

After recording, please return to:
Community Development Division
City of Billings
PO Box 1178
Billings, MT 59103

HOUSING DEVELOPMENT AND CONSTRUCTION AGREEMENT
Kings Green Subdivision, Third Filing
Phase IV

HOME Investment Partnerships Program

Between the

City of Billings
A Montana Municipal Corporation
Whose address is
PO Box 1178, Billings, Montana, 59103
the "City"

and

Real Estate Dynamics, Inc.
A For-Profit Sub S Corporation
whose address is
3780 Heritage Drive, Billings, MT 59102
The "Builder/Selling Agent (BSA)"

Date: _____

WHEREAS, the BSA desires to work with the City to build affordable housing on City-owned property in the City of Billings, Yellowstone County, Montana, commonly known as Kings Green Subdivision, Third Filing; legal description as follows:

Lots 5A-1, 6A, 7A, 8A, Block 6, and Lots 40A, 41A, 42A, 43A, 44A, and 45, Block 3, Kings Green Subdivision, Third Filing, all in Kings Green Subdivision, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana.

WHEREAS, the City has concurrently entered into a HOME Contract with the United States Department of Housing and Urban Development (HUD) whereby the City will receive and administer HOME monies to provide financing, in part, for site development for the project to be undertaken by the BSA;

WHEREAS, the City desires to develop the land for affordable housing, and the City desires to use HOME funds for site improvement, engineering fees, and related development costs for affordable housing;

WHEREAS, the BSA is desirous of obtaining access to City-owned and developed land and is willing to assume obligations to the City under the HOME contract on the terms and conditions, as provided herein; and

WHEREAS, the City has selected Real Estate Dynamics, Inc. (RED) as the BSA for the Project.

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

A. PURPOSE

The purpose of this written Agreement is to ensure compliance with 24 CFR 92.504, which provides for the funding of approved project activities by the City through its HOME Investment Partnerships Program (HOME) written agreement with HUD; 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. ROLES AND RESPONSIBILITIES

The BSA agrees to build ten (10) single-family units. Each home will be constructed with universal design features that address accessibility and "Visit-ability," receives Energy Star Certification, includes finished landscaping or "Xeriscaping," and meets all other specifications contained in the Kings Green Subdivision, Phase IV, Affordable Housing Request for Proposals – TLR03302012 to which RED submitted a proposal. The units will be a mixture of the three basic plans:

- 2 bedrooms, 1 bathroom, and 1,008 square feet, or
- 3 bedrooms, 1.75 bathrooms, and 1,276 square feet, or
- 4 bedrooms, 1.75 bathrooms, and 1,417 square feet.

The City agrees to oversee the project during construction. Upon completion of the single-family homes, the City agrees to provide subsidy assistance to the homebuyer. The City will also enter into a HOME agreement with the homebuyer.

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

The BSA agrees to comply with all federal, state, and local laws applicable to activities undertaken through this agreement, including: all program requirements that regulate and restrict the use of the funds under the HOME Investment Partnership Program 24 CFR Part 92 and the regulations issued there under, now or hereafter, including but not limited to 24 CFR, and the regulations, policies, guidelines, and requirements as they relate to the application, acceptance, and use of federal funds for this program; BSA's project application statements as identified in the response to the Request for Proposals as received in the Community Development Division on March 27, 2012, along with associated price quotes; Uniform Relocation Act; and Section 104(d) and all amendments to these laws that govern the use of HOME funds. Incorporated by reference is 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 Americans with Disabilities Act.

D. ACCEPTANCE OF HOME PROGRAM REQUIREMENTS

1. The BSA 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; applicable state and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.
2. The BSA will comply with all applicable parts and requirements of Section 3 of the Housing and Urban Development (HUD) Act of 1968.
3. The BSA agrees to the following:
 - a. Project Schedule
The construction of site improvements was completed and inspected on _____, 2012 by the City. Housing construction will be completed by _____.

BSA including weather dependent items within two (2) years from the date of this current agreement; unless an extension is granted by the City. BSA agrees that it will be responsible for any and all damage it causes to the already in place infrastructure, including but not limited to sidewalks, streets, curbs, gutters, utilities and storm drain system.

b. Project Budget

The site improvements project budget has been estimated and approved for \$389,000. Projected construction costs for the range of houses to be constructed are on file with the BSA and the City.

4. The BSA agrees that all contracts entered into by the BSA for the completion of the activities described in Section I (SCOPE OF ACTIVITIES AND PROJECT RESTRICTIONS) of this Agreement will contain provisions requiring contractors to comply with all applicable HOME requirements. These contract provisions are to be included in all subcontracts.
5. The BSA expressly agrees to comply with federal statutes and regulations governing the HOME program.
6. Initial Homebuyer's Period of Affordability / RECAPTURE Provisions: The BSA agrees that all homes constructed under this Agreement will initially be sold to a low-income homebuyer under the terms of the restrictions contained in the Warranty Deed and will be subject to recapture provisions. For purposes of this Agreement, the period of affordability and the recapture provisions are:

Ten (10) years as required by HOME regulations for per-unit subsidies from \$15,000 to \$40,000, which will apply to the homebuyers who receive down payment assistance and/or the site improvements subsidy, and

Fifteen (15) years as required by HOME regulations for per-unit subsidies over \$40,000, which will apply to the homebuyers who receive down payment assistance and/or the site improvements subsidy.

Subsidy will include site improvements and First Time Home Buyers assistance.

The BSA understands that recapture provisions for each assisted unit will be enforced and will begin after the transfer of the property to the homebuyer. Repayment of the homebuyer's HOME loan will be deferred for the term of the recapture provisions, provided that the property owner is in full compliance with the agreement. At the time of sale or refinance of the property at any time, the full amount of the HOME loan will become due in full. The loan will become due in full should the property become a rental during the affordability period. In the event that the property owner sells the property during the term of the recapture provisions, the full amount of the City's HOME investment will be due and payable to the extent that net proceeds are available to repay the homebuyer's loan. The BSA agrees to inform all potential low-income homebuyers of all applicable recapture provisions.

E. PERSONNEL

The BSA represents that it has, or shall secure, at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder shall be performed by the BSA, or under this/her supervision, and all personnel engaged in the work shall be fully qualified and shall be eligible under the law to perform such services. Where the State or local public jurisdictions require licensure for the provision of services provided hereunder, the BSA and any subcontractors shall be properly licensed. The BSA

will provide at the time of this Agreement; an Irrevocable Standby Letter of Credit; Commercial General Liability Insurance in the amount of \$1.5 million per occurrence and \$750,000 per claim; and workers compensation insurance carried by any sub-contractor who contracts directly with the BSA for the construction services related to this agreement. Other professional services subcontracted for by the BSA will provide proof of insurance as required by Montana Law.

F. BONDS AND INSURANCE

The BSA will provide before construction an Irrevocable Standby Letter of Credit in the amount of \$100,000 during the time the BSA holds the title to any lot on which a unit is being constructed and has not yet been sold/transferred to an approved low-income homebuyer for the time period reference in Paragraph I, Section 8; Commercial General Liability Insurance in the amount of \$1.5 million per occurrence and \$750,000 per claim, and workers compensation insurance carried by any sub-contractor who contracts directly with the BSA for the construction services related to this Agreement. Other professional services subcontracted by the BSA will provide proof of insurance as required by Montana Law.

Insurance: The BSA shall secure and maintain such insurance policies, including those set forth below, as will protect itself, its subcontractors and, unless otherwise specified, the City from all claims for bodily injuries, death, and/or property damage which may arise under this Agreement; whether the acts were made by the BSA or City or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:

- a. Commercial General Liability in an amount not less than \$1.5 million per occurrence and \$750,000 per claim for injuries, including accidental death, to any one person; and
- b. Builder's Risk Insurance in an amount not less than \$750,000; and
- c. Commercial automobile liability -- \$1,500,000 per accident.

Insurance certificates shall be filed with the City giving satisfactory evidence of insurance as stipulated above at the time the Agreement is signed. The Commercial General Liability Insurance certificate shall be maintained during the life of the Agreement. The Builders Risk Insurance shall be secured prior to initiating construction on the first unit.

All insurance certificates shall name the City as an additional insured party and contain the following language, "The Company agrees that it will give the City of Billings, Montana, 30 days prior written notice of its intent to cancel or materially change the described policy." This language, however, if accompanied by a disclaimer or any other language, which negates company responsibility for failing to provide said notice, will not be acceptable.

The insurer and the insurance form must be satisfactory to the City Attorney for the City of Billings. Further, the BSA will ensure all subcontractors performing work on the project maintain public liability, property, and casualty insurance and stationary workers compensation insurance coverage in compliance with Montana Law.

Bonds/Irrevocable Standby Letter of Credit: The BSA will provide an Irrevocable Standby Letter of Credit issued by a responsible lending company for \$100,000. The Irrevocable Letter of Credit will be filed with the City of Billings City Clerk at the time the City transfers a lot to the BSA through a Realty Transfer Certificate. The Irrevocable Letter of Credit will remain on file with the City during the time BSA holds title to any lot while a house is being constructed on the lot, or it is scheduled to be constructed on,

and has not yet been sold/transferred to an approved low-income homebuyer for the time period referenced in Paragraph I, Section 8, conditioned that BSA shall faithfully perform the terms and conditions of this Agreement and shall save the City harmless from the negligent acts of the BSA, its agents or servants in their performances of the terms and conditions of the Agreement, and shall pay all proper claims of subcontractors and suppliers. The City will release the Irrevocable Letter of Credit at the request of the BSA at any time that all lots transferred to the BSA upon which construction has begun are fully constructed and have received a Certificate of Occupancy. Prior to the construction resuming on a lot, the BSA will file an Irrevocable Letter of Credit with the City.

G. EFFECTIVE DATE AND TIME OF PERFORMANCE

The Project shall commence as soon as practicable after the execution of this Agreement and shall be undertaken and performed in accordance with the schedule set forth in this Agreement between the City and the BSA. The BSA agrees that time is of the essence in the performance of its obligations under this Agreement, and that completion of the Project shall occur no later than two (2) years from the date of this Agreement.

H. TERMINATION DATE

This agreement shall terminate no later than two (2) years after the date upon which it was executed, plus any authorized extensions as set forth in writing in the Agreement between the City and the BSA.

I. SCOPE OF ACTIVITIES AND PROJECTED RESTRICTIONS

1. The major components of the project include the construction of a total of 10 units of affordable owner-occupied, single-family, housing units for low-income households to be located in Kings Green Subdivision, 3rd Filing, Phase IV. The City will provide the BSA with access to City-owned land located in the Kings Green Subdivision, 3rd Filing, to construct 10 single-family dwelling units affordable to low-income households in this fourth phase.

The units to be constructed in the development will comply with affordability restrictions and design standards as specified herein. All of the units will initially be sold to low-income households as defined by HOME Program regulations and verified through documentation provided by individuals purchasing the properties.

2. Low-Income Benefit
All of the homes constructed will initially be sold to a household who qualifies as a low-income family as defined by HOME Program regulations. Low-income households are defined as those households whose income is less than 80% of the current Area Median income (AMI) for their particular family size. The City will provide the BSA with the current income guidelines upon request. The City will approve the homebuyers and monitor the principal residency requirement compliance.
3. Contract Administration
All site improvements undertaken with the use of HOME funds were completed by the City under a public contract that complied with HOME Program regulations for construction contracts.

The BSA will be responsible for administration of all home building contracts and related work associated with this construction for the project. Construction contracts entered into between the BSA and contractors, sub-contractors, and suppliers will be considered private contracts but must also be undertaken in compliance with City, state and federal regulations for construction contracts.

At or before closing, the BSA will provide a one-year warranty on quality of construction and materials to homebuyer. At closing, the BSA will release all liens on the property in the name of the BSA.

4. Property Standards

Upon completion of each individual home, the new home will, at a minimum, meet the International Residential Code; all adopted local and state building codes and standards, as well as Section 8 Housing Quality Standards. Homes will be constructed according to the BSA's response to the Request for Proposals received the Community Development Division on March 27, 2012. All representations made in the BSA's response to the Request for Proposals will be considered part of this Agreement.

The BSA agrees to provide the City with detailed information for each home to be constructed prior to the initiation of the construction of each home. The City will verify estimated costs and construction standards for compliance with the HOME Program affordability provisions.

5. Per Unit Subsidy

All HOME funds provided for site improvements, in the amount of \$_____ per unit, will be enforced by the City through RECAPTURE restrictions imposed upon the initial home buyer according to the terms, conditions and reverter clause set out in the Warranty Deed. The initial property owners may apply for and may receive assistance under the City of Billings' First Time Home Buyer Program separate from this Agreement in an amount to be determined by need and household income. Assistance provided through the First Time Home Buyer Program is also subject to RECAPTURE provisions.

6. Time of Performance

This agreement shall cover 10 dwelling units in Phase IV as identified herein and be effective upon full and proper execution. The Agreement shall expire upon completion but not later than two (2) years from the date of execution. The time of performance may be extended by a modification to this Agreement, subject to mutual written agreement by the BSA and the City. To initiate this process, a request in writing for an extension of project time and performance shall be submitted to the City's Community Development Division by the BSA three (3) months prior to the agreement completion term. It shall include full justification for the extension requested.

7. Cost of Site Improvements

Site improvements work has been paid for through the HOME Program under a public contract between the City of Billings and private contractors. No HOME funds will be paid to the BSA for site improvements.

8. Control of Land

Each individual building lot will remain in the name and control of the City until the point in time that the BSA is ready to initiate construction of a home on the lot.

At that time, a Warranty Deed with restrictions and a reverter clause will be provided by the City to the BSA enforcing the terms and conditions of this agreement and the BSA must initiate construction on the site within 30 days and complete within 180 days after initiation of construction. The BSA has the option of beginning construction on no more than six (6) houses at any one time. The BSA may not begin construction on an additional house until a Certificate of Occupancy has been issued for at least one (1) house. At no time shall BSA have more than six (6) houses under construction.

The BSA will execute a Quit Claim Deed concurrently for said lot, to return ownership to the City, should construction not take place in a timely manner or should the BSA violate any terms of this Agreement or the restrictions in the Warranty Deed. This Quit Claim Deed will be held in escrow at American Title & Escrow until final transfer of ownership to the new homebuyer.

Each individual lot will be sold by the City to the BSA with a Warranty Deed for Valuable Consideration, subject to certain restrictions and a reverter clause. The BSA will not sell undeveloped lots to a third party, or allow the construction of a home on a lot by a third party, without the written permission of the City and only in accordance with the terms of this Agreement.

The BSA, upon construction of a home on the property and the subsequent sale of the individual developed property (lot) to a home buyer, shall include all covenants, deeds and restrictions enforced in the Warranty Deed, which run with the land and are in effect and enforceable through the period of affordability to ensure the HOME RECAPTURE restrictions are carried forth through the period of affordability.

9. Cost Verification, Project Costs, and Profit Level

PROJECT EXPENSES shall be defined as follows: Building permit fees, house plan expenses, site preparation, excavation, backfill and grading, decking, foundation materials and labor, waterproofing and fill, dirt and debris removal from site, concrete work, lumber, framing, roofing, HVAC, siding, plumbing, electrical, insulation, ceilings and drywall, garage doors, painting, finish carpentry and hardware, cabinets, vanities, countertops, electrical fixtures, sewer and water excavation, mirrors and medicine cabinets, appliances, floor covering and underlayment, gutters, landscaping, temporary utility costs, interest expense, closing costs associated with construction financing, cleaning costs, insurance, warranty, FHA inspection fees, and normal industry overhead expense allocation and other items directly related to the construction of the home as allowed for in the project.

PROFIT LEVEL shall be defined as follows: Profit as defined by sales proceeds less approved project expenses.

The BSA agrees to provide the City with verification of all project expenses and a statement of profit level post construction of each home. The City will allow a maximum profit level of 15% of the total project costs which includes marketing and selling fees. There will be a maximum 5% commission on homes sold by the BSA, when the BSA serves as both the buyer's and seller's agent. Total project costs are determined by the cash value of site improvements investment per lot in addition to construction costs of each home.

A project budget estimating project expenses will be provided by the BSA to the City prior to the start of construction on each home. The budget must be pre-approved by the City prior to initiation of construction on each home. The City will verify project expenses and profit level based on detailed documentation of project expenses provided by the BSA when construction is completed.

REQUEST FOR DISBURSEMENT OF FUNDS is to be submitted by the BSA. The City will review, approve and submit payment for approved expenditures to BSA within 30 days of receipt of the Request for Disbursement of Funds.

10. Sales Price / Qualification as Affordable Housing: Homeownership \$92.254

All properties sold by the BSA to homebuyers must be sold at an appraised value that does not exceed 95% of FHA 203(b) Mortgage Limits. The appraised value also includes the value of the contribution of land and site improvements to the property. Furthermore, to prevent construction of homes below the standard of

homes constructed in previous phases of the Kings Green Subdivision, the appraised value of the properties cannot be less than 70% of the FHA 203(b) Mortgage Limits as modified from time to time. The City will provide the BSA with notice of future modifications upon request.

The sales price of the property cannot exceed the project expenses plus 15% profit level to maintain housing affordability. Such affordability will be maintained by the agreed covenant to sell all of the homes to households who qualify as low-income as defined by HOME Program regulations.

The value of the land and site improvements will be included in the sales price of the home for appraisal purposes. As all households will qualify as low-income family as defined by HOME regulations, a Deed Restriction Credit will be given to the eligible buyer and will not be included as part of the homebuyer's principal part of the mortgage loan to assure the affordability of the homes.

In the event a home is not sold within 90 days after construction, the BSA may choose to reduce the sales price and reduce or eliminate the profit level (in consultation with the City) to or below the project expenses as certified to the City by the BSA. In such an event, the City would subsidize the purchase of the home by a lower-income household up to the amount of the certified project expenses as defined by the selling price and the BSA will forego gaining any profit level on the sale of the home.

Both the City and BSA recognize material costs and market conditions may limit contract performance. Prior to commencing construction on one or more homes, an appraisal shall be conducted using the proposed home plan. Should the results of the appraisal be less than a sales price meeting the specifications in Section I, SCOPE OF ACTIVITIES AND PROJECTED RESTRICTIONS, paragraph 10, the BSA shall not commence construction unless the home is pre-sold to an approved buyer at a price acceptable to City and the BSA that allows the terms of this agreement to be met. Prior to construction, the City and BSA shall review the pre-sold buyer terms to mutually agree to commence this construction.

As construction within Phase IV progresses, if the appraisal histories for the pre-sold homes show selling prices are consistently supported by appraisal results, the City and BSA may agree to initiate construction and performance of this agreement on a non pre-sold basis.

Additionally, should appraisals be less than a sales price meeting the specifications in Section I, SCOPE OF ACTIVITIES AND PROJECTED RESTRICTIONS, paragraph 10, the City may elect to have the BSA commence construction on a home-by-home basis with the intent to compensate the BSA as stated in Section I. SCOPE OF ACTIVITIES AND PROJECTED RESTRICTIONS, paragraph 11, HOME Program Proposed Rule. Prior to the commencement of construction, the City and BSA shall establish an agreed upon compensation to the BSA at the time the home is converted to a HOME rental unit, under the terms of Section I, SCOPE OF ACTIVITIES AND PROJECTED RESTRICTIONS, paragraph 11.

11. HOME Program Proposed Rule

If the HOME Program Proposed Rules released in December 2011 are formally adopted during the term of this agreement, the BSA and City agree to implement the rules for the homes covered by this agreement that have not been transferred to an eligible low-income homebuyer as stipulated within this agreement.

Under the proposed rules, in the event the BSA does not sell a home to an eligible low-income homebuyer within six (6) months of the home receiving a Certificate of

Occupancy, the unit must be converted to a HOME rental unit and operated in compliance with §92.252 for the affordability period applicable to rental projects (20 years for new construction). If this happens, the BSA will be compensated for eligible and City-approved home expenses plus 15% profit, less realtor fees and any BSA projected closing and/or other costs that were not paid by the BSA. BSA shall provide a projected cost and profit to the City for these homes for approval prior to commencement of construction.

12. Square Footage, Cost Estimate, and House Plans

The BSA agrees to assure that the housing units constructed in the Kings Green Subdivision are compatible with the existing homes constructed in Phases I, II and III of the Kings Green Subdivision and the minimum square footage of each home to be constructed will not be less than 900 square feet per level.

The BSA will provide the City general specifications, cost estimates and house plans for each home constructed under the terms of this Agreement prior to initiation of construction to assure quality and affordability. These specifications and plans may be modified upon written approval of the City. The City will provide the BSA with written approval of each home prior to initiation of construction.

J. LIAISON AND NOTICE

Tam Rodier or Dina Billington are the City's liaisons with the BSA.
Timothy J. Hudson is the BSA's liaison with the City.

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

K. 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 City and BSA. The City and BSA each have the nonexclusive and unrestricted authority to release, publish, or otherwise use in whole or in part, information relating to it. No materials 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 from the City and BSA.

L. ACCESS TO RECORDS

The BSA will supply to the City copies of all current records, including, but not limited to: contracts; approved invoices and lien releases; project budgets; cash flow statements; annual audits; and any and all financial records which impact the performance of the BSA under the terms of this written agreement.

The BSA may, at the City's discretion, be considered in breach of this agreement by failing to provide any and all requested documentation in a timely manner. Failure to provide access to records is grounds for termination of this Agreement.

The BSA and City 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 (HUD) and the Comptroller General. These records will be kept in the BSA's office at 3780 Heritage Drive, Billings, MT 59102. The City will keep its pertinent records at the Community Development Division office, currently located at 510 N Broadway, Billings, Montana.

Project Records Required to be Maintained by the City:

1. Documentation that the project meets applicable property standards for HOME new construction activities;

2. Documentation that the appraised value of each new home conforms to HOME Program requirement;
3. For each household purchasing a HOME assisted unit – a copy of the homebuyer application, income verification, terms & conditions and recapture provisions;
4. An approved Affirmative Marketing Plan which complies with 24 CFR 92.351; and
5. Immediate written notification of any pending legal action which names the BSA and the real property assets covered under this agreement.

BSA to provide all records described above to the City and must be retained for a period of five years after project closeout. The records demonstrating compliance with project requirements that apply for the period of affordability must be retained for at least five 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 five 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.

M. PROGRESS REPORTING

The BSA will promptly submit quarterly status reports on project progress in writing.

N. AVOIDANCE OF CONFLICT OF INTEREST

The BSA will comply with the provisions of 24 CFR § 92.356; and with § 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.

No officer, employee, or agent of the City or immediate relative (spouse, parent, sibling, child) shall be an investor, officer, employee or agent of the BSA or receive any compensation from the BSA during the term of this Agreement outside of approved project costs.

O. 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 BSA accepts responsibility for adherence to the terms of this Agreement by contractor, subcontractor, or sub-recipient entities any by its agents, if any, to which it delegates authority to carry out portions hereof. For the purposes of this Agreement, legal actions pending (or in process) are considered a pending modification of the written agreement and require a written notice to the City as soon as the written agreement becomes part or party to a legal civil or criminal action.

P. 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 the District Court of the Thirteenth Judicial District in and for the County of Yellowstone, State of Montana.

Q. INDEMNIFICATION

The BSA 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 BSA's or any contractor's, subcontractor's or sub-recipient's performance of this Agreement.

Further, the BSA will indemnify, hold harmless, and defend the City, its officers, agents and employees against any and all losses, claims, demands, damages, costs, expenses, or liability arising out of the BSA's or any contractor's, subcontractor's or sub-recipient's performance of this Agreement or in any way arising or resulting from any intentional or negligent act on the part of the BSA or its agents or employees or which result in personal injury or real or personal property damage to any person or entity including the City. In the event that the City is named as a co-defendant in any action relating to activities to be performed by the BSA or City or sub-recipient under this Agreement, the BSA will immediately notify the City of such fact in writing.

In addition, the City will indemnify, hold harmless, and defend the BSA, its officers, agents and employees against any and all losses, claims, demands, damages, costs, expenses, or liability arising out of the City's performance of this Agreement or in any way arising or resulting from any intentional or negligent act on the part of the City or its agents or employees or which result in personal injury or real or personal property damage to any person or entity including the BSA. In the event that the BSA is named as a co-defendant in any action relating to activities to be performed by the City or BSA under this Agreement, the City will immediately notify the SA of such fact in writing.

R. TERMINATION OF AGREEMENT

Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 60 days before the effective date of such termination. BSA agrees to complete construction of any homes started in the construction process prior to termination without cause. It is the intent of the parties that these remedies be exercised in a manner appropriate and to the end that this project shall continue to provide housing for the target population of low-income households.

Termination for Cause: If, through any cause, the BSA fails to fulfill in a timely and proper manner their obligations under this Agreement, or if the BSA violates any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the BSA of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination.

It is understood that the BSA and City representatives shall enter into negotiations in an attempt to reach a solution mutually acceptable to both parties within five (5) days of notification of termination, if the City shall so request in writing. If no agreement is reached by the City and BSA then the matter will be referred to HUD for resolution. In any event, the City may terminate the agreement to fund an activity without cause or recourse from the BSA, its agents or subcontractors.

Notwithstanding the above, the BSA shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of contract by the BSA or termination by BSA, and the City may withhold any payment to the BSA for the purpose of setoff until such time as the exact amount of damages due to the City from the BSA is determined.

Return of Material: In the event of termination, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the BSA under this Agreement, shall, at the option of the City, become the City's property, and City shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Remedies: Where either party violates or breaches contract terms, the other party, at its discretion, may, in addition to terminating this Agreement, institute such administrative, contractual, legal or equitable remedies available as may be appropriate. In such event, the party found in violation of the Agreement shall pay the other party's costs and reasonable attorney's fees incurred thereby.

S. UNIFORM RELOCATION ACT

The BSA will assure that the units are sold to homeowners who intend to use the property as their primary residence and that the units will not be rented prior to the initial sale of the property to a homeowner. In the event the BSA breaches this Agreement and rents the property, the BSA will be subject to compliance with the Federal Uniform Relocation Act, be solely responsible for the cost to comply with those requirements, and be subject to termination of this Agreement.

T. COMPLIANCE WITH LAWS

1. Median Income Level: The BSA agrees that 100% of the units to be constructed will be purchased and occupied by low-income households. Low-income households are defined as those households whose income is less than 80% of the current area median income (AMI) for their particular family size.
2. Political Activities: None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activities or to further the election or defeat of any candidate for public office.
3. Construction Contracts: The BSA agrees to deny participation in construction contracts by ineligible, debarred or suspended persons or entities at 24 CFR Part 24. The BSA 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 BSA a written notice if the contractors are ineligible.
4. Environmental Review: The BSA will carry out each activity in compliance with all federal laws and regulations described in 24 CFR, Part 92, subpart H, except that the BSA does not assume the City's responsibility for the environmental review which will be completed by the City prior to the beginning of construction.
5. Drug-Free Work Place: The BSA certifies that it will provide a drug-free work place.
6. Davis-Bacon Wage Rates: The Davis Bacon Act is triggered in projects with twelve (12) or more HOME assisted units. Because Kings Green Subdivision, Phase IV, only contains ten (10) units, the City will NOT monitor Davis-Bacon wage rates with this project.
7. Equal Opportunity Provisions: During the performance of this contract, the BSA agrees to not discriminate against any applicant, employee, contractor or subcontractor due to race, color, creed, sex, age, religion, marital or family status,

