

HOME INVESTMENT PARTNERSHIPS PROGRAM

AWARD AGREEMENT H-17-01

This Award Agreement is entered into by and between the Homeword, Inc., a Montana non-profit corporation and Community Housing Development Organization located at address 1535 Liberty Lane, Suite 116A, Missoula, MT 59808 (“AWARDEE”), and the City of Missoula, Montana, a municipal corporation incorporated pursuant to Montana law, located at 435 Ryman, Missoula, MT (“CITY”).

RECITALS

- A. The Home Investment Partnerships (HOME) Program was created by the National Affordable Housing Act of 1990. The objectives of the HOME Program are to provide decent affordable housing to lower-income households, expand the capacity of non-profit housing providers, strengthen the ability of state and local governments to provide housing, and leverage private-sector participation.
- B. The City of Missoula is a Participating Jurisdiction in the HOME Program, and has received an allocation of HOME funds to be administered by the City in furtherance of the HOME Program objectives.
- C. The City of Missoula utilizes a competitive grant application process to determine how to allocate and spend the HOME funds awarded to the City.
- D. Awardee has submitted an application for HOME funds. This application has been fully reviewed and approved by the Missoula City Council in compliance with public open-meeting requirements.

Now therefore, based on the Recitals above, AWARDEE and the City agree to the following terms:

1. PURPOSE OF AWARD AGREEMENT

- a. The purpose of this Award Agreement is to provide funding for project activities approved by the City under the U.S. Department of Housing and Urban Development (HUD) Home Investment Partnerships Program (HOME). An award was granted to AWARDEE and approved by the Missoula City Council on the 12th day of June, 2017. The terms, obligations and requirements that AWARDEE needs to perform in exchange for this award of funding are set forth in this Award Agreement, and upon execution of this Award Agreement, are binding on all parties.

2. ACCEPTANCE OF HOME PROGRAM REQUIREMENTS

- a. By accepting an award of HOME funds, AWARDEE agrees to comply with all laws, rules and regulations related to the HOME program. AWARDEE will comply with all applicable parts of Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended; the applicable Department of Housing and Urban Development (HUD) regulations in 24 CFR Part 92, as now in effect or as they may be amended during the term of this Award Agreement; all requirements established by the City, including the applicable version of the City of Missoula HOME and CDBG Administrative Manual; applicable State and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.

- b. AWARDDEE agrees that all contracts entered into by AWARDDEE for the completion of the activities described in Section 5 of this Award Agreement will contain special provisions requiring contractors to comply with all applicable requirements, as outlined in the applicable version of the *City of Missoula HOME and CDBG Administrative Manual*.
- c. AWARDDEE expressly agrees to repay to the City any and all funds advanced to AWARDDEE under this Award Agreement which AWARDDEE, its officers, employees, agents, assigns, subcontractors or AWARDDEE entities, or any other agent to which AWARDDEE delegates authority to carry out portions of this Award Agreement, expends in violation of the terms of this Award Agreement or in violation of any federal, state and local statutes, ordinances and/or regulations governing the HOME Program.

3. ADMINISTRATION

The City shall administer this grant. Any reference to CITY indicates an administrative function to be performed by CITY staff.

4. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Award Agreement shall take effect upon execution by all the parties and shall conclude on June 30th, 2018. AWARDDEE may be able to receive reimbursement for costs expended in furtherance of the approved list of activities contained in AWARDDEE's application for costs incurred between July 1 and the date of execution of this Award Agreement. Reimbursement for already expended costs is purely a discretionary decision to be made by staff, and shall be evaluated on a case-by-case basis. If reimbursement is allowed, reimbursement for already expended costs is limited to only those costs allowed by 24 CFR Part 92.

5. SCOPE OF ACTIVITIES

The allocation of HOME funds awarded to AWARDDEE by the City must be utilized to achieve the identified list of activities set forth in its application for HOME fund and this Agreement. By accepting the award of HOME funds, AWARDDEE agrees to perform all activities identified in its application. The major components of the approved project activities include, but are not limited to:

- Homeword, Inc. will utilize HOME funds as a CHDO Predevelopment Loan – pursuant to 24 CFR 92.301 – in order to determine the feasibility of a senior housing development that would comply with HOME affordability requirements if advanced.
- The address of the proposed site is 901 & 925 S. 3rd St. W, Missoula, MT 59801.
- AWARDDEE will utilize HOME funds for expenses detailed in Attachment B of this Award Agreement.

6. AMOUNT OF AWARD AND BUDGET

- a. The total amount of HOME funds awarded to AWARDDEE by the City will not exceed \$20,000. The City will have no obligation to pay for any project activities that exceed this award amount.

- b. A copy of the project budget is included as Attachment B to this Award Agreement and by this reference is made a part of this Award Agreement and binding upon Awardee.
- c. Budget adjustments requests must be approved in advance by CITY. For adjustments between line items of the HOME portion of Attachment B, in an amount not to exceed \$1,000, CITY's approval of the Request for Payment form submitted by Awardee will constitute approval of the requested budget adjustment. Budget adjustment requests in excess of \$1,000 must be submitted to CITY in writing, and are subject to an approval review process by CITY.

7. LOAN REPAYMENT

- a. HOME funds will take the form of a zero-interest loan to the Awardee.
- b. Awardee must repay the loan to the CITY from construction loan proceeds or other project income. The CITY may waive repayment of the loan, in part or in whole, if there are impediments to project development that the CITY determines are reasonably beyond the control of the Awardee.

8. SPECIAL CONDITIONS

- a. Awardee will not obligate or expend HUD or non-HUD funds for any activities provided for by this Award Agreement until:
 - i. CITY completes an Environmental Review Record(s) and issues a Notice of Release of Funds;
 - ii. Awardee submits to CITY evidence of the firm commitment of the other resources necessary for the completion of the project, as defined in Section 6, Amount of Award and Budget, and Attachment B of this Award Agreement;
 - iii. Awardee submits a detailed Program Income Plan, if applicable, for review and written approval by CITY prior to the release of any funds. Awardee will be permitted to retain program income generated by the activities described in Section 5 of the Award Agreement, "Scope of Activities."

Program income received before the program is closed out must be expended on HOME eligible activities before any additional HOME funds are requested by Awardee. The receipt and expenditure of program income will be treated as additional HOME funds subject to all applicable requirements of Section 2 of this Award Agreement governing the use of HOME funds. Awardee will record the receipt and expenditure of program income as part of the financial transactions of the grant program. After program closeout Awardee may retain all program income resources for additional HOME-eligible activities, subject to authorization by CITY. Reports of program income transactions will be required to be submitted to the HOME Program as part of the quarterly reports described in Section 13 of the Contract; and

- iv. Awardee establishes a separate HOME account or accounting classification within the approved accounting and management system to be used exclusively for the receipt and disbursement of HOME and related funds, including program income receipts and disbursements.

- b. AWARDDEE will provide and document matching contributions in the minimum amount of \$20,000.00 prior to project completion.
- c. AWARDDEE will comply with Federal requirements set forth in 24 CFR Part 5, subpart A which includes nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free workplace.
- d. AWARDDEE will carry out each activity in compliance with all Federal laws and regulations described in 24 CFR, Part 92, Subpart H, except that AWARDDEE does not assume the responsibility for release of funds under 24 CFR §92.352 for environmental review or the intergovernmental review process described in 24 CFR §92.357 for Executive Order 12372. Subpart H includes, but is not limited to, provisions dealing with other Federal requirements and nondiscrimination; affirmative marketing; minority outreach program; displacement, relocation, and acquisition; labor; lead-based paint; conflict of interest; and consultant activities.
- e. When applicable, AWARDDEE will follow the provisions governing the use of HOME funds by religious organizations, as contained in 24 CFR §92.257.
- f. AWARDDEE must comply with applicable uniform administrative requirements, as described in 24 CFR §92.505.
- g. Upon expiration of the agreement, AWARDDEE must transfer to the CITY any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.
- h. If AWARDDEE project is subject to repayment of HOME funds or recaptured HOME funds, these funds must be remitted to the CITY.
- i. AWARDDEE is prohibited from charging servicing, origination, or other fees for the costs of administering the HOME program, except as permitted by §92.214(b)(1).
- j. The CITY must complete Underwriting and Subsidy Layering required by 24 CFR 92.250(b) prior to committing HOME funds to AWARDDEE.

9. PROCEDURE FOR DISBURSEMENT OF FUNDS

- a. The City will pay to AWARDDEE funds available under this Award Agreement upon approval by the CITY of AWARDDEE's Request for Payment. The City will reimburse AWARDDEE for approved, eligible and necessary expenses according to the documentation submitted by AWARDDEE to support the expenditures. The City will not reimburse AWARDDEE for any expenses not included in the approved budget or not clearly and accurately supported by AWARDDEE's original application and/or any subsequent documentation. CITY may require that any awarded funds not expended by AWARDDEE within 18 months of the date of execution of this Award Agreement will revert to the City and will be used to finance other HOME projects.
- b. The reimbursement of eligible costs incurred is contingent upon AWARDDEE's completion of Section 8. SPECIAL CONDITIONS. In the event AWARDDEE is unable

to comply with the terms and the conditions of this Award Agreement, any costs incurred will be AWARDDEE's sole responsibility.

- c. If the actual total cost of completing the project is less than has been projected by AWARDDEE in the approved budget (Attachment B), CITY may, at its discretion, reduce the amount awarded to AWARDDEE under this Award Agreement in proportion to the overall savings.
- d. If CITY determines that AWARDDEE has failed to satisfactorily carry out its responsibilities under this Award Agreement, CITY may revoke AWARDDEE's authority to draw against the funds awarded to AWARDDEE under this Award Agreement until CITY and AWARDDEE agree on a plan to remedy the deficiency.
- e. CITY reserves the right to withdraw an award and commitment of any HOME funds which remain unobligated 12 months after the date of execution of this Award Agreement.
- f. For non-construction projects, a monetary retainage of \$2,000.00 (10% of the HOME program award) shall be withheld by the City until satisfactory completion of the scope of activities in Section 5 of this agreement and all reporting and closeout requirements in Section 13 of this agreement have been satisfied.

10. NOTICE.

All notices, demands, and consents provided for in this Award Agreement must be given in writing and shall be sent by U.S. Mail, hand-delivered, or emailed to the following:

The City's contact for all administrative and technical matters concerning this Award Agreement is:

Will Sebern, Grants Administrator III, or Successor
City of Missoula Office of Housing and Community Development
435 Ryman
Missoula, MT 59802
406.552.6396
wsebern@ci.missoula.mt.us

AWARDEE's contact for all administrative and technical matters concerning this Award Agreement is:

Heater McMilin, Housing Development Director, or Successor
Homeword, Inc.
1535 Liberty Lane, Suite 116A
Missoula, MT 59808
406.532.4663 x. 36
heather@homeword.org

11. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor, AWARDDEE, agent, employee or assign, pursuant to this Award Agreement are to be the property of both AWARDDEE and the City. Both AWARDDEE and the City shall have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating thereto. No material produced in whole or part under this Award Agreement may be copyrighted or patented in the United States or in any other country without the City's prior written approval.

12. ACCESS TO RECORDS AND PROJECT MONITORING

- a. AWARDDEE will maintain adequate and reasonable records of its performance under this Award Agreement and will allow access to these records at any time during normal business hours by the City, the U.S. Department of Housing and Urban Development and the Comptroller General. These records will be kept in AWARDDEE's offices in Missoula, Montana.
- b. CITY may monitor and inspect all phases and aspects of AWARDDEE's performance to determine compliance with the provisions of the application, the Scope of Work set forth in Section 5 of the Award Agreement, and with any other technical and administrative requirements, including the adequacy of AWARDDEE's records and accounts. CITY will advise AWARDDEE of any specific areas of concern and provide AWARDDEE opportunity to propose corrective actions acceptable to CITY.

13. PROJECT PROGRESS REPORTING

- a. During the term of this Award Agreement, AWARDDEE will submit a Project Progress Report to CITY during each quarter for the periods ending June, September, December and March. This report will describe the status of the project with respect to each implementation objective including, at a minimum, the percentage of the project which has been completed, costs incurred, funds remaining and anticipated completion date. The report must also describe any significant problems encountered and any necessary modification of the project scope or implementation schedule that is being requested.
- b. AWARDDEE will submit the Project Progress Report to CITY within 15 days of the close of each quarter. The City will not process claims for payment until the required quarterly report has been submitted to and approved by CITY. Project Progress Reports submitted during a quarter in conjunction with a Request for Payment will satisfy the quarterly progress-reporting requirement.

14. NON-DISCRIMINATION

All hiring shall be on the basis of merit and qualification and there shall be no discrimination against any person on the basis of race; ancestry; color; physical or mental disability; religion; national origin; sex; age; marital or familial status; creed; ex-offender status; physical condition; political belief; public assistance status; or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

15. AFFIRMATIVE ACTION POLICY

Contractors, subcontractors, subgrantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title

49 Montana Codes Annotated, entitled “Human Rights” or forfeit the right to continue such business dealings.

The City’s Affirmative Action Policy Statement is:

The Mayor of the City of Missoula is committed to implement affirmative action to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, national origin, sex, age, marital status, creed, ex-offender status, physical condition, political beliefs, public assistance status or sexual preference. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility of actively facilitating equal opportunity for present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all personnel actions are administered on the basis of job necessity.

Specific responsibility for development, implementation, monitoring and reporting will be assigned to the City Personnel staff under the supervision of the Mayor’s Administrative Assistant.

It is the policy of the City of Missoula to take affirmative action to eliminate discrimination in personnel policies and procedures that have adverse impact on the “affected class” unless sex, ex-offenders status, and/or physical or mental handicap relates to a bona fide occupational qualification. Equal opportunities shall be provided for all City employees during their terms of employment. All applicants for City employment shall be recruited from the available labor market, and employed on the basis of their qualifications and abilities. The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.

16. AVOIDANCE OF CONFLICT OF INTEREST

AWARDEE will comply with the provisions of the applicable HUD regulations of 24 CFR 92.356:

(a) Applicability. In the procurement of property and services by participating jurisdictions, State recipients, and CHDOs, the conflict of interest provisions in 2 CFR 200.317 and 2 CFR 200.318, apply. In all cases not governed by 2 CFR 200.317 and 2 CFR 200.318, the provisions of this section apply.

(b) Conflicts prohibited. No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement

with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or CHDO which are receiving HOME funds.

(d) Exceptions: Threshold requirements. Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) Factors to be considered for exceptions. In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

(f) Owners and developers.

(1) No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required period of affordability specified in §92.252(e) or §92.254(a)(4). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) Exceptions. Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

- (i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- (ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;
- (iii) Whether the tenant protection requirements of §92.253 are being observed;
- (iv) Whether the affirmative marketing requirements of §92.351 are being observed and followed; and
- (v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

AWARDEE will also comply with sections 2-2-125, 2-2-201, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

17. MODIFICATION OF AWARD AGREEMENT

This Award Agreement, together with all referenced and incorporated attachments, contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this written Award Agreement, are valid or binding. This Award Agreement may not be enlarged, modified, or altered except upon mutual written agreement of the parties except for amendments made by the City pursuant to Section 23 of this Award Agreement. AWARDDEE accepts responsibility for the adherence to the terms of this Award Agreement by all officers, employees, agents, assigns, and subcontractor or AWARDDEE or other affiliated entities and by all public or private agents or agencies to which it delegates authority to carry out portions of this Award Agreement.

18. CONSTRUCTION AND VENUE

This Award Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning the Award Agreement, venue shall be in the District Court of the Fourth Judicial District in and for the County of Missoula, State of Montana.

19. INDEMNIFICATION

- a. AWARDDEE waives any and all claims and recourse against the City and its officers, employees and agents including the right of contribution, for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to AWARDDEE's or any AWARDDEE's performance under this Award Agreement.
- b. AWARDDEE agrees to indemnify, hold harmless, protect, defend and save the City, its elected and appointed officials, agents and employees, while acting within the scope of their duties as such, against any and all claims, demands, damages, costs, liability, expenses, including reasonable attorneys' fees, or causes of action of any kind or character, including the cost of defense arising out of the performance or omissions of performance or in any way resulting from the acts or omissions of the Awardee and/or its agents, employees, representatives, assigns, AWARDDEEs, and/or subcontractors under this Agreement.

20. WORKERS' COMPENSATION AND LIABILITY INSURANCE COVERAGE

- a. Workers' Compensation: AWARDDEE must, at their own expense, obtain and keep in force any required workers' compensation insurance. The City of Missoula is not the worker's compensation insurer of AWARDDEE's employees. AWARDDEE must have current workers' compensation insurance in place for its employees. The City of Missoula shall have no liability with respect to any and all actions of AWARDDEE's employees, officers or agents. AWARDDEE shall provide CITY with a certificate of insurance evidencing AWARDDEE's worker's compensation insurance coverage.
- b. Liability Insurance: AWARDDEE must, at their own expense, obtain and keep in force general commercial liability insurance to provide insurance against liability for loss, damage, or injury to property or persons that might arise out of AWARDDEE's activities. The City of Missoula shall have no liability with respect to any and all actions of AWARDDEE's officers, employees or agents. AWARDDEE shall provide CITY with a certificate of insurance evidencing liability insurance.

21. AWARD AGREEMENT AMENDMENT

- a. AWARDDEE may request that this Award Agreement be amended. The requested amendment will only be allowed upon a clearly showing/demonstration by AWARDDEE that the amendment is justified and will enhance the overall impact of the original project. CITY will consider each individual amendment request to determine whether the amendment is substantial enough to necessitate reevaluating the project's original ranking. If warranted, CITY will analyze the impact of the proposed amendment on the scores assigned to AWARDDEE's application in the original grant competition.
- b. CITY will not approve amendments to the scope of work or the budget that will affect high priority activities or improvements that would materially alter the circumstances under which the grant was originally ranked.
- c. If CITY determines that the proposed amendment represents a substantial change in the project activities proposed in the original application for HOME funds, the City will hold a local public hearing on the amendment with reasonable notice.
- d. No amendment to the Award Agreement will occur unless the amendment is set forth in writing and signed by CITY and AWARDDEE.

22. PROPERTY MANAGEMENT

Title to real property or equipment acquired using fund from a grant or subgrant will vest upon acquisition in AWARDDEE or subgrantee. AWARDDEE or subgrantee will use, manage, and dispose of this property or equipment in accordance with the requirements set out in 24 CFR Part 85, Subpart C and 24 CFR Part 570, Subpart J.

23. TERMINATION OF AWARD AGREEMENT

This Award Agreement may be terminated as follows:

- a. Termination or Modification Due to Loss of Funding. If, for any reason, the federal financial resources required by the City to fund AWARDDEE's project are withdrawn by the federal government, the City may unilaterally terminate or modify the terms of this Award Agreement to reflect the loss of funding. If a termination or modification is required, the City will, to the extent permitted by available HOME funds, compensate AWARDDEE for eligible work elements AWARDDEE has completed and for actual, necessary and eligible expenses incurred by AWARDDEE as of the revised termination date. The City will give AWARDDEE written notice of the effective date of the modification or termination of this Award Agreement and, if a reduction in funding is required, will provide AWARDDEE with a modified project budget.
- b. Termination Due to Noncompliance with Award Agreement Terms. In accordance with 2 CFR 200.338, suspension or termination may occur if AWARDDEE materially fails to comply with any term of the agreement. The CITY may permit the agreement to be terminated in whole or in part in accordance with 2 CFR 200.339. If CITY determines that AWARDDEE has failed to comply with the general terms and conditions of this Award Agreement, the project schedule, any special conditions, or has not obligated funds within 18 months after the date of execution of this Award Agreement, and if upon written notification of the defect AWARDDEE does not remedy the deficiency within a reasonable period to be specified in the written notice, the City may terminate

this Award Agreement in whole or in part at any time before the date of completion. The City will promptly notify AWARDDEE in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.

- c. Termination Due to Adverse Environmental Impact. This Award Agreement will terminate at the conclusion of the environmental review process if AWARDDEE or the City determines that the project would have a significant adverse impact on the quality of the human environment and that this impact cannot be avoided or sufficiently mitigated by reasonable, cost-effective means.
- d. Effect of Termination. In the event of termination due to AWARDDEE's failure to comply with the terms of this Award Agreement or the project's adverse environmental impact, any costs incurred will be the responsibility of AWARDDEE. However, at its discretion, the City may approve requests by AWARDDEE for reimbursement of expenses incurred. The City's decision to authorize payment of these costs or to recover expended HOME funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of AWARDDEE to comply with the terms of this Award Agreement and on whether any failure to comply with the terms of this Award Agreement was the result of circumstances beyond AWARDDEE's control.

24. WAIVER

The waiver of any of the terms and conditions of this Award Agreement on any occasion or occasions is not to be deemed as waiver of those terms and conditions on any future occasion.

25. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Award Agreement is for any reason held to be invalid, illegal, or unenforceable, such decision shall not affect the validity of the remaining portions of this Award Agreement.

26. ATTORNEYS' FEES

In the event of a breach of the terms of this Award Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in the enforcement of the terms of this Award Agreement.

27. SUCCESSORS AND ASSIGNS.

This Award Agreement inures to the benefit of and constitutes a binding obligation on AWARDDEE and their respective successors and assigns. AWARDDEE may not assign this Award Agreement or any of its duties hereunder without the prior written consent of the City.

28. OPEN MEETINGS

All meetings of AWARDDEE's Board of Directors will be open to the public as per the applicable Montana Code Annotated provisions in 2-3-203, MCA

29. INDIRECT COST RATE

While 2 CFR 200.414(c) details options available to HOME subrecipients to be able to

charge indirect costs to this award, 2 CFR 200.100(c) details the limitations on charging for indirect costs:

c) *Cost Principles*. Subpart E—Cost Principles of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

Furthermore, 2 CFR §200.408 Limitation on allowance of costs states:

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

24 CFR §92.207 defines the HOME program's cap on administrative and planning costs:

A participating jurisdiction may expend, for payment of reasonable administrative and planning costs of the HOME program and ADDI, an amount of HOME funds that is not more than ten percent of the sum of the Fiscal Year HOME basic formula allocation plus any funds received in accordance with §92.102(b) to meet or exceed participation threshold requirements that Fiscal Year.

Given HOME's ten percent cap on administrative and planning costs, which includes indirect costs, Awardee may select an indirect cost rate for this award but may not receive reimbursement for such costs since the City anticipates to incur administrative and planning costs up to the maximum allowed by HOME.

Awardees wishing to include indirect costs as part of their reimbursement of HOME Investment Partnerships Program funds, must inform the City of their intent by completing the attached **Administration and Indirect Cost Selection Form (ATTACHMENT C)**. Subrecipients will need to indicate the type of indirect rate option that is proposed/requested for the Program Year. Depending on the option chosen, the City may require additional documentation to establish the approved or negotiated indirect rate for your agency. The two indirect rate options followed by a brief definition are as follows:

- **Federally Negotiated Indirect Cost Rate:** These are actual costs that are incurred by an organization and are part of an approved Cost Allocation Plan that has been approved through a Federal agency or a cognizant agency.

- **Federally Accepted *de minimis* Indirect Rate:** Organizations that have never received a federally negotiated indirect cost rate will charge a flat de minimis indirect cost rate of 10% of Modified Total Direct Costs (MTDC) (see Exhibit B for definition of MTDC). *MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and sub awards and subcontracts up to the first \$25,000 of each sub award or subcontract.*

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties have executed this Award Agreement.

CITY OF MISSOULA

BY: _____ DATE: _____
John Engen, Mayor

ATTEST:

Martha L. Rehbein, CMC
City Clerk

HOMEWORD, INC.

BY: _____ DATE: _____
Tyler Johnson, Board President

STATE OF MONTANA)
)
County of Missoula)

On this ____ day of _____, 2017, before me _____, a Notary Public for the State of Montana, personally appeared, Tyler Johnson, Board President, Homeword, Inc. in Montana, and acknowledged to me that he executed the written instrument on behalf of said Business.

(NOTARY SEAL)

PRINTED NAME: _____
Notary Public for the State of Montana
Residing at _____
My Commission expires _____

ATTACHMENT A
PROJECT TIMELINE
HOME PROGRAM YEAR 2017
Homeword, Inc. – 4th Street CHDO Predevelopment Loan

Project Activity	Completion Date
Award of HOME funds	July 1, 2017
Partnership Agreement finalized	July to November 2017
Predevelopment Activities continue	July to December 2017
Preliminary due diligence, Phase I Environmental	July to October 2017
Project feasibility analysis completed	January 2018

4th Street Predevelopment

Homeword, Inc.

**2017 CITY OF MISSOULA HOME
USES OF FUNDS**

ENTER WHOLE NUMBERS ONLY	TOTAL PROJECT BUDGET	SOURCE	SOURCE	SOURCE
		HOME	Targeted Brownfield Assessment	Equity from McCann Holdings, LLC
		\$20,000	\$20,100	\$20,000
PROFESSIONAL WORK & FEES				
Architectural	\$15,000	\$5,500		\$9,500
Construction Estimating	\$5,000	\$2,500		\$2,500
ALTA Survey	\$5,000	\$2,500		\$2,500
Geotechnical Engineering	\$4,000			\$4,000
Initial Energy Modeling	\$3,500	\$2,000		\$1,500
TOTAL PROF. WORK & FEES	\$32,500	\$12,500	\$0	\$20,000
SOFT COSTS				
FIRREA Appraisal	\$4,000	\$4,000		
Market Study	\$3,500	\$3,500		
Environmental Study/Review	\$20,100		\$20,100	
TOTAL SOFT COSTS	\$27,600	\$7,500	\$20,100	\$0
GRAND TOTAL OF COSTS	\$60,100	\$20,000	\$20,100	\$20,000

ATTACHMENT C
HOME Administration and Indirect Cost Selection Form

INSTRUCTIONS:

Subrecipients interested in reimbursement for indirect costs must complete all parts of this form. Part one (1) will certify that the applicant is a legal entity. Part two (2) selects the type of indirect rate that the applicant is requesting in the application. Make sure the form is signed by the agency's authorized representative.

Name of Agency: _____

Address: _____

PART 1:

Subrecipients or grantees must be legal entities. Identify your organization type as one of the following and provide your Federal Employer Identification Number (FEIN):

- ☐ Local government: FEIN _____
- ☐ Non-Profit Organization: FEIN: _____
- ☐ Institution for Higher Education: FEIN: _____
- ☐ Individual (not eligible for indirect or administrative costs)

PART 2:

Applicants must select one of the following indirect rates. This rate will apply for the life of this grant, including any future extension for time, and cannot be changed.

- ☐ **Federally Negotiated Indirect Cost Rate.** We have previously negotiated or currently have an approved indirect cost rate with a Federal (cognizant) agency. A copy of our most recently approved rate agreement is attached; if necessary, we will provide a more current rate once it is approved. Our current Federally Negotiated Indirect Cost Rate is _____ %.
- ☐ **Federally Accepted *de minimis* Indirect Rate.** We have never received a federally negotiated indirect rate. We request as a condition of this grant to charge a flat *de minimis* indirect cost rate of 10% of modified total direct costs (MTDC). We would like to negotiate an indirect rate of modified total direct costs (MTDC).
- ☐ **We choose not to select an Indirect Cost Rate for this award**

_____ Name	_____ Title
_____ Signature	_____ Date

Definitions

§ 2 CFR 200.56 Indirect (facilities & administrative (F&A)) costs.

Indirect (F&A) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

§ 2 CFR 200.68 Modified Total Direct Cost (MTDC).

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards and subcontracts up to the first \$25,000 of each subaward or subcontract (regardless of the period of performance of the subawards and subcontracts under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward and subcontract in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

ATTACHMENT D
CITY OF MISSOULA HOME-CDBG
REQUIRED CONTRACT SUPPLEMENTAL CONDITIONS

The following supplemental Conditions are hereby made a part of the contract to which they are appended, thereby supplementing that contract and superseding any of its articles which are in conflict with the Conditions contained herein.

1. **INDEPENDENT CONTRACTOR.** It is understood by the parties hereto that the Contractor is an independent contractor and as such neither it nor its employees, if any, are employees of the HOME/CDBG Subrecipient for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to Section 39-71-401, *Montana Code Annotated (MCA)*, the Contractor has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principles and employees for the services to be performed hereunder.
2. **CONTRACTOR REGISTRATION.** Title 39, Chapter 9, Part 2, MCA provides that no Contractor may submit a bid unless properly registered with the Montana Department of Labor and Industry (DOLI) and has been issued a Certificate of Registration upon compliance with registration requirements. No bids will be considered that do not carry the bidder's Montana Contractor's Registration Number on the envelope containing the bid and on the bid. Independent contractors without employees and architects, civil or professional engineers licensed in Montana and acting solely in a professional capacity are exempt from registering (Section 39-9-211, *MCA*). An independent contractor may voluntarily elect to register.
3. **GROSS RECEIPTS WITHHOLDING REQUIREMENTS (CONTRACTOR'S LICENSE FEE).** Pursuant to Section 15-50-206(2)(3), MCA, the Owner is required to withhold one percent of all payments due the Contractor and is required to transmit such moneys to the Montana Department of Revenue as part of the public contractor's license fee. In like fashion, the Contractor is required to withhold one percent from payments to subcontractors.
4. **ELIGIBILITY.** Prior to submitting a bid, Contractor's firm and the firm's principals must not be debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension" [2 *CFR* 200.213]. Contractor must be registered in the System for Award Management (www.sam.gov). In addition, this provision applies to all Subcontractors.
5. **BONDING REQUIREMENTS FOR CONSTRUCTION.** In accordance with 2 *CFR* §200.325 and City of Missoula Administrative Rule #3, CDBG-HOME subrecipients and their Contractors must adhere to the following bonding requirements:

(a) A bid guarantee from each bidder equivalent to ten percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon

acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

6. **CONFLICT OF INTEREST.** The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the HOME/CDBG project that would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in the performance of this Contract, it will employ no person who has any such interest.
7. **DOCUMENTS INCORPORATED BY REFERENCE.** The Grantee's HOME and/or CDBG contracts with the City of Missoula for HOME and/or CDBG funding, dated _____, 20____, and all applicable federal and state statutes and regulations are incorporated into this Contract by this reference and are binding upon the Contractor.
8. **COMPENSATION.** Neither the cost plus a percentage of cost method nor the percentage of construction cost method will serve as the basis for compensating the Contractor for its services provided under this Contract.
9. **PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE.** This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is the 4th Judicial District in and for the County of Missoula, State of Montana.
10. **BREACH OF CONTRACT.** *(Applicable to contracts in excess of \$100,000; otherwise remove paragraph)* In the event of breach of Contract by the Contractor, the HOME/CDBG Subrecipient may at its option, engage the services of another contractor to complete the work and deduct the cost of the completion from the amount due to the Contractor. In the event if either the HOME/CDBG Subrecipient or Contractor do not fulfill performance under this agreement, then the affected party may pursue all legal remedies available for breach of contract.
11. **TERMINATION OF CONTRACT.** This Contract may be terminated as follows:
 - (a) **Termination due to loss of funding.** This Contract will terminate, in whole or in part, at the discretion of the HOME/CDBG Subrecipient in the event that the City of Missoula reduces or terminates payments under the HOME/CDBG Program so as to prevent the HOME/CDBG Subrecipient from paying the Contractor with

HOME/CDBG funds. In this event, the HOME/CDBG Subrecipient will give the Contractor advance written notice which sets forth the effective date of the termination and explains that the termination is due to a loss or reduction of the HOME/CDBG Program grant.

(b) Termination for cause.

- (i) If the HOME/CDBG Subrecipient determines that the Contractor has failed to comply with the terms and conditions of the Contract, it may terminate this Contract in whole or in part at any time before the date of completion. If the Contractor fails to comply with any of the terms and conditions of this Contract, the HOME/CDBG Subrecipient may give notice, in writing, to the Contractor of any or all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a reasonable period to be specified in the notice, the HOME/CDBG Subrecipient may, with no further notice, declare this Contract to be terminated. The Contractor will thereafter be entitled to receive payment for those services reasonably performed to the date of termination, less the amount of reasonable damages suffered by the HOME/CDBG Subrecipient by reason of the Contractor's failure to comply with this Contract.
- (ii) Notwithstanding the above, the Contractor is not relieved of liability to the HOME/CDBG Subrecipient for damages sustained by the HOME/CDBG Subrecipient by virtue of any breach of this Contract by the Contractor, and the HOME/CDBG Subrecipient may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the HOME/CDBG Subrecipient from the Contractor is determined.

12. CIVIL RIGHTS ACT OF 1964 [42 U.S.C. 2000d]. The Contractor will abide by the provisions of the *Civil Rights Act of 1964* which states that under *Title VI*, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

13. EQUAL EMPLOYMENT OPPORTUNITY. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

41 CFR 60-1.4 (b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will 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 obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

14. NONDISCRIMINATION AND EQUAL OPPORTUNITY. The Contractor will abide by the Federal requirements set forth in *24 CFR 5.105(a), Nondiscrimination and equal opportunity*, as these apply to the HOME/CDBG program and activities:

- a) requirements of the *Fair Housing Act* [42 U.S.C. 3601-20] and *Executive Orders 11063 and 12259* (regarding Equal Opportunity in Housing);
- b) prohibitions against discrimination on the basis of age under the *Age Discrimination Act of 1975* [42 U.S.C. 6101-07];
- c) prohibitions against discrimination against an otherwise qualified individual with a physical or mental disability, as provided in *Section 504 of the Rehabilitation Act of 1973* [42 U.S.C. 794]; and
- d) *Executive Order 11246*, as amended, regarding Equal Employment Opportunities.

15. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 [12 U.S.C. 1701u]. (*Per 24 CFR 135.3(a)(3) Contractor and subcontractor thresholds. The requirements of this part apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000.*) The Contractor will ensure that, to the greatest extent feasible, opportunities for training and employment arising in connection with this HOME/CDBG-assisted project will be extended to lower income project area residents. Further, Contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the awarding of contracts and purchasing of services and supplies. The following Section 3 Clause found at 24 CFR 135.38 applies:

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects

covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

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

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

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

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

16. **MINORITY AND WOMEN'S BUSINESS ENTERPRISES [Executive Orders 11625, 12432, 12138, and 11246].** The Contractor will take affirmative steps to assure that minority and women-owned businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Contractor must document all affirmative steps taken to solicit the participation of minority and women-owned businesses, and will forward this documentation (along with the names of the minority subcontractors and suppliers) to the HOME/CDBG Subrecipient.

In accordance with 2 CFR 200.321 the Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

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

17. **NONDISCRIMINATION.** The Contractor will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

18. **LOBBYING PROVISIONS.** The Contractor certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

19. **OWNERSHIP AND PUBLICATION OF MATERIALS.** All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are to be the property of the HOME/CDBG Subrecipient and the City of Missoula Office of Housing and Community Development (HCD) which have nonexclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating

thereto. Any reuse without written verification or adaptation by Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or in part under this Contract may be subject to copyright or patent in the United States or in any other country without the prior written permission of the HOME/CDBG Subrecipient and HCD.

20. **REPORTS AND INFORMATION.** The Contractor will maintain accounts and records, including personnel, property and financial records, which are adequate to identify and account for all costs pertaining to this Contract; and such other records as may be deemed necessary by the HOME/CDBG Subrecipient to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the HOME/CDBG Subrecipient or its authorized representative, and will be retained by the Contractor for five years after the expiration of this Contract.

The contractor, at such times and in such forms as the owner may require, shall furnish the owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

21. **ACCESS TO RECORDS.** It is expressly understood that the Contractor records relating to this Contract will be available during normal business hours for inspection by the HOME/CDBG Subrecipient, City of Missoula Office of Housing and Community Development (HCD), the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, and, when required by law, the Montana Legislative Auditor.

22. **INDEMNIFICATION.** The Contractor waives any and all claims and recourse against the HOME/CDBG Subrecipient, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to the Contractor's performance of this contract, except for liability arising out of concurrent or sole negligence of the HOME/CDBG Subrecipient or its officers, agents or employees. Further, the Contractor will indemnify, hold harmless, and defend the HOME/CDBG Subrecipient against any and all claims, demands, damages, costs, expenses or liability arising out of the Contractor's performance of this Contract except for liability arising out of the concurrent or sole negligence of the HOME/CDBG Subrecipient or its officers, agents or employees. In the event that the HOME/CDBG Subrecipient is named as a co-defendant in any action relating to activities to be performed by the Contractor or a subcontractor under this Contract, the Contractor will notify the HOME/CDBG Subrecipient of this fact and will represent the HOME/CDBG Subrecipient in the legal action unless the HOME/CDBG Subrecipient undertakes to represent itself as a co-defendant, in which case the HOME/CDBG Subrecipient will bear its own litigation costs, expenses, and attorneys' fees.

23. **LEGAL FEES.** In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

- 24. MODIFICATION AND ASSIGNABILITY OF CONTRACT.** This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement. The Contractor may not subcontract or assign its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the HOME/CDBG Subrecipient. Any subcontract or assignee will be bound by the terms and conditions of this contract.
- 25. COPELAND ANTICKICKBACK ACT.** The Contractor shall not induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which (s)he is entitled under contract of employment.
- 26. ACCESSIBILITY REQUIREMENTS.** All design specifications for the construction of any building shall comply with the applicable accessibility requirements of the *Fair Housing Amendments Act of 1988 (Fair Housing Act)*; the *Uniform Federal Accessibility Standards* adopted by HUD in *24 CFR Part 8* (implements *Section 504 of the Rehabilitation Act of 1973*); and the accessibility requirements of the *Americans with Disabilities Act*.
- 27. CERTIFICATION OF COMPLIANCE WITH FEDERAL CLEAN AIR AND WATER ACTS.** (Applicable to federally assisted construction contracts and related sub-contracts exceeding \$100,000; otherwise remove paragraph) During the performance of this contract, the contractor and all subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and the regulations of the Environmental Protection Agency with respect thereto, at *40 CFR 15*, as amended.. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 28. PRECONSTRUCTION CONFERENCE.** After the construction contract(s) for the project contemplated by this Contract have been awarded, but before the start of construction, a conference will be held for the purpose of familiarizing the successful bidder with the federal and State requirements which apply to projects funded in whole or in part by a HOME/CDBG Grant. Additionally, discussions will take place on such matters as project supervision, coordination with city or county officials, on-site inspections, progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety and other items pertinent to the project. The Contractor may be responsible for conducting this conference. The contractor shall arrange to have all supervisory personnel connected with the project on hand to meet with representatives of the engineer and owner to discuss any problems anticipated
- 29. FEDERAL LABOR STANDARDS PROVISIONS.** (required for construction contracts which include 12 or more HOME-assisted units or 8 or more total housing units when CDBG funding is involved; otherwise remove.)

(Attach and Reference [HUD-4010](#) form that by this reference is made a part hereof, if applicable.)

30. SCHEDULE OF MINIMUM HOURLY WAGE RATES. (required for construction contracts which include 12 or more HOME-assisted units or 8 or more units when CDBG funding is involved; otherwise remove.)

(Attach and Reference Davis-Bacon Wage Determination that by this reference is made a part hereof.)