

DEVELOPMENT CONTRACT FOR**COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING**

Or

HOME INVESTMENT PARTNERSHIP FUNDING

THIS DEVELOPMENT CONTRACT (“**Contract**”) is entered into by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (“**City**”), and [Agency/DEVELOPER] (“**Developer**”) and shall be effective on the date last signed below (“**Effective Date**”).

RECITALS:

1. 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 Developer to assist the City in utilizing such funds.

2. The Developer wishes to loan the HOME Funds to _____ (“**Owner**”), which will own the Project as defined herein.

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

I. Scope of Services/Performance Monitoring.

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

B. The City will monitor the performance of the Developer against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this Contract. If the Developer 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.

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 **Community Development Block Grant (“CDBG”) or HOME Investment Partnership (“HOME”)** Funds provided to Developer under this Contract; 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 from _____ 20 to _____, 20 and shall be contingent upon full compliance by Developer with all terms and conditions set forth herein.

III. Payment.

Payments under this Contract will be made by:

advance payment; reimbursement.

A. Funding Amount. If the Developer is not in default hereunder, and subject to the City's receipt from the Department of Housing and Urban Development of the CDBG and/or HOME Funds, and provided that the Contract and Scope of Services are eligible expenditures of the HOME Funds, the City agrees to pay the Developer CDBG and/or HOME FY funding of [WRITTEN AMOUNT] (\$XXX,XXX) for a total of [WRITTEN AMOUNT] (\$XXX,XXX) (the "Loan"). The Developer may in turn loan those funds to the Owner, subject to the security requirements described in section VII.E.5. . [Specify CHDO and/or other funding breakouts.]

B. Advance Payment. The City will pay the Developer in advance its allowable costs for the Project as identified in this Contract, not to exceed Dollars (\$,000), upon presentation of properly executed forms as provided or approved by the City, if the Developer is considered a low-risk grantee and the Developer maintains or demonstrates the willingness to maintain:

- (1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Developer, 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 Developer'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 Developer for direct Project costs and the proportionate share of any allowable indirect costs. The Developer may not request disbursements when not required for payment of eligible costs. The Developer must make timely payment to contractors in accordance with the contract provisions.

C. Reimbursement. If the Developer is not able to meet the requirements for advance payments, or if the Developer requests payment by reimbursement, the City shall reimburse the Developer its allowable costs for the services identified in this Contract, not to exceed Dollars (\$,000) upon presentation of invoices which Developer certified are true and correct copies of payments due on behalf of the Developer, for an activity covered by this Contract and made in accordance and compliance with the Scope of Services. The Developer 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 Developer'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 Developer agrees to utilize funds available under this Contract to supplement rather than supplant funds otherwise available. To the extent available, the Developer 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 Developer hereunder exceed **[WRITTEN AMOUNT] (\$XXX,XXX)**.

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 Developer 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 Developer. Payments may also be contingent upon the Developer's financial management system meeting the requirements of 2 CFR Part 200.

G. Retainage. For projects funded with **CDBG and/or HOME** dollars, the City will withhold a retainage of 10% of the Loan amount until the Developer 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 HOME Funds are 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 as follows: the Developer shall pay five percent 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 total amount owing is **[WRITTEN AMOUNT] (\$XXX,XXX)**. 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 Developer commits fraud, deceit or misrepresentation in applying for or obtaining funding.

IV. Notices.

Notices required to be given under this Contract shall be hand delivered or sent by U.S. Mail or overnight commercial courier and directed to the following Contract representatives:

City of Fort Collins:

Affordable Housing Administrator
Social Sustainability Department
City of Fort Collins, P.O. Box 580
Fort Collins, CO 80522-0580
(970) 221-6758

Developer:

Executive Director
[Address]
[City], [State] [Zip]
[Phone Number]

V. Special Conditions.

A. Compliance with Federal Regulations. The Developer agrees to comply with the requirements of 24 CFR, Part 92, the Housing and Urban Development (HUD) regulations concerning the Home Investment Partnership Program (“**HOME**”), 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, Title II of the Cranston-Gonzales National Affordable Housing Act and all federal regulations and policies issued pursuant to these regulations. The Developer further agrees to utilize funds available under this Contract to supplement rather than supplant funds otherwise available.

B. Compliance with Laws. The Developer, 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, all provisions of the Americans with Disabilities Act and all regulations interpreting or enforcing such act. **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.**

C. Proof of Lawful Presence

Developer 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 Developer shall ensure compliance with C.R.S. § 24-76.5-103 of State statute by performing the required verifications. Specifically, when required the Developer 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 the affidavit attached to this Contract as Exhibit D.

(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, Developer 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 Developer determines through such verification process that the individual is not an alien lawfully present in the United States, the Developer shall not provide benefits to such individual with the City’s Competitive Process funds.

The City acknowledges that the Scope of Services provided by Developer 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.

D. Prohibition Against Employing Illegal Aliens

This paragraph applies to all Developers whose performance of work under this Contract does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work. In compliance with C.R.S. § 8-17.5-101, Developer represents and agrees that:

(a) As of the date of this Contract, Developer does not knowingly employ or contract with an illegal alien who will perform work under this Contract; and Developer 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) Developer shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Developer that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.

(c) Developer 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) Developer 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 Developer obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Developer shall:

(i) Notify such subcontractor and the City within three days that Developer has actual knowledge that the subcontractor is employing or contracting with an illegal alien; 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 illegal alien; except that Developer 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 an illegal alien.

(f) Developer 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 Developer 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,

Developer 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 Developer violates this provision of this Contract and the City terminates the Contract for such breach.

VI. General Conditions.

A. General Compliance.

The Developer agrees to comply with all applicable federal, state and local laws and regulations governing the funds provided under this Contract and activities carried out using those funds.

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 Developer 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 Developer is an independent contractor.

C. Liability.

As to the City, Developer 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 Developer or by the conditions created thereby. Developer 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 Developer of any statute, ordinance, rule or regulation.

D. Workers' Compensation.

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

E. Insurance and Bonding.

The Developer 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 Developer's employees in an amount equal to cash advances from the City. Specifically, the Developer 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 Developer 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 Developer 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 or Developer 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 Developer 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 Developer.

H. Suspension or Termination and Default.

1. Developer 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 in Section I. above may only be undertaken with the prior approval of City. If the Developer terminates this Contract prior to completion of Scope of Services, including any required period of affordability, all funds previously paid to Developer 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 Developer 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 Developer and/or affiliates of the Developer 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 Developer 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 Developer 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 Developer shall remit to the City all monies previously paid by the City to the Developer under this Contract, and all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by Developer under this Contract shall, at the option of the City, become the property of the City, provided, however, that Developer 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 **CDBG and/or 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. In the event of default, the City reserves the right to (1) direct the Developer to prepare a corrective action plan and timetable to correct the default, (2) direct the Developer to reimburse the City for any amounts provided and impose monetary fines or penalties and (3) bar or suspend the Developer and/or affiliates of the Developer to limit or prohibit future funding opportunities through the City.
6. Remedies: In the event of termination for cause, the City may pursue any remedies available to it at law or in equity, including, without limitation, damages, specific performance, and criminal remedies. All representations made by the Developer to the City either in this Contract or for the purpose of inducing the City to execute this Contract are hereby sworn to the City to be true, correct, honest and forthright and are made under penalty of perjury.

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 Developer 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.

VII. Administrative Requirements.**A. Financial Management.**

1. Accounting Standards.

The Developer 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, Developer 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 Developer shall maintain all records necessary for Developer 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. When applicable, records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. 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;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with **CDBG and/or HOME** assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the **CDBG and/or HOME** program;
- f. 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

- g. 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 Developer 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 of individual tenant income verifications, project rents and project unit inspections must be retained for the most recent five year period, until five years after the affordability period terminates. Records for any displaced person must be kept for five (5) years after he/she has received final payment.

3. Client Data.

The Developer shall maintain for a period of five (5) years client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to: client name, address, income level or other basis for determining eligibility, and description of service provided, racial and ethnic data and single head-of-household data (to the extent Developer can obtain such information from the client.) In addition, data will be retained for five (5) years for affordability and income targeting for each household. Such information shall be made available to City monitors or their designees for review upon request.

4. Property Records.

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

5. National Objectives.

When CDBG funding is also used, the Developer agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this Contract meet one or more of the CDBG program's national objectives: (1) benefit low/moderate income persons, (2) aid in the prevention or elimination of slums or blight, or (3) meet community development needs having a particular urgency, as defined in 24 CFR Part 570.208, specific documentation of which shall be maintained in the project file.

6. Close-outs.

The Developer'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.

7. Audits and Inspections.

- a. All Developer records with respect to any matters covered by this Contract shall be made available to the Developer, the City, their designee or the Federal Government, at any time during normal business hours, as often as the Developer or 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 Developer to comply with the above requirements will constitute a violation of this contract and may result in the withholding of future payments.
- b. Developer 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 Developer 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 Developer 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, Developer 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, Developer 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 Developer'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 Developer 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. Developer 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 Developer under this and other City grant programs is included in Exhibit A (Scope of Services), and a detailed contract budget is attached as **Exhibit C** and incorporated herein by this reference. The City and the Developer 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 Developer shall report to the City yearly all program income generated by activities carried out with **CDBG and/or HOME** funds made available under this Contract, 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 Developer shall comply with the requirements set forth at 24 CFR Part 92 Subpart K. By way of further limitations, the Developer 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 Developer 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 Developer funds available under this Contract based upon information submitted by the Developer 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 Developer, 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 Developer 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 Developer.

5. Progress Reports.

The Developer 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 and the City may require submission of a yearly audit.

E. Procurement.

1. Compliance.

To the extent required under 2 CFR Part 200, Developer 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 Developer shall procure, utilize and dispose of materials in accordance with the procurement standards set forth in 2 CFR Part 200 Subpart D.

3. Relocation, Acquisition and Displacement.

To the extent required under 2 CFR Part 200, the Developer 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.

4. Property Acquired With Program Funds.

Developer agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with the **CDBG and/or HOME** Funds, as set forth in Exhibit A. In the event Developer ceases to use a personal asset or real property acquired or improved, with the **CDBG and/or HOME** Funds, and described in Exhibit A, the Developer 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-**CDBG and/or HOME** funds for the acquisition of, or improvement to, the asset or property. The Developer shall transfer to the City any **CDBG and/or HOME** Funds on hand at the time of expiration of this Contract and any accounts receivable of HOME Funds.

5. Liens on Items or Property.

Developer 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 funds provided hereunder. Developer 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. The requirements of this Section VII.E.5 will be satisfied by Developer's enforcing the terms of the Scope of Services and the restrictions on the use of the Project Property specified herein and necessary to meet HOME objectives and requirements through an appropriate lien, deed of trust, or security instrument and Restrictive Covenants executed by Owner and recorded in the applicable public land records governing the Project Property.

VIII. Personnel and Participant Conditions.

A. Civil Rights.

1. Compliance.

The Developer agrees to comply with Chapter 13, Article II, of the City Code and Title 24, Article 34, Parts 3 through 7, C.R.S., and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title 1 of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246, as amended by Executive Orders 11375, 11478 and 12086.

2. Nondiscrimination.

The Developer 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 Developer 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 Developer 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 Developer 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 Developer shall:

(1) Develop and provide to the City in writing, a Title VI Plan describing how the Developer will implement compliance with Title VI, and a Language Access Plan, describing how the Developer 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 Developer 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 Developer and the United States are beneficiaries of and entitled to enforce such covenants. The Developer, 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 Developer 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 Developer 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.

B. Affirmative Action.

1. Approved Plan.

The Developer 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 Developer shall submit a plan for an Affirmative Action Program for approval as soon as possible after the awarding of funds.

2. W/MBE.

The Developer 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 Developer may rely on written representations by Developers 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 paragraphs (1) through (5) of this subsection.

3. Access to Records.

The Developer 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.

4. Notifications.

The Developer 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 Developer's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. EEO/AA Statement.

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

6. Subcontract Provisions.

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

C. Employment Restrictions.

1. Prohibited Activity.

The Developer 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 (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) Developer 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 Developer will comply with all applicable "Right to Know" Acts.

4. Labor Standards.

- a. The Developer agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon 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 Developer shall maintain documentation which demonstrates compliance with wage and hour requirements of this part. Such documentation shall be made available to the City for review upon request.
- b. The Developer 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 Developer 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 Developer of its obligation, if any, to require payment of the higher wage.

5. "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 Developer and any sub-Developers. Failure to fulfill these requirements shall subject the City, the Developer and any sub-Developers, their successors and assigns, to those sanctions specified by the Contract through which federal assistance is provided. The Developer 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 Developer further agrees to comply with these "Section 3" requirements 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 Developer certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.

b. Notifications.

The Developer 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 Developer will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the Developer is in violation of regulations or requirements applicable to the Project. The Developer will not subcontract with any sub-Developer 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 sub-Developer has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct.

1. Assignability.

This contract has been awarded based on the specific qualifications and representations of the Developer. Therefore, the Developer shall not assign or transfer, except to the Owner: (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 and excluding contingent interests or security interests granted in a deed or other security agreement pursuant to obtaining funds to develop and construct the Project), without the prior **written** consent of the City; provided, however, that claims for money due or to become due to the Developer 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 Developer 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 transfers (each an “**Approved Disposition**”):
[**fill in as appropriate based on information from Developer**]

2. Conflict of Interest.

The Developer 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 Developer further covenants that in the performance of this Contract, no person having such a financial interest shall be employed or retained by the Developer 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, or of any designated public agencies or Developers which are receiving funds under the **CDBG and/or HOME** Entitlement Grants.

3. Subcontracts.

a. Approvals.

Except as otherwise permitted herein, the Developer 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 Developer 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 Developer shall cause all of the provisions of this Section VIII 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 Developer 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.

5. Religious Organization.

The Developer 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 Developer 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.

E. Equal Employment Opportunity.

The Developer 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.

IX. 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.

A. Air and Water.

The Developer 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).

B. Flood Disaster Protection.

The Developer 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.

C. Lead-based Paint.

The Developer 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.

D. Historic Preservation.

The Developer 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.

E. Procurement of Recovered Materials.

If the Developer is a state agency or agency of a political subdivision of a state, Developer 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.

X. 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 CDBG Commission, 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.

XI. Developer Certification

By signing below, the Developer 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, Developer's obligations under VIII.A.2. above.

XII. Authority to Sign

The persons executing this Contract on behalf of the Developer represent that one or both of them has the authority to execute this Contract and to bind the Developer 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 _____

Darin A. Atteberry, City Manager

ATTEST:

City Clerk

(Print name)

APPROVED AS TO FORM:

Sr. Assistant City Attorney

(Print name)

[Developer/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:**

The allocation is conditional that the funding be used as follows:

2. Amount of award, source of funding:

3. Terms of the Loan: Due on sale loan with a 5% one-time interest payment on the principal

4. Number of units in the project and number of accessible units:**5. Legal Description of Project Property:**

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

The Developer 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. Developer 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 Developer 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.

7. 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 [Name of Project] was received by the City on [REDACTED], 201[REDACTED].

8. 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 Developer's application for funding, Developer agrees to ensure thatXX units are occupied by persons whose household income does not exceed 50% of area median income, XXunits 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. The Developer shall determine annual income of the Project beneficiaries using Section 8 Housing Program income definitions as per 24 CFR.

9. 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 **Exhibit B-2**, attached hereto and is incorporated herein by reference. The Developer 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 period of affordability for new construction of affordable housing, whatever the funding source, is twenty (20) years from the date of final project completion (the "**Affordability Period**") regardless of repayment of the Loan and/or transfer or sale of the Project Property or any portion thereof.

10. Restrictive Covenant: The Developer 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.

11. 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.

12. 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 **CDBG/HOME** specific to funding sources requirements, and must be reported quarterly by the Developer to the City.

13. Contract Administration. The City is responsible for providing the following information to the Developer 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 Developer shall be responsible for the timely completion of the Scope of Services requirements.

14. 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.

15. 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 HOME Funds are repaid, whichever comes first.

16. Davis-Bacon Fair Labor Standards: This contract is subject to the Davis-Bacon requirements for the following reason: _____ [e.g., CDBG and/or HOME funds will be expended and the Project has 12 HOME units or more]. When applicable, the Developer shall comply with, and shall require all contractors under prime construction contracts in excess of \$2000 awarded by the Developer to comply with, all the requirements of the Davis-Bacon Fair Labor Standards Act and keep all required records which will be available to the Department of Housing and Urban Development upon request. All such contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3).

17. Contract Work Hours and Safety Standards Act. If Developer 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).

18. Time of Performance. The Project shall commence upon the full and proper execution of this Contract and shall be completed on or before _____, 20____. However, the Project time of Performance may be extended by letter, subject to mutual agreement of the City and the Developer and approval of the City's CDBG Commission, in its sole discretion. To initiate this process, a written request shall be submitted to the City by the Developer at least sixty (60) days prior to _____, 20____ and shall include a full justification for the extension request. In no case may the time of performance be extended beyond _____.

19. 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.

EXHIBIT B-1

2019 Income Limits

Income Limits (effective date 06/28/19)
 2019 Median Income for a Family of 4: **\$87,200**
 (Fort Collins/Loveland Metropolitan Statistical Area)
City of Fort Collins

Household Members

Income	1	2	3	4	5	6
100% AMI	\$61,100	\$69,800	\$78,500	\$87,200	\$94,200	\$101,200
80% of AMI*	\$48,850	\$55,800	\$62,800	\$69,750	\$75,350	\$80,950
60% of AMI	\$36,660	\$41,880	\$47,100	\$52,320	\$56,520	\$60,720
50% of AMI*	\$30,550	\$34,900	\$39,250	\$43,600	\$47,100	\$50,600
30% of AMI*	\$18,350	\$20,950	\$23,550	\$26,150	\$28,250	\$30,350

MI = 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

EXHIBIT B-2

2019 Fair Market Rents					
Rent	0-Bdrm	1-Bdrm	2-Bdrm	3-Bdrm	4-Bdrm
Low HOME	763	818	981	1133	1265
High HOME	892	1025	1253	1440	1588
FAIR MARKET	892	1025	1253	1812	2201
50% Rent Limit	763	818	981	1133	1265
65% Rent Limit	973	1044	1254	1440	1588
80% Rent Limit	1221	1395	1569	1743	1883

EXHIBIT C

PROJECT BUDGET

Funding Available: \$

Eligible Costs:

For rehabilitations expenses:

SAMPLE

EXHIBIT D

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 valid Colorado Driver’s License or a 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.