirements shall subject the City, the Owner and any subcontractors, their successors and assigns, to those sanctions specified by the Contract through which federal assistance is provided. The Owner certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

Construction Standards: For properties undergoing construction and rehabilitation, all units must meet all City codes and ordinances at the time of completion. Certificates of Occupancy must be submitted at Project completion. For new construction of multifamily projects with four or more units, all of the units in buildings with elevators and all of the ground floor units in buildings without elevators must meet the design and construction requirements of the Fair Housing Act.

The Owner further agrees to comply with these "Section 3" requirements, to require Owner's subcontractors to complete the Section 3 form attached to this Contract as **Exhibit H**, incorporated herein by reference, and to include the following language in all subcontracts executed under this Contract:

The work to be performed under this contract is a project 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. 1701. 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 business concerns which are located in, or owned in substantial part by persons residing in the areas of the project.

The Owner certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

b. Notifications.

The Owner agrees to 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 advising said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts.

The Owner will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the Owner is in violation of regulations or requirements applicable to the Project. The Owner will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Equal Employment Opportunity.

The Owner must incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is paid for in whole or in part with funds paid under this Contract, the following clause:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for

purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction 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, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

E. Environmental Conditions.

When applicable, no funds shall be obligated or expended until an Environmental Review is completed and accepted by HUD and the City of Fort Collins.

1. Air and Water.

The Owner agrees to comply with the following laws and regulations, along with any other environmental or public health related laws or regulations, insofar as they apply to the performance of this Contract:

- If the amount of funding under this Contract exceeds \$150,000, all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C., 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., as amended. Violations must be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA);
- EPA regulations pursuant to 40 CFR, Part 50, as amended;
- National Environmental Policy Act of 1969; and
- HUD Environmental Review Procedures (24 CFR Part 58).

2. Flood Disaster Protection.

The Owner agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (P.L. 2234) in regard to the sale, lease or other transfer of land acquired, cleared

or improved under the terms of this Contract, as it may apply to the provisions of this Contract. Compliance measures may include, but are not limited to, maintaining flood insurance, structural adaptation or other mitigation as required.

3. Lead-based Paint.

The Owner agrees that any construction or rehabilitation of residential structures with assistance provided under this Contract shall be subject to HUD Lead-based Paint Regulations at 24 CFR 92.355, and 24 CFR Part 35, and in particular Subpart B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified that such properties may include lead-based paint, and shall be inspected for lead hazards prior to purchase or rehabilitation.

4. Historic Preservation.

The Owner agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Contract.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty (50) years or older or that are included on a federal, state or local historic property list. Properties adjacent to the planned development site may also be subject to review.

5. Procurement of Recovered Materials.

If the Owner is a state agency or agency of a political subdivision of a state, Owner and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

F. Trafficking Victims Protection Act.

The Owner will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

EXHIBIT E

Davis-Bacon and Related Acts

1. When applicable, the Owner shall comply with, and shall require all contractors under prime construction contracts in excess of Two-Thousand Dollars (\$2,000) awarded by the Owner to comply with, the requirements of the Secretary of Labor in accordance with the Davis-Bacon Fair Labor Standards Act as amended, the provisions of Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333) 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 Contract. The Owner shall maintain documentation which demonstrates compliance with wage and hour requirements of this part prior to and during construction, including, but not limited to, completion of the checklist attached as **Attachment 1** to this Exhibit E. Such documentation shall be made available to the City for review upon request.
2. The Owner agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than eight (8) units, all contractors engaged under contracts in excess of Two Thousand Dollars (\$2,000) for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this Contract, and/or with respect to the rehabilitation or construction of residential property where there are more than 12 HOME-assisted units, the Owner shall comply with federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 3, 1, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Owner of its obligation, if any, to require payment of the higher wage.
3. If Owner awards any contract in excess of \$100,000 that involves the employment of mechanics or laborers, such contract must include a provision for compliance with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

ATTACHMENT 1
To Exhibit E

Davis Bacon Labor Requirements Checklist

HOME: Applicable to any construction contract for 12 or more HOME Assisted Units

Project Name: _____ Dollar Amount: _____

- Prepare bid/contract documents
 - Obtain Davis-Bacon Wage Rate <http://www.wdol.gov/> - Date: _____
 - Federal Labor Standard Provisions
http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips
HUD-4010 _____(Contracts over \$2,000)
 - 10 days prior to bid opening check wage determinations for any modifications
 - If there is a modification notify all bidders of change – Date: _____
 - Sign contract within 90 days of bid opening. If not, obtain new wage decision
Date contract was signed: _____
 - For additional wage rates submit HUD-4230A to Denver HUD Labor Relations Office
Date submitted: _____ Date received: _____
 - Verify contractor eligibility at www.epls.gov (print result for project file)
 - Debarred Not Debarred Date: _____
 - Provide contractor training – Date: _____
Handouts: Wage Decision
 Applicable Federal Labor Standards Provisions
 Contractor Guide Book

 - Employees Rights under the Davis-Bacon Act poster
English: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>
Spanish: <http://www.dol.gov/whd/regs/compliance/posters/davispan.pdf>
Date posted on job site: _____
 - Conduct weekly or monthly (determined on the duration of project) on-site interviews using HUD-11
Date: _____ Date: _____ Date: _____
Date: _____ Date: _____ Date: _____
 - Conduct payroll review, in addition to comparing payrolls to HUD-11 to identify deficiencies
Follow-up required: _____
-

EXHIBIT G

MONITORING PROCEDURES

Acquisition of Real Property, Displacement, Temporary Relocation and Non-displacement of Existing Occupants

ACQUISITION OF REAL PROPERTY – vacant land Date of Application: _____

Did applicant comply with the following procedures:

1. Property was not under contract at date of application (may have purchase option)
___ Yes ___ No Date of purchase contract _____
2. Property was not under contract until Environmental Assessment completed and received Clearance from HUD (___ Yes ___ No)
Date of HUD Release of Funds: _____ Date of contract: _____
3. Applicant submitted Voluntary Arm's Length Transaction (VALT) Notice with purchase offer & included Fair Market Value as established by an appraisal
 - a. Date: _____
 - b. Fair Market Value: _____
 - c. Appraised Value: _____ Source: _____

ACQUISITION OF REAL PROPERTY – existing units Date of Application: _____

Did applicant comply with the following procedures:

1. Property was not under contract at date of application (may have purchase option)
 - a. ___ Yes ___ No Date of purchase contract _____
2. Property was not under contract until Environmental Assessment completed and received Clearance from HUD (___ Yes ___ No)
 - a. Date of HUD Release of Funds: _____ Date of contract: _____
3. Applicant submitted Voluntary Arm's Length Transaction (VALT) Notice with purchase offer & included Fair Market Value as established by an appraisal
 - a. Date: _____
 - b. Fair Market Value: _____
 - c. Appraised Value: _____ Source: _____
4. Did application to the City for Federal Assistance include the following:
 - a. List of all occupants at time of application (___ yes ___ no)
 - b. List of all occupants who vacated the property with the 90 days prior to application for funding (___ yes ___ no)
 - i. For every occupant who moved, there's an explanation on file:
Notes:
 - c. General Information Notices (GIN) & proof delivery to each occupant on record the date of application (___ yes ___ no)
5. Did project sponsor make a determination of eligibility to remain in the property promptly (within 5 – 7 days) upon execution of the contract and deliver every occupant with one of the following:
 - a. Notice(s) of Non-Displacement
Date of Contract: _____ Date of Notices: _____
 - b. Notice(s) of Eligibility for Relocation Assistance
Notice(s) included referrals to 3 comparable units: (___ yes ___ no)
Date of Contract: _____ Date of Notices: _____

6. For any resident permanently displaced, do the files contain the following:
 - a. 90 Day Notice to Vacate (___ yes ___ no)
 - b. HUD Form 40061 – with referral to 3 comparable units (___ yes ___ no)
 - c. All documentation related to assistance and advisory services provided
 - d. Verification of legal residency at the time of establishing any relocation benefits
 - e. Documentation the permanent replacement unit passed HQS inspection

REHABILITATION (Including Acquisition/Rehab) OF EXISTING DWELLING UNITS

Did applicant comply with the following procedures:

1. Property was not under contract at date of application (may have purchase option)
 - a. ___ Yes ___ No Date of purchase contract _____
2. Property was not under contract until Environmental Assessment completed and received Clearance from HUD ___ Yes ___ No
 - a. Date of HUD Release of Funds: _____ Date of contract: _____
3. Applicant submitted Voluntary Arm's Length Transaction (VALT) Notice with purchase offer & included Fair Market Value as established by an appraisal
 - a. Date: _____
 - b. Fair Market Value: _____
 - c. Appraised Value: _____ Source: _____
4. Did application to the City for Federal Assistance include the following:
 - d. List of all occupants at time of application (___ yes ___ no)
 - e. List of all occupants who vacated the property with the 90 days prior to application for funding (___ yes ___ no)
 - i. For every occupant who moved, there's an explanation on file:
Notes: _____
 - f. General Information Notices (GIN)* & proof delivery to each occupant on record the date of application (___ yes ___ no)
Note: If there is no direct impact to occupants from the rehab (i.e. roof replacement, parking lot, etc), than it's sufficient to demonstrate the posting of the GIN in a common area
5. Did project sponsor make a determination of eligibility to remain in the property promptly (within 5 – 7 days) upon execution of the contract and deliver every occupant with one of the following:
 - a. Notice(s) of Non-Displacement
Date of Contract: _____ Date of Notices: _____
 - b. Notice(s) of Eligibility for Relocation Assistance
Notice(s) included referrals to 3 comparable units: (___ yes ___ no)
Date of Contract: _____ Date of Notices: _____
6. For any occupants temporarily displaced, do the files contain the following:
 - a. 30 Day Notice of Temporary Displacement (___ yes ___ no)
 - b. Documentation of temporary assistance (___ yes ___ no)
 - i. Verification that temporary units are suitable (___ yes ___ no)
 - c. Date moved back into unit (less than 1 year) (___ yes ___ no)
 - d. Verification of legal residency (___ yes ___ no)
7. For any resident permanently displaced, do the files contain the following:
 - a. 90 Day Notice to Vacate (___ yes ___ no)
 - b. HUD Form 40061 – with referral to 3 comparable units (___ yes ___ no)
 - c. All documentation related to assistance and advisory services provided

- d. Verification of legal residency at the time of establishing any relocation benefits
- e. Documentation the permanent replacement unit passed HQS inspection

DEMOLITION OF EXISTING DWELLING UNITS

1. Follow procedures for occupied units regarding relocation payments.
2. Follow the City's One for One Replacement Housing Policy

EXAMPLE ONLY

EXHIBIT H

City of Fort Collins Section 3 - Compliance Form

Project Name: _____
Project Address: _____
Contractor: _____
Date: _____

_____ I **will not hire** any new employees for this project. (*stop here, but sign form at bottom*)

_____ I **will hire** _____ Section 3 employees and/or _____ non-Section 3 employees. I have taken one or more of the following recruitment steps to hire a Section 3 resident(s) with the highest training and employment priority ranking: (check all that apply)

_____ I have placed an ad in the local newspaper (attach a copy of the ad to document compliance)

Name of newspaper _____ Date of Ad _____

_____ I have advertised to fill the vacancy(ies) at the site(s) where work is taking place in connection with this project. I have taken the following steps to find Section 3 low-income residents from the targeted groups and neighborhoods, to fill any vacancies:

_____ Placed signs or posters in prominent places at each of these developments: (take photos of the sign/poster to document compliance)

_____ Distributed employment flyers to each of the residents at the developments

_____ Kept a log of all applicants and indicated the reasons why Section 3 residents who applied were not hired. (retain copies of all applications completed by public housing Section 8 voucher holders or other Section 3 residents)

_____ Sent a notice about Section 3 training and employment requirements and opportunities to labor organizations or to worker representatives with whom our firm has a collective bargaining or other agreement.

Please describe any other efforts you took to reach out to Section 3 residents: _____

Note: This form must be signed and dated by the general contractor. The general contractor must provide this form to any subcontractor firms they hire for this project. Use a separate form for each company. All signed forms must be returned to the City of Fort Collins, Social Sustainability Dept., P.O. Box 580, Fort Collins, Colorado 80522 along with proof of the checked items indicated above.

Contractor name: _____

Contractor Signature: _____ Date: _____