

City of Billings
FY 1999 HOME PROGRAM
SUBRECIPIENT AGREEMENT

This Agreement is entered into by homeWORD/MONTANA PEOPLE'S ACTION, Montana, herein referred to as "the Grantee," and the City of Billings, herein referred to as "the City."

WITNESSETH THAT the Grantee and the City mutually agree as follows:

A. PURPOSE

The purpose of this Agreement is to provide funding for project activities approved by the City under its FY 1999 Home Investment Partnerships Program (HOME); and to achieve the purposes of Title II of the *Cranston-Gonzalez National Affordable Housing Act* (Title II, Public Law 101-625, approved November 1990, 104 Stat. 4079, 42 U.S.C. 12701-12839), as amended.

B. DOCUMENTS INCORPORATED INTO THIS AGREEMENT BY REFERENCE BUT NOT ATTACHED HERETO:

The Grantee agrees to comply with all appropriate federal, state, and local laws applicable to activities required by this agreement, including:

Program requirements under the HOME Investment Partnership Program 24 CFR Part 92, and the regulations issued thereunder, now or hereafter, including but not limited to 24 CFR, and the regulations, policies, guidelines, and requirements of Office of Management and Budget circulars A-110, A-122, A-87, and A-133 as they relate to the application, acceptance, and use of federal funds for this program as well as the Uniform Relocation Act and Section 104(d). Incorporated by reference are Title VI of the Civil Rights Act of 1964, Executive Order 11246, Section 3, Federal Labor Standards set forth in 24 CFR 570-605 and the American Disabilities Act.

The City agrees to upon request assist the Grantee to comply with requirements of the U.S. Department of Housing and Urban Development (HUD), and if the need arises, the City will provide technical assistance to assure compliance with requirements applicable to the project.

C. ACCEPTANCE OF HOME PROGRAM REQUIREMENTS

The Grantee will comply with all applicable parts and requirements of the *National Affordable Housing Act of 1990* (as amended), as now in effect or as they may be amended during the term of this Agreement; all requirements established by the City; applicable state and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.

The Grantee agrees that all contracts entered into by the Grantee for the completion of the

activities described in Section E of this Agreement will contain special provisions requiring contractors to comply with all applicable HOME Program requirements for construction projects.

The Grantee expressly agrees to repay to the City any funds advanced to the Grantee under this Agreement which the Grantee, its subcontractors or SUBRECIPIENT entities, or any public or private agent or agency to which it delegates authority to carry out portions of this Agreement, expends in violation of the terms of this Agreement or the federal statutes and regulations governing the HOME Program.

The Grantee agrees that 100% of HOME funds will be used to benefit the low and very low income persons as required by HOME Program regulations. Documentation of this requirement is specified in Section J.

D. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Agreement takes effect on January 19, 2000 and will be in effect for the "period of affordability" defined below. The activities to be performed by the Grantee will be completed according to the Implementation Schedule included as Attachment A to this Agreement, which by this reference is made a part of the Agreement.

For purposes of this Agreement, the period of affordability is as follows:

1. Period Of Affordability For New Construction Activities:

New Construction of Owner Occupied Housing: 20 years

E. SCOPE OF ACTIVITIES

The Grantee will carry out the activities as set forth below.

The major components of the project include: the construction of 8 new units of housing intended for ownership by low-income households on vacant lots currently owned by homeWORD/Montana Peoples Action located in what is known as the Billings Heights High Sierra subdivision Block 26, Lots 2-7 & Block 17, Lots 15-16. All 8 units are to be considered HOME assisted units and will meet HUD's definition as affordable housing for low-income home buyers according to HOME Program regulations governing the value of property at time of purchase and must adhere to resale provisions for the affordability period as outlined in the City's HOME Program description. Construction will at minimum meet the Uniform Building Code, all applicable local and state building codes and standards, the model Energy Code and conform to area covenants.

F. BUDGET

1. The total amount to be awarded to the Grantee under this Agreement will not exceed \$160,000.00.

2. A copy of the program budget is included as Attachment B to this Agreement and by this reference is made a part of this Agreement and is binding upon the Grantee. The Grantee may modify this budget only after having requested and received the City's written approval of the adjustment.
3. It is not anticipated that program income will be generated by the activities described in Section E of the Agreement, "Scope of Activities." Program income received before the program is closed out must be expended on HOME eligible activities approved in advance by the City before any additional HOME funds are requested by the Grantee. The receipt and expenditure of program income will be treated as additional HOME funds subject to all applicable requirements governing the use of HOME funds. The Grantee will record the receipt and expenditure of program income as part of the financial transactions of the grant program.

G. METHOD OF PAYMENT

1. The Grantee will not request disbursement of funds until the funds are needed for payment of eligible costs. The amount of each request will be limited to the amount needed.
2. If the actual total cost of completing the project is less than that projected by the Grantee in the preliminary budget (Attachment B), the City may, at its discretion, reduce the amount of HOME funds to be provided under this Agreement in proportion to the overall savings.

H. LIAISON AND NOTICE

Joe Burst, HOME Program Coordinator, is the City's liaison with the Grantee.

Sarah McNamara, Billings Housing Specialist is the Grantee's liaison with the Department.

Notice will be sufficient if given in writing and mailed to the parties' liaison.

I. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any subcontractor pursuant to this Agreement are to be the property of the Grantee and the City, which each have the nonexclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating to it. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written permission of the Grantee and the City.

J. ACCESS TO RECORDS

The Grantee will maintain reasonable records of its performance under this 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, the Comptroller General. These records will be kept in the Grantee's offices at 541 Avenue E., Billings, Montana.

1. Program Records Required:

Documentation that the income of HOME beneficiaries is within the HOME Program guidelines for low income homeowner projects.

2. Project Records Required:

- a. Documentation that the project meets applicable property standards for HOME new construction activities;
- b. Documentation that the rent level conforms to HOME Program requirements;
- c. On a quarterly basis: Total number of and percent of total number of, Sub-recipient clients who benefit from Sub-recipients use of HOME funds who are low and moderate income, white (not Hispanic), Black (not Hispanic), American Indian/ Alaskan Native, Hispanic, Asian/Pacific Islander.

3. Other Federally Required Records - Data must be gathered to document compliance with the following:

- a. Equal opportunity and fair housing laws, Section 3 of the *Housing Development Act*, attempts to utilize minority and female-owned business; and affirmative fair housing actions;
- b. Affirmative marketing procedures;
- c. Relocation requirements;
- d. Labor standards (Davis-Bacon does not apply for this project);
- e. Lead-based paint;
- f. Conflict of interest;
- g. Debarment and suspension; and

4. Other records as may be required by state or federal law:

The records described above must be retained for a period of three years after project closeout. The records demonstrating compliance with project requirements

that apply for the period of affordability must be retained for at least three years after the required period of affordability. If any litigation, claim negotiation, audit or other action has been commenced before the expiration of the regular three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

Access to the records described above and all other documentation relating to the program is governed by all applicable state and federal laws as they pertain to disclosure of information to the public and to the individual's right of privacy.

K. PERFORMANCE REPORTING

The Grantee will submit status reports on project performance and a year to date budget when submitting a payment request form in the format prescribed by the City.

L. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with the provisions of 24 CFR part 92.356; and with parts 2-2-125, 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, as applicable, regarding the avoidance of conflict of interest.

M. MODIFICATION AND ASSIGNABILITY OF AGREEMENT

This Agreement 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 Agreement, are valid or binding. This Agreement may not be enlarged, modified, or altered except upon written agreement. This Agreement does not imply any continuing commitment by the City of Billings beyond the termination date noted herein. The Grantee accepts responsibility for adherence to the terms of this Agreement by subcontractor or subrecipient entities and by its agents, if any, to which it delegates authority to carry out portions hereof.

N. SPECIAL CONDITIONS

1. The Grantee will maintain the new units in compliance with applicable Housing Quality Standards and local housing code requirements, in accordance to 24 CFR part 92.251, for the duration of the period of affordability.
2. The units assisted with FY 1999 HOME funds must meet affordability requirements set forth in 24 CFR part 92.252 or 24 CFR part 92.254, as applicable; HOME funds disbursed for a project will be repaid to the City if the assisted housing unit is sold within the specified time period;
3. The Grantee will comply with the project requirements found in 24 CFR, Part 92, subpart F, as applicable, in accordance with the type of project assisted;

4. The Grantee will carry out each activity in compliance with all federal laws and regulations described in 24 CFR, Part 92, subpart H, except that the Grantee does not assume the City's responsibility for the environmental review. Commitment of HOME funds to the activities described in Section E. is subject to the successful completion of the environmental review of the project. HOME project funds cannot be committed until receipt of a "Release of Funds" for this project from HUD.
5. When applicable, the Grantee will follow the provisions governing the use of HOME funds by religious organizations, as contained in 24 CFR part 92.257.
6. The Grantee certifies that it will provide a drug-free work place.

O. CONSTRUCTION AND VENUE

This Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the First Judicial District in and for the County of Yellowstone, State of Montana.

P. INDEMNIFICATION

1. The Grantee waives any and all claims and recourse against the City, 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 the Grantee's or any subrecipient's performance of this Agreement.
2. Further, the Grantee will indemnify, hold harmless, and defend the City against any and all claims, demands, damages, costs, expenses, or liability arising out of the Grantee's or any subrecipient's performance of this Agreement. In the event that the City is named as a co-defendant in any action relating to activities to be performed by the Grantee or subrecipient under this Agreement, the Grantee will notify the City of such fact and will represent the City in such legal action unless the City undertakes to represent itself as a co-defendant in such legal action, in which case the City will bear its own litigation costs, expenses, and attorneys' fees.

Q. CONSTRUCTION CONTRACTS

The Grantee agrees to deny participation in construction contracts by ineligible, debarred or suspended persons or entities at 24CFR Part 24. The grantee will provide the City with the names of contractors and subcontractors prior to entering into contracts. The City, within five (5) working days, will provide the grantee a written notice if the contractors are ineligible.

R. TERMINATION OF AGREEMENT

This Agreement may be terminated as follows:

Termination Due to Noncompliance with Agreement Terms. If the City determines that the Grantee has failed to comply with the general terms and conditions of this Agreement, the project schedule, or any special conditions, and if upon notification of the defect the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the City may terminate this Agreement in whole or in part at any time before the date of completion. The City will promptly notify the Grantee in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.

S. REPAYMENT OF FUNDS

If the housing assisted with HOME funds fails to meet the HOME affordability requirements for the periods set forth in Section D of this Agreement, the Grantee will repay to the City all HOME funds expended on this project.

T. TRANSFER OF OWNERSHIP


The Grantee will develop, own, and manage the project to be constructed. The Grantee may elect to assign all of its right, title, and interest in said project. If Grantee elects to make such an assignment, the City will review and determine consent to the assignment and release Grantee from any further liability hereunder. The City's consent to the assignment would be contingent upon acceptance of the terms and conditions of this agreement.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed.

SUBRECIPIENT
GRANTEE:
homeWord


Ren Essene
Executive Director

ACCEPTED BY
CITY OF BILLINGS
COMMUNITY DEVELOPMENT
DIVISION


Joe Burst
HOME Program Coordinator