

HOME Investment Partnerships Program
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION AGREEMENT

between

City of Billings

A Montana Municipal Corporation
P.O. Box 1178 Billings, Montana 59103
the "City"

and

Montana Homeownership Network, Inc. dba NeighborWorks Montana

a Montana Nonprofit Organization
509 1st Avenue South, Great Falls, MT 59401
and is a certified Community Housing Development Organization
through the City of Billings,
the "Developer"

On this date:

August 10, 2017

WHEREAS, the Developer desires to work with the City and build affordable housing on property being purchased by NeighborWorks Montana in the City of Billings, Yellowstone County, Montana commonly known as 5336 Denali Drive, Billings, Montana and legally known as:

Lot 5, Block 5 Riverfront Pointe Subdivision, in the City of Billings, 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 Investment Partnership Program (HOME) moneys to provide financing, in part, for an acquisition / construction project (the "Project") to be undertaken by the Developer.

WHEREAS, the Developer is desirous of obtaining such financing on the Project and is willing to assume obligations to the City under the City's HOME Contract with HUD on the terms and conditions, as provided herein.

WHEREAS, the Developer desires to utilize HOME funds to assist with the acquisition and / or new construction, and related development costs resulting in the creation of two new owner-occupied affordable housing units. HOME funds will also be utilized as direct assistance to income-eligible households, as described herein.

WHEREAS, the City has completed an Environmental Review Record and has garnered HUD's authority to utilize HOME funds for the development of the Project.

WHEREAS, the City has certified completion of the following prior to this HOME funding commitment: subsidy layering and underwriting analysis; assessment of the current market demand in the neighborhood; assessment of the experience and financial capacity of the Developer; and confirmation of firm written financial commitments to the Project.

WITNESSETH THAT the City and the Developer, mutually agree as follows:

A. PURPOSE

The purpose of this written Agreement is to ensure compliance with 24 CFR 92, including 92.300, which provides for the funding of approved Community Housing Development Organization (CHDO) project activities by the City through its HOME Contract with HUD; and to achieve the purposes of Title II (42 USC 12701-12839) of the Cranston-Gonzales National Affordable Housing Act (Public Law 101-625, approved November 28, 1990), including previous and future amendments.

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

The Developer, a CHDO and recipient of HOME funds, agrees to comply with all appropriate federal, state, and local laws applicable to the HOME funds awarded to complete approved activities undertaken through this agreement, including: All program requirements which regulate and restrict the use of the funds under the HOME Investment Partnerships 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; Developer’s project application statements; Uniform Relocation Act; and Section 104 (d) and all amendments to these laws which 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. The Developer must also comply with applicable Uniform Administration Requirements as described in 24 CFR 92.505; 2 CFR Part 230 for non-profit organizations.

C. ROLES AND RESPONSIBILITIES

The Developer agrees to complete all development activities which will result in an affordable housing project to include obtaining financing, locating and purchasing the property, and hiring a construction contractor. The City agrees to review project plans, budget and HOME subsidy for approval. The City will also be responsible for payment inspections and disbursements. Both the Developer and City agree to complete the required activities to secure a finished HOME affordable housing project.

D. ACCEPTANCE OF HOME PROGRAM REQUIREMENTS

1. The Developer will comply with all applicable parts and requirements of the aforementioned regulatory requirements, 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 Developer agrees to the following:

a. **Project Schedule**

The Developer will complete all work required by this agreement in accordance with the timetable set forth:

Milestone	Start By:	Complete By:
Project Planning All Financial Resources Identified	Began prior to the date of this Agreement	July 1, 2017
Construction <i>Must begin 12 months following commitment of funds via written agreement.</i>	September 2017	N/A
Project Completion <i>Must be completed within four years of written agreement date.</i>	N/A	July 1, 2021
Homebuyer Housing Units Sold to Income-Eligible Homebuyers <i>Requires a ratified sales contract.</i>	N/A	Nine Months Post the Date of Construction Completion

The Developer must communicate any anticipated changes to this schedule to the City in writing as soon as they are known and the City must approve any proposed changes. In addition, this project is subject to ongoing HOME compliance requirements for a maximum of 20 years from the date the project completion report is entered into HUD’s Integrated Disbursement & Information System (IDIS).

b. **Project Budget and Expenditure Deadlines**

The total budget for this Project includes:

NeighborWorks Montana Equity	\$350,740
Community Frameworks	\$30,000
City of Billings HOME Funds	\$75,000
Homeowner Labor, Loan Fees	\$4,260
Wells Fargo Targeted Market Grant	\$20,000
Total Sources:	\$480,000

The total HOME budget and CHDO reserve funding allocated to the Developer is \$75,000 for this Project. Funding includes the following CHDO set-aside and expenditure deadline:

<i>FY</i>	<i>Amount</i>	<i>Expenditure Deadline</i>
FY17-18	\$44,250	Within four years of the date funds are committed as reflected by the date of the last signature on the Development Agreement
	\$30,750	

Current and complete Sources and Uses are on file with the City and the Developer is required to submit updated financial documents to the City as revised commitments are made. The Developer represents that the HOME funds invested are no more than necessary to provide affordable housing. The Developer will disclose to the City any changes in sources of funds within ten (10) of days from notice of such changes, and the City will reserve the right to revise the project's HOME award based on a revised Sources and Uses statement and subsequent subsidy layering analysis.

The Developer may not modify the finalized budget without having requested and received the City's written approval of the adjustment. Modifications to the budget without City approval will be considered a violation of the contract and are grounds for termination at any point without consideration for performance or compensation. The Developer agrees to adhere to maximum 221(d)(3) HOME per-unit subsidy requirements.

The Developer understands that the HOME funds being provided are subject to the requirements of 24 CFR 92.300, Set-Aside for CHDOs. Eligible costs may be paid if incurred up to 24 months prior to the date HOME funds are committed to the Project.

The \$75,000 in funding allocated to the project will be repaid to the City by the Developer if the Developer fails to comply with federal, state or local requirements for the use of HOME funds, construction, or sale to income-eligible households.

The Developer will submit a HOME Match Funds report when units are completed.

c. **Project Scope and Statement of Work**

The Developer will carry out the activities as established herein. The major components pertaining to this Agreement include acquisition and new construction of two units of affordable single family owner-occupied housing within the City of Billings limits. Each of the homes will have two bedrooms, two bathrooms, single car garage and will be universally designed including construction conformity with visitability standards of zero-step entries. One of the units will be built to be fully handicap accessible.

The project includes a market study to determine type of housing needed in the community. Obtaining financing will be required for development of the project that will be determined by market study. A construction contractor is to be hired post site control establishment. Housing to be constructed will meet local and state building codes and the plans approved by the City and will meet uniform physical condition standards as required in 24 CFR 92.251 (Property Standards for New Construction Projects). The Developer will perform all professional services necessary to complete project development and sale to income-eligible households.

All units will be rehabilitated / constructed (as applicable) to ensure compliance with 24 CFR 92.251 as it relates to Property Standards and / or Uniform Physical Condition Standards (UPCS) including the use of local building codes. All units will be rehabilitated / constructed to ensure compliance with the Accessibility Standards under 24 CFR 92.251 including the use of universal design concepts to meet the needs of those with disabilities. All existing units built prior to 1978 will be rehabilitated to ensure compliance with the Lead Based Paint Requirements as found in 24 CFR 92.355 and 24 CFR Part 35.

New construction must meet the current edition of the International Energy Conservation Code published by the Council of American Building Officials.

d. **Period of Affordability**

The Developer agrees that all units constructed under this Agreement will be sold to income-eligible homebuyers under the terms of the Deed Restriction Agreement which will be filed with the Yellowstone County Clerk & Recorder at the time it is negotiated. For purposes of that Agreement, the period of affordability is as follows:

<i>HOME Funding Per Unit / Project Type</i>	<i>Period of Affordability</i>
Less than \$15,000	5 years
\$15,000 to \$40,000	10 years
More than \$40,000	15 years
Rental New Construction	20 years

e. **Sales Price, Income Eligibility, Mortgage Liens and Sales Timeline**

The proposed sales price of each unit will not exceed the lower of the following: 95 percent of the median purchase price for the area based on Federal Housing Administration (FHA) single family mortgage program; or the appraised value of the completed unit.

Prospective buyers will apply directly with the lender of their choice for a first mortgage loan and will be reviewed through the City's First Time Home Buyer program staff to determine income eligibility. Total household income must not exceed 80 percent of the Area Median Income as determined by HUD. The household will be referred to the Home Center for homebuyer education classes and will enter into a buy/sell agreement with the Developer.

Buyers will be qualified for a first mortgage using no more than 30 percent of household income for monthly payments. Silent, zero percent interest, deferred payment loans will be secured as secondary mortgages to ensure primary mortgage payments are no more than 30 percent of total household income. Total debt ratio will be no higher than 41 percent of household income.

The Developer will ensure a City-approved Montana Trust Indenture, Promissory Note and Deed Restriction are secured against the units for the secondary liens. The Deed Restriction will include the amount of HOME assistance, deferred payment restrictions, use of funds, restrictions on use, mechanisms to ensure the affordability periods are met, and recapture provisions for proceeds to be paid back to the City. These second-position liens will identify the City of Billings as the sole recipient for repayment of HOME funds upon resale, refinance or non-use as a primary residence.

The Developer may receive and retain proceeds from the initial sale of the property to the first home purchasers in order to assist in other housing activities to benefit low income households.

The City will monitor the units for non-use as a primary residence through the procedures implemented for the First Time Home Buyer program.

The Developer will sell the units to income-eligible households within nine months of unit completion.

3. The Developer agrees that all contracts entered into by the Developer for the completion of the activities described in the Project Scope of this Agreement will contain provisions requiring Developers to comply with all applicable HOME requirements. These contract provisions are to be included in all subcontracts.
4. The Developer expressly agrees to repay to the City any funds paid on behalf on the Developer or its subcontractors that are expended in violation of the terms of this Agreement or the federal statutes and regulations governing the HOME program, or if for some reason the project is unable to move forward within the time frame set forth in the PROJECT SCHEDULE and / or TIME OF PERFORMANCE sections of this Agreement.

E. SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and attachments hereto which may require continued performance or compliance beyond the termination date of this Agreement shall survive such termination date and shall be enforceable by City as provided herein in the event of such failure to perform or comply by the Developer or its subcontractors.

F. COMPENSATION

The City shall reimburse the Developer for all eligible project costs in the total amount of **\$75,000**. The City's obligation to make periodic or final payment to the Developer shall be conditioned upon the City's receipt of HOME funds sufficient to make such payment. Final compensation will be made only when the Developer is in full compliance with this Agreement.

G. REQUESTS FOR DISBURSEMENT OF FUNDS

Payment is made on a reimbursement basis of actual and proper expenditures and shall be made in accordance with this Agreement between City and Developer. The Developer may only request disbursement of funds when funds are needed for payment of eligible costs, and the amount of the disbursement request must be limited to the amount needed. The City shall only reimburse HOME-eligible expenses, following on-site inspection for construction compliance.

The City may withhold any payment if the Developer has failed to comply with program objectives, contractual terms, or reporting requirements. The City may withhold payment of the final five percent (5%) of the total award amount until the Developer has submitted, and the City has accepted, all required financial and performance report information required pursuant to either the Project or City requirements. The following documentation must be submitted for payment requests:

- Invoices, receipts, purchase orders, and/or contracts pertaining to the specific request for disbursement.
- Completed Request for Reimbursement and Progress Report form.

H. DEVELOPER AN INDEPENDENT DEVELOPER

The Developer shall be considered an independent Developer, and may not be the agent or employee of City, and shall have no authorization, express, implied, or apparent, to bind City to any agreements, settlements, liability, or understanding except as expressly set forth herein.

I. PERSONNEL

The Developer represents that it has, or shall secure all personnel required in performing the services under this Agreement. All of the services required hereunder shall be performed by the Developer, or under his/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 Developer and any subcontractors shall be properly licensed.

Other professional services subcontracted for by the Developer will provide proof of insurance as required by Montana Law to include Commercial General Liability not less than \$1.5 Million per occurrence and Builder's Risk Insurance for development and construction in an amount not less than the completed value of the whole completed property.

J. TIME OF PERFORMANCE

This Agreement shall become effective upon its execution. 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 Developer. The Developer 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 the termination date or the date(s) set forth in the PROJECT SCHEDULE section of this Agreement.

K. ENFORCEMENT OF THE AGREEMENT

The affordability requirements in CFR 24 92.252 for rental housing or 24 CFR 92.254 for homeownership housing shall be enforced by recorded deed. Any issues relating to non-compliance will be managed in accordance with a progression of severity for non-responsiveness and continued non-compliance. This progression includes verbal guidance, guidance delivered via email, guidance delivered by mail, informal meetings to resolve non-compliance issues, withholding currently allocated and committed funding for reimbursements, mandatory meetings to resolve non-compliance issues, notifications of non-compliance via certified mail, determination of ineligibility for future City funding, and termination of current agreements due to non-compliance.

L. LIAISON AND NOTICE

- Dina Harmon, Program Coordinator, is the City's liaison with the Developer.
- Mary Lou Affleck is the Developer's liaison with the City.

Notice will be sufficient if given in writing and emailed and / or mailed to the parties' liaison at the addresses described herein.

M. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials related to the project and prepared by any subcontractor pursuant to this Agreement are to be the property of the Developer, 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 City and the Developer.

N. ACCESS TO RECORDS

The Developer 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 Developer under the terms of this written agreement.

The Developer 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 timely access to records is grounds for termination of this agreement and non-reimbursement for expenditures. The City will retain records of the Developer's performance under this Agreement and will allow access to these records at any time during normal business hours by the Developer, HUD, and the Comptroller General. These records will be kept at the Community Development Office, 2825 3rd Avenue North, 6th Floor, Billings, Montana.

Project Records Required:

Upon completion of the project's predevelopment, the Developer will submit to the City the following project predevelopment records:

1. Property acquisition records including but not limited to:
 - Property Appraisal
 - Title Report
 - Site Control Status
 - Property Survey
 - Soils Report
 - Engineer's Report
 - Environmental Reports
2. Property construction / rehabilitation records including but not limited to:
 - Documentation that the project meets applicable property standards for HOME rehabilitation activities and / or new construction.
 - Documentation that the sales price for each HOME assisted unit conforms to HOME program requirements.
 - For each household buying a HOME assisted unit, a copy of the application, income verification, and purchase agreement.
 - Copies of invoices submitted for payment.
 - Verification of matching contribution from owner.

The records described above must be retained for a period of five years after project closeout. 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.

O. PROGRESS REPORTING

The Developer will promptly submit status reports on project progress at the request of, and in the format prescribed by, the City of Billings. During the development phase of this project, the Developer will submit reports on project progress **quarterly** to: Community Development Coordinator, P.O. Box 1178, Billings, MT 59103.

P. CHDO PROVISIONS

It is understood that the Developer has certified that it is and will maintain CHDO status for the term of this agreement in accordance with 24 CFR 92. Developer agrees to provide information as may be requested by the City to document its continued compliance, including but not limited to an annual board roster and certification of continued compliance.

Any funds advanced as CHDO pre-development funds must be in compliance with 24 CFR 92.301, and are forgivable only under the terms in 24 CFR 92.301. Any funds advanced to the CHDO as CHDO Operating Expenses must be expended in compliance with 24 CFR 92.208. If the project is rental, the Developer will create and follow a tenant participation plan as required in 24 CFR 92.303. Any funds that the CHDO is permitted to retain as CHDO proceeds from this project shall be used in compliance with 24 CFR 92.300(a)(2) or as specified in this Agreement.

The Developer agrees to refrain from charging servicing, loan origination, loan processing, or other fees for the costs of administering HOME program funds, including assessing fees to low-income families for construction management, inspections, or other services. The Developer may charge nominal fees for homebuyer housing counseling.

Q. AVOIDANCE OF CONFLICT OF INTEREST

The Developer 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.

A conflict of interest would be any employee of the City or his/her relative that has a real or perceived financial interest in a project receiving HOME funds from the City, or if a CHDO employee or member of the board occupies a HOME-assisted unit (with exceptions for management and maintenance employees).

R. 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 who 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. Any written request to modify or amend agreement will be reviewed by the City and respond to the Developer in writing.

All change orders to the approved scope must be submitted to the City for review and approved at the time the change is needed. If the City is unable to review the work at the time of the change or the change order is held and submitted at the end of construction, the change order may not be approved.

This Agreement does not imply any continuing commitment by the City of Billings beyond the termination date noted herein.

The City & Developer accept responsibility for adherence to the terms of this Agreement by contractor, subcontractor or sub-recipient entities and 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.

Modification or assignment of this Agreement without prior written notice to the City will be grounds for termination and loss of unexpended funds at the City's discretion. The City reserves the right to seek damages if the termination of this written agreement results in the loss or repayment of funds by the City to HUD.

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

T. INDEMNIFICATION

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

- a. Certification of Federal Assistance
- b. Sources and Uses Budget
- c. Development Budget
- d. Operating Budget, including Pro-Forma for a period of operation equal to the duration of the established period of affordability.

Should the project involve the use of low-income housing tax credits (LIHTC), the Developer will provide the City a copy of the LIHTC subsidy layering review for the project file as soon as the review is completed.

8. **Religious Organization:** The Developer will follow the provisions governing the restriction on the use of HOME funds by religious organizations, as contained in 24 CFR 92.257.
9. **Drug-Free Work Place:** The Developer certifies that it will provide a drug-free work place.
10. **Non-Discrimination:** The Developer will not discriminate against any contractor, subcontractor, or rental applicant due to race, color, creed, religion, ancestry, national origin, sex, disability, or other handicap, age, marital / familial status, or status with regard to direct rental assistance, or other public assistance. The Developer will take affirmative action to ensure all employment practices are free from such discrimination. The Developer agrees to comply with the non-discrimination in employment and Contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607 and (CDBG funding) as revised by Executive Order 13279 or 24 CFR 92.350 (HOME funding).
11. **Labor Standards:** Housing projects with twelve (12) or more HOME-assisted units are subject to conform to the Davis-Bacon Act (40 USC 276a-276a-5), which requires payment of not less than the wages prevailing in the locality to all laborers and mechanics employed in the development of any such housing. Housing projects with HOME-assisted units must also comply with the Contract Work Hours and Safety Standards Act (CWHSSA), the Copeland Act (Anti-Kickback Act), and the Fair Labor Standards Act (FLSA), including the applicable overtime provisions.

Y. FINANCING CONTROLS

Notwithstanding any provision herein to the contrary, the performance and administration of this Agreement shall be subject to the applicable provisions of the City's HOME Contract with HUD. Accordingly, the Developer hereby assumes all obligations under the Contract as a condition to Developer's obligation to perform under this Agreement.

Z. SIGNATURES

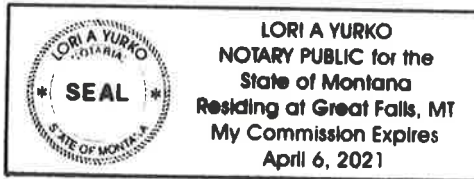
Printed Name: Maureen J. Rude Printed Name:
Signature: Maureen J. Rude Signature:
Date: 8/14/17 Date:

STATE OF MONTANA)
 : ss. Cascade
County of Yellowstone)

On the 14th day of August, 2017, before me,
Lori A Yurko, a Notary Public for the State of Montana, personally
appeared Maureen J Rude and _____ and
whose names are subscribed to the within instrument and acknowledged to me that they
executed the same. she

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and
year first above written.

Seal:



Lori A Yurko
Printed Name: Lori A Yurko
Notary Public for the State of Montana
Residing At: Great Falls
My Commission Expires: 04-06-2021

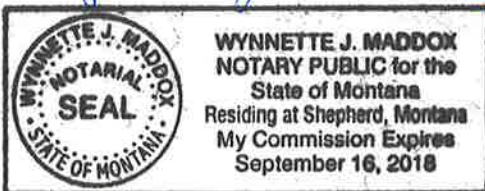
Printed Name: Denise Bohlman, City Clerk Printed Name:
Signature: Denise P. Bohlman Signature:
Date: 8.21.17 Date: 8.21.17

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this 21st day of August, 2017, before me, a Notary Public for the State of Montana,
personally appeared THOMAS W. HANEL and DENISE BOHLMAN, known to me to be the Mayor
and City Clerk respectively of the City of Billings, and whose names are subscribed to the within
instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and
year first above written.

Seal:



Wynnette J Maddox
Printed Name: Wynnette J Maddox
Notary Public for the State of Montana
Residing At: Shepherd MT
My Commission Expires: 9-16-2018

Approved as to form:

Brent Brooks
Brent Brooks, City Attorney

NOTARY PUBLIC
STATE OF MONTANA
WYNNETTE J. MADDOX
2018

WYNNETTE J. MADDOX
NOTARY PUBLIC for the
State of Montana
My Commission Expires
September 16, 2018

