

Please return to:
City of Billings
Community Development Division
P.O. Box 1178
Billings, MT 59103

Affordable Housing Development Agreement

HOME Investment Partnerships Program

Between

City of Billings (City)

A Montana Municipal Corporation
316 N. 26th St., Billings, Montana 59101

and

Homeward, Inc. (Developer)

a Montana Non-Profit Organization
1535 Liberty Lane, Ste 116A, Missoula, Montana 59808

and

HAB Development, Inc. (Project Owner)

a Montana Non-Profit Organization
2415 1st Avenue N., Billings, Montana 59101

On this date

WHEREAS, the Developer and Project Owner desire to work with the City and build affordable housing on property owned by HAB Development, Inc. in the City of Billings, Yellowstone County, Montana commonly known as LB Lofts, Sioux Lane, Billings, Montana 59105 and legally known as:

WHITETAIL SQUARE SUB (10), S22, T01 N, R26 E, BLOCK 1, Lot PARK, PRIVATE PARK comprised of 1.348 AC and adjacent parcel on Sioux Lane, Billings MT 59105 legally described as WHITETAIL SQUARE SUB (10), S22, T01 N, R26 E, BLOCK 1, Lot 1 comprised of 3.014 AC, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. 3792983.

WHEREAS, the City has concurrently entered into a HOME Investment Partnership Program (“HOME”) Agreement with the United States Department of Housing and Urban Development (HUD) whereby the City will receive and administer HOME moneys to provide financing, in part, for an acquisition / construction project (the “Project”) to be undertaken by the Developer and Project Owner and Project Owner. Notwithstanding any provision herein to the contrary, the performance and administration of this Affordable Housing Development Agreement (“Agreement”) shall be subject to the applicable provisions of the City’s HOME Agreement with HUD. Accordingly, the Developer and Project Owner hereby assume all obligations under the City’s HOME Agreement with HUD as a condition of the Developer and Project Owner’s obligations to perform under this Agreement as set forth herein.

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

WHEREAS, the Developer and Project Owner desire to utilize HOME funds to assist with the new construction of affordable rental housing. The Developer and Project Owner desire to use \$1,400,000 in HOME funds for the development of new rental housing and related construction costs resulting in the creation of one hundred and one (101) new affordable rental housing units. **Six (6) of the units will be designated HOME-assisted units. All six (6) of these units will be two-bedroom units.**

WHEREAS, the City has certified completion of the following prior to this HOME funding commitment: subsidy layering and underwriting analysis in compliance with [24 CFR 92.250\(b\)](#); assessment of the current market demand in the neighborhood; assessment of the experience and financial capacity of the Developer and Project Owner; and confirmation of firm written financial commitments to the Project.

WITNESSETH THAT the City, Developer and Project Owner, mutually agree as follows.

I. PURPOSE

The purpose of this written Agreement is to ensure compliance with [24 CFR 92](#) by the City through its HOME Agreement 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.

II. RECITALS INCORPORATED BY REFERENCE

The recitals stated above are true and accurate and are incorporated into this Agreement.

III. APPLICATION INCORPORATED BY REFERENCE

The Developer and Project Owner's Affordable Housing Development application to the City, and statements made therein, are included in this Agreement by reference.

IV. ACCEPTANCE OF GENERAL PROGRAM REQUIREMENTS

The Developer, Project Owner, their contractors, and subcontractors will ensure compliance with all the following requirements now in effect or as they may be amended during the twenty (20) year term of this Agreement:

- A. [Housing and Community Development Act of 1974](#);
- B. HOME Investment Partnerships Program [24 CFR Part 92](#) as part of the Cranston-Gonzales National Affordable Housing Act;
- C. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Super / Omni Circular codified at [2 CFR Part 200](#);
- D. Additional HUD regulations included in [24 CFR](#) and the [regulations, policies, guidelines, and requirements](#) as they relate to the application, acceptance, and use of federal funds for this program;
- E. Federal, [State](#), and [local government](#) laws, regulations, administrative directives, ordinances, resolutions, and procedures;
- F. Uniform Relocation Act which provides fair and equitable treatment of persons whose real property is acquired as stipulated in [Title 24, Subtitle A, Part 42 and Section 104\(d\)](#) and [92.353](#).
- G. Civil Rights and Fair Housing, Employment and Contracting Opportunity requirements at 24 CFR [570.601](#), [570.602](#), [570.607](#), [92.350](#) and [Executive Order 11246](#). Developer and Project Owners shall comply with the Fair Housing Act, HUD regulations, and the [Montana Human Rights Act](#) prohibiting employment, contracting, and beneficiary discrimination based on: Disability - includes people with HIV / AIDS and people in recovery from alcohol / drugs; Race / Color; Religion; Religious Belief; Sex - includes protection against sexual harassment; Familial Status - includes the presence of children under the age of 18 and / or pregnancy; National Origin; Marital Status; Creed; and Age;
- H. [Section 3 of the Housing and Development Act of 1968](#) requires the Developer and Project Owner, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low-income persons;

- I. Labor Standards at [24 CFR 92.354](#) apply to all non-volunteer labor financed in whole or in part with HOME;
- J. The Developer and Project Owner must not contract with, hire, or employ an individual in the United States knowing that the contractor or individual is not authorized with respect to such employment;
- K. The Developer and Project Owner must provide liability insurance coverage, fidelity bond coverage for principal staff handling the organization's accounts, and payment of payroll taxes and worker's compensation insurance coverage, as required by Federal and State law;
- L. The Developer and Project Owner will maintain active and current registration as required in [SAM.gov](#);
- M. The Developer and Project Owner will comply with the conflict of interest provisions of [24 CFR § 92.356](#) prohibiting the Developer and Project Owner from allowing any of their employees, agents, officials, consultants, or immediate / family members from occupying a HOME-assisted housing unit for the period of affordability, with the exception of management or maintenance employee(s). The Montana Code Annotated [§ 2-2-201](#) also prohibits the Developer and Project Owner from engaging public officers, City employees, and former City employees from having interest in the Developer and Project Owner's contracts;
- N. HOME-funded projects with a total number of residential units of 12 or more must comply with [Davis-Bacon prevailing wage rates](#) and regulations;
- O. [Lead-Based Paint](#) requirements prohibit the use of lead-based paint in new construction;
- P. Radon testing and mitigation response is a requirement on the Environmental Review Record in reference to Contamination and Toxic Substances [24 CFR Part 50.3\(i\)](#) and [58.5\(i\)\(2\)](#). In addition, it is reviewed as a worker safety hazard relative to land development. The Developer and Project Owner are required to assess the property for radon exposure to protect workers during construction and residents post construction. In compliance with [24 CFR 92.504\(c\)\(2\)\(iv\)](#), Environmental Review Record has been completed and HUD has authorized the use of HOME funds for the development of the Project.
- Q. [Construction and accessibility standards referenced](#) in Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act, and Architectural Barriers Act;
- R. [Copeland "Anti-kickback" Act](#), which prohibits a federal building contractor or subcontractor from inducing an employee into giving up any part of the compensation that they are entitled to under the terms of their employment contract;
- S. [Contract Work Hours and Safety Standards Act](#), 40 USC 3701;
- T. [City of Billings](#) Building, Zoning, and Fire Safety Codes;
- U. 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. By signing this Agreement, the Developer and Project Owner certify that no HOME funds will be spent on lobbying activities in connection with the assistance, in accordance with [24 CFR 91.225](#);
- V. The Developer and Project Owner will follow the provisions governing the restriction on the use of HOME funds by religious organizations, as contained in [24 CFR 92.257](#);
- W. The Developer and Project Owner certify that it will provide a drug-free work place;
- X. The Developer and Project Owner will comply with HUD guidelines for affirmative marketing, as outlined in [24 CFR 92.351, Subpart H](#) for projects with five (5) or more HOME assisted units. Six (6) units are being assisted with HOME funds under this Agreement; and
- Y. The Developer and Project Owner will comply with the Violence Against Women Act (VAWA) requirements at [24 CFR § 92.359](#) to provide housing protections for people applying for or living in units subsidized by the federal government and who have experienced domestic violence, dating violence, sexual assault, or stalking, to help keep them safe and reduce their likelihood of experiencing homelessness. The City's reference herein to [HUD forms 5380](#),

[5381, 5382, and 5383](#) serve as official notice and certification forms to the Developer and Project Owner.

IV. INSURANCE & CONTRACTS

The Developer and Project Owner shall furnish the City with proof of insurance, as stipulated below, as this Agreement is submitted to the City for signature, finalization, and prior to commencing the activities described herein.

The Developer and Project Owner shall secure and maintain such insurance policies to protect itself, its subcontractors, and the City, from all claims for bodily injuries, death or property damage that may arise under this Agreement; whether the acts were made by the City, Developer or Project Owner or by any contractor or subcontractor or anyone employed by the Developer or Project Owner directly or indirectly.

- A. The City shall be listed as an additional insured on all insurance policies and will include the following language:

The Company agrees that it will give the City of Billings, Montana, no less than 30 days advance 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 Developer and Project Owner responsibility for failing to provide said notice, will not be acceptable.

- B. The following insurance policies are required:

1. Workers' compensation and employer's liability coverage as required by Montana law;
2. Professional liability in the amount of \$1,500,000 per claim;

- C. The following insurance policies are also required and must include a waiver of subrogation against the City:

1. Commercial General Liability, including contractual and personal injury coverages of \$750,000 per claim and \$1,500,000 per occurrence for injuries, including accidental death to any one person; and
2. Automobile liability of \$1,500,000 per accident.

- D. **Approval of Contractor / Subcontractor and Insurer:** The insurer must be satisfactory to the City Attorney for the City of Billings. Further, the Developer and Project Owner will assure all subcontractors performing work on the project maintain public liability, property, and casualty insurance and stationary workers compensation insurance coverage in compliance with state Law.

- E. **Construction Contracts:** The Developer and Project Owner agree to deny participation in construction contracts by ineligible, debarred or suspended persons or entities. **The Developer and Project Owner will provide the City with the names of contractor(s) and subcontractor(s) prior to entering into contracts.** City staff will check each contractor for a City of Billings business license, state contractor registration, worker's compensation, insurance, registration in the federal government's System for Award Management (SAM), and that the contractor(s) is not debarred by the State of Montana and/or SAM.

V. SCOPE OF WORK

The Developer and Project Owner agree to complete all development activities that will result in an affordable housing project including obtaining financing, 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. The Developer, Project Owner and City agree to complete the required activities to secure a finished HOME affordable housing project.

The Developer and Project Owner will carry out the activities as established herein. The major components pertaining to this Agreement include new construction of 101 units of affordable multifamily rental housing units within the City of Billings limits. The project will include 101 two-bedrooms units. Six of the units in the proposed project will be HOME- assisted, floating units.

The project includes a market study to determine the type of housing needed in the community. Financing is required for the development of the project as per the market study. A construction contractor is to be hired post site control establishment.

A. PROJECT SCHEDULE

1. Project planning commenced prior to the date of this application.
2. Developer and Project Owner will complete all work required by this Agreement in accordance with the timetable set forth:

Milestone	Start By	Complete By
Construction <i>Must begin within 12 months following commitment of funds via written Agreement</i>	October 2026 tentatively	N/A
Milestone	Start By	Complete By
Project Completion <i>Must be completed within four years of written Agreement date</i>	N/A	Certificate of Occupancy issued by October 2029
Units leased to income qualified tenants	N/A	Nine (9) months post the date of construction completion

The Developer and Project Owner must communicate any anticipated or proposed changes to this schedule to the City in writing as soon as they are known for review and approval by the City.

B. PROJECT BUDGET AND EXPENDITURE DEADLINES

1. The total budget for this Project includes:

NWMT Capital Magnet Loan	\$2,450,000
Glacier Bank Tax Exempt Loan	\$7,500,000
HC Equity Non-Competitive	\$12,222,427
City of Billings HOME Funds	\$1,400,000
City of Billings CDBG Funds	\$145,000
<u>Deferred Developer Fee</u>	<u>\$1,357,169</u>
Total Sources:	\$25,074,596

HOME Fiscal Year Funding Origin	Award Amount	Expenditure Deadline
FY21-22	\$329,746	Funds must be expended within four (4) years of the date funds are committed as reflected by the date of the last signature on the Development Agreement
FY22-23	\$339,477	Funds must be expended within four (4) years of the date funds are committed as reflected by the date of the last signature on the Development Agreement
FY23-24	\$329,506	Funds must be expended within four (4) years of the date funds are committed as reflected by the

		date of the last signature on the Development Agreement
FY24-25	\$138,771	Funds must be expended within four (4) years of the date funds are committed as reflected by the date of the last signature on the Development Agreement
FY25-26	\$262,500	Funds must be expended within four (4) years of the date funds are committed as reflected by the date of the last signature on the Development Agreement
Total	\$1,400,000	

2. Current and complete Sources and Uses are on file with the City with firm written commitments of all funds dedicated to the project. HOME funding may only be used to pay actual eligible costs of HOME-assisted housing and a percentage of pro-rated share of common area costs.
3. The Developer and Project Owner are required to submit updated financial documents to the City as revised commitments are made.
4. The Developer and Project Owner represent that the HOME funds invested are no more than necessary to provide affordable housing.
5. The Developer and Project Owner 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.
6. The Developer and Project Owner will ensure compliance with subsidy layering review requirements, including the provision of the following, updated documents as soon as they become available:
 - 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 and Project Owner will provide the City a copy of the LIHTC subsidy layering review for the project file as soon as the review is completed.

7. The Developer and Project Owner 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.
8. The Developer and Project Owner are required to adhere to the current HOME maximum per-unit subsidy limits as established by HUD.
9. The total HOME funding allocated to the project will be repaid to the City by the Developer and Project Owner if the Developer or Project Owner fail to comply with federal, state, or local requirements for the use of HOME funds, construction, or rental to income-eligible households.
10. The Developer and Project Owner will submit a HOME Match Funds report when units are completed as determined by the Certificate of Occupancy issued by the City.

C. DISBURSEMENT OF FUNDS

1. The City shall **reimburse** the Developer or Project Owner for all eligible project costs in the total amount of **\$1,400,000**. The City's obligation to make periodic or final payment

to the Developer or Project Owner shall be conditioned upon the City's receipt of HOME funds sufficient to make such payment. Final reimbursement will be made only when the Developer or Project Owner is in full compliance with this Agreement.

2. Payment is made on a reimbursement basis of actual and proper expenditures and shall be made in accordance with this Agreement between the City, Developer and Project Owner. The Developer or Project Owner 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.

During the term of this Agreement, the Developer or Project Owner will submit progress reports to the City with each request for payment. This report will describe the status of the project with respect to each implementation objective including, at a minimum, the percentage of the project that 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 being requested. A project narrative for each payment is a mandatory requirement. The City will not honor claims for payment until the Developer or Project Owner submits to the City the required progress report and the City has approved it. Support documentation may include invoices, bills, certified payroll records, City permits and inspection records, and other documents necessary to justify the payment. Processing time may be up to 30 days and reimbursements may be requested every 30 days until funding has been expended.

3. The City shall only reimburse HOME-eligible expenses, following on-site inspection for construction compliance.
4. The City may withhold any payment if the Developer or Project Owner 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 or Project Owner 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:
 - a) Completed Request for Reimbursement and Progress Report form.
 - b) Invoices, receipts, purchase orders, and/or contracts pertaining to the specific request for disbursement.

D. CONSTRUCTION COMPLIANCE

1. Housing constructed will meet local and state building codes and the plans must be approved by the City.
2. The units will comply with current HUD property standards for new construction projects.
3. All units will be constructed to ensure compliance with [24 CFR 5.703](#) and as it relates to physical condition standards for HUD housing that is decent, safe, sanitary and in good repair.
4. Constructed units will comply with property standards as per [24 CFR 92.251](#) as it relates to state and local codes, zoning requirements, and HUD requirements, including:
5. Units will be accessible and in compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans Disabilities Act as noted in [Title 24, Subtitle A, Part 9](#) and, to the maximum extent feasible, be made readily accessible and usable by individuals with disabilities as per [Title 24, Subtitle A, Part 8, Subpart C, §8.22](#).
6. The [Uniform Federal Accessibility Standard](#) requires a percentage of total units comply with the following:
 - a) At least five percent (5%) of total units, and at least one (1) unit, must meet accessibility standards for persons with mobility disabilities; and
 - b) An additional two percent (2%) of total units (at least one [1] unit), must be accessible for persons with hearing / visual disabilities.

- c) The use of universal design concepts will also be utilized to meet the needs of those with disabilities.
- d) **Build America, Buy America Act (BABA):** The Infrastructure Investment and Jobs Act, Pub. L. 117-58 and 2 CFR 184 [2 CFR Part 184 -- Buy America Preferences for Infrastructure Projects](#) requires that all iron and steel, construction materials, and manufactured products used in federally-funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. This requirement is known as the “Buy America Preference (BAP)” and the specific requirements are codified in [2 CFR § 184](#).

E. PERIOD OF AFFORDABILITY AND AGREEMENT DURATION

- 1. The project is subject to ongoing HOME compliance requirements for an affordability period from the date the Certificate of Occupancy is completed, and the project completion report is entered into HUD’s Integrated Disbursement & Information System (IDIS). Information necessary for completing activities in IDIS include finalized project budget; occupant demographic and income data; information on unit configuration; rents; and rental assistance.
- 2. The duration of the Agreement includes the construction, lease-up, and renting of housing units for the entire period of affordability.

<i>HOME Funding Per Unit / Project Type</i>	<i>Period of Affordability</i>
Rental New Construction	20 Years

- 3. Affordability requirements for the HOME program will be met, including regulations outlined for the affordability of rental housing units as per [24 CFR 92.252](#).
- 4. The Developer and Project Owner expressly agree to repay the City all funds paid on behalf of the Developer and Project Owner or its subcontractors if the housing constructed does not meet the affordability requirements for the specified period of affordability ([24 CFR 92.504\(c\)\(3\)\(ii\)](#)).

F. INITIAL RENTS AND PROCEDURES FOR RENT INCREASES

- 1. The Developer and Project Owner agree that 100 percent (100%) of the HOME-assisted units to be constructed will be rented and occupied by low-income households as per HUD requirements.
- 2. The Developer and Project Owner agree that all units constructed under this Agreement will be rented to income-eligible tenants under the terms of the Deed Restriction Agreement which will be filed with the Yellowstone County Clerk & Recorder at the time it is negotiated.
- 3. Rents will not exceed the allowable HOME rents during the entire period of affordability. In projects with five (5) or more HOME-assisted units, 20 percent (20%) of the HOME-assisted units must comply with the HOME Low Rents and occupied by households with an Area Median Income less than fifty percent (50%). The remaining units can be rented at the High HOME rental limit.
- 4. HUD sets new HOME rent limits annually and are effective upon publication. However, tenants’ rents should only be adjusted when leases are renewed.
- 5. The Developer and Project Owner will provide initial rent-up information on occupants and units to the City within thirty (30) days of initial occupancy and annually thereafter. The Developer and Project Owner will also provide proposed utility allowances to the City annually for approval.
- 6. The Developer and Project Owner will comply with HUD’s requirements relative to maintaining the correct number of high and low HOME rent units.
- 7. The Developer and Project Owner will comply with HUD's requirements relative to income determination at initial lease up and annual thereafter ([24 CFR 92.203](#)).

G. PROJECT MONITORING DURING THE PERIOD OF AFFORDABILITY

1. Mandatory HUD monitoring requirements include (but are not limited to):
 - a) Demographic and rental unit information on initial occupants;
 - b) Annual reports on current occupants including demographic and rental unit information;
2. The City's monitoring responsibilities include (but are not limited to):
 - a) On-site monitoring review of the project annually as required for a project with twenty-five (25) or more units;
 - b) Source documentation monitoring for occupant income and eligibility verification at least every six (6) years; and
 - c) The financial condition of projects with ten (10) or more HOME-assisted units will be assessed annually.

G. LEASE REQUIREMENTS

1. All tenant leases during the period of affordability will contain the following provisions:
 - a) Each individual lessee certifies the accuracy of the information provided in connection with the examination and re-examination of annual household income;
 - b) Each individual lessee certifies that the annual income and other eligibility requirements shall be deemed substantial and material obligations of their tenancy. They will comply promptly with all requests for information and their failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional).
 - c) Refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of their tenancy and constitute cause for immediate termination thereof.
 - d) Initial leases must be a commitment for at least one year and may be re-negotiated by mutual agreement for continuing leases thereafter.
2. Any provision of the Lease which falls within the classifications below shall not apply and not be enforced by the Landlord.
 - a) *Confession of Judgment*. Consent by the Tenant to be sued, to admit guilt, or to a judgment in favor of the landlord in a lawsuit brought in connection with the Lease.
 - b) *Treatment of Property*. Agreement by the Tenant that the Landlord may take or hold the Tenant's property, or may sell such property without notice to the Tenant and a court decision on the rights of the parties.
 - c) *Excusing the Landlord from Responsibility*. Agreement by the Tenant not to hold the Landlord or Landlord's agent legally responsible for any action or failure to act, whether intentional or negligent.
 - d) *Waiver of Legal Notice*. Agreement by the Tenant that the Landlord may institute a lawsuit without notice to the Tenant.
 - e) *Waiver of Court Proceedings for Eviction*. Agreement by the Tenant that the Landlord may evict the Tenant Family (i) without instituting a civil court proceeding in which the Family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.
 - f) *Waiver of Jury Trial*. Authorization to the Landlord to waive the Tenant's right to a trial by jury.
 - g) *Waiver of Right to Appeal Court Decision*. Authorization to the Landlord to waive the Tenant's right to appeal a court decision or waive the Tenant's right to sue to prevent a judgment from being put into effect.
 - h) *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome of the Lawsuit*. Agreement by the Tenant to pay lawyer's fees or other legal costs whenever the Landlord decides to sue, whether or not the Tenant wins.

H. VIOLENCE AGAINST WOMEN ACT (VAWA) REQUIREMENTS

1. VAWA requirements at [24 CFR § 92.359](#) must be met during the entire period of affordability.
 - a) *Notification requirements.* The Developer and Project Owner must provide notice and certification forms to housing applicants and tenants, whether approved or denied housing assistance.
 - b) *Bifurcation of lease requirements.* If a family living in a HOME-assisted rental unit separates under [24 CFR 5.2009\(a\)](#), the remaining tenant(s) may remain in the HOME-assisted unit.
 - c) *Development of VAWA lease or lease addendum.* The Developer and Project Owner must develop a VAWA lease term / addendum to incorporate all requirements that apply to the owner or lease under [24 CFR part 5, Subpart L](#), including the prohibited bases for eviction and restrictions on construing lease terms under [24 CFR 5.2005\(b\)](#) and [\(c\)](#). This VAWA lease term / addendum must also provide that the tenant may terminate the lease without penalty if the participating jurisdiction determines that the tenant has met the conditions for an emergency transfer under [24 CFR 5.2005\(e\)](#).
 - d) *Emergency transfer plan.* The Developer and Project Owner must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies under the plan. The plan must meet the requirements in [24 CFR 5.2005\(e\)](#).

For the purposes of [§ 5.2005\(e\)\(7\)](#), the required policies must specify that for tenants who qualify for an emergency transfer and who wish to make an external emergency transfer when a safe unit is not immediately available, the participating jurisdiction must provide a list of properties in the jurisdiction that include HOME-assisted units. The list must include the following information for each property: The property's address, contact information, the unit sizes (number of bedrooms) for the HOME-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HOME-assisted units. In addition, the participating jurisdiction may:

- (1) Establish a preference under the participating jurisdiction's HOME program for tenants who qualify for emergency transfers under [24 CFR 5.2005\(e\)](#); Provide HOME tenant-based rental assistance to tenants who qualify for emergency transfers under [24 CFR 5.2005\(e\)](#); or
- (2) Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units.

VI. ADDITIONAL REQUIREMENTS

A. PERSONNEL

The Developer and Project Owner represent 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 and Project Owner, 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 Project Owner and any subcontractors shall be properly licensed.

B. ENFORCEMENT OF THE AGREEMENT AND VENUE

1. The affordability requirements in [CFR 24 92.252](#) for rental housing shall be enforced by recorded deed restriction agreement.
2. 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.

3. This Agreement will be construed and enforced in accordance with the laws of the State of Montana. In the event of litigation concerning it, the venue is in the District Court of the Thirteenth Judicial District Court in Yellowstone County, Montana.

C. 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 that may require continued performance or compliance beyond the termination date of this Agreement shall survive such termination date and shall be enforceable by the City as provided herein in the event of such failure to perform or comply by the Developer and Project Owner or its subcontractors.

D. LIAISONS, NOTICE, ROLES AND PROGRESS REPORTING

1. Jordan Langton, Program Coordinator, is the City's liaison with the Developer and Project Owner. The City's liaison is responsible for balancing the need for public subsidy to make the project viable while safeguarding federal investments to ensure regulatory compliance during construction, lease-up, and throughout the entire period of affordability.
2. Karissa Trujillo is the Developer's liaison and Patti Webster is the Project Owner's liaison with the City and is responsible for communicating compliance with regulations throughout construction, lease-up, and throughout the entire period of affordability.
 - a) The Developer and Project Owner are independent and they are not agents or employees of the City, and have no authorization, expressed, implied, or apparent, to bind the City to any Agreements, settlements, liability, or understanding except as expressly set forth herein.
 - b) Notice will be sufficient if given in writing and emailed and/or mailed to the parties' liaison at the addresses described herein. If liaisons change in the future, the City and Developer and Project Owner will provide notification 30 days prior to the change.
 - c) The Developer and Project Owner 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 and Project Owner will submit reports on project progress **quarterly** to the City's liaison as stipulated herein.

E. 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, Project Owner, 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 and Project Owner.

F. ACCESS TO RECORDS

1. The Developer and Project Owner 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 and Project Owner under the terms of this written Agreement.
2. The Developer and Project Owner may, at the City's discretion, be considered in breach of this Agreement by failing to provide any or 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.

3. The City will retain records of the Developer and Project Owner's performance under this Agreement and will allow access to these records at any time during normal business hours by the Developer, Project Owner, HUD, and the Comptroller General. These records will be kept at the current Community Development Office, 316 North 26th Street, Billings, Montana.

G. REQUIRED PROJECT RECORDS

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

1. Property acquisition records, including, but not limited to:
 - a) Property Appraisal
 - b) Title Report
 - c) Site Control Status
 - d) Property Survey
 - e) Soils Report
 - f) Engineer's Report
 - g) Environmental Reports

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

2. Property construction / rehabilitation records including, but not limited to:
 - a) Documentation that the project meets applicable property standards for HOME rehabilitation activities and/or new construction.
 - b) Documentation that the rents charged in each HOME-assisted unit conforms to HOME program requirements.
 - c) For each household renting a HOME-assisted unit, a copy of the rental application, income verification, and rental Agreement and subsequent annual income verifications.
 - d) An approved Affirmative Marketing Plan which complies with 24 CFR 92.351 for projects with five (5) or more HOME-assisted units.
 - e) Immediate written notification of any pending legal action which names the Developer and Project Owner and the real property assets covered under this Agreement.
 - f) Copies of invoices submitted for payment.
 - g) Verification of matching contributions.

H. RECORDS RETENTION

1. The records described above must be retained for a period of five (5) years after project closeout.
2. Records demonstrating compliance with project requirements that apply for the period of affordability must be retained for at least five (5) years after the conclusion of the required period of affordability (20 years).
3. If any litigation, claim negotiation, audit or other action has 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 that arise from it, or until the end of the regular period, whichever is later.
4. 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.

VII. AGREEMENT MODIFICATION AND ASSIGNABILITY

- A. 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 signed by all parties. Any written request to modify or amend Agreement will be reviewed by the City and the City will respond to the Developer and Project Owner in writing.
- B. 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.
- C. This Agreement does not imply any continuing commitment by the City of Billings beyond the termination date noted herein.
- D. The City, Developer and Project Owner 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.
- E. 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.

VIII. INDEMNIFICATION

- A. The Developer and Project Owner waive 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 and Project Owner's or any contractor's, subcontractor's or sub-recipient's performance of this Agreement.
- B. Further, the Developer and Project Owner 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 Developer and Project Owner'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 Developer, Project Owner 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 Developer, Project Owner or City or sub-recipient under this Agreement, the Developer and Project Owner will immediately notify the City of such fact in writing.
- C. In addition, the City will indemnify, hold harmless, and defend the Developer, Project Owner, 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 Developer and Project Owner. In the event that the Developer and Project Owner are named as a co-defendants in any action relating to activities to be performed by the City, Developer or Project Owner under this Agreement, the City will immediately notify the Developer and Project Owner of such fact in writing.

IX. AGREEMENT SUSPENSION, TERMINATION, AND REPAYMENT

This Agreement may be terminated as follows and is subject to the following provisions in accordance with [24 CFR 85](#) suspension or termination may occur if the Developer and Project Owner materially fails to comply with any term of the Agreement ([24 CFR 92.504\(C\)\(2\)\(ix\)](#)).

A. CONTRACT SUSPENSION

If the Developer and Project Owner fails to comply with any contractual provision, the City may, after notice to the Developer and Project Owner, suspend the Agreement and withhold further payments to prohibit the Developer and Project Owner from incurring additional obligations of contractual funds or demand repayment of funds expended, pending corrective action by the City or a decision to terminate in accordance with provisions herein. The City may determine to allow such necessary and proper costs which the Developer and Project Owner could not reasonably avoid during the period of suspension, provided such costs were necessary and reasonable for the conduct of the project.

B. TERMINATION DUE TO LOSS OF FUNDING

1. The parties hereto expressly recognize that Developer and Project Owner are to be paid, reimbursed, or otherwise compensated with federal HOME funds provided to the City under the HUD HOME Agreement for the purpose of contracting for the services provided for herein or with program income; and therefore, the Developer and Project Owner expressly understands and agrees that all its rights, demands, and claims to compensation arising under this Agreement are contingent upon receipt of such funds by the City. In the event that such funds or any part thereof are not received by the City, the City may immediately terminate or amend this Agreement.

C. TERMINATION FOR CAUSE

1. If, through any cause, the Developer and Project Owner shall fail to fulfill in a timely and proper manner their obligations under this Agreement, or if the Developer and Project Owner shall violate 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 Developer and Project Owner of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.
2. It is understood that the Developer, Project Owner and City representatives shall enter into negotiations in an attempt to reach a solution mutually acceptable to both parties within ten (10) days of notification of termination, if the City shall so request in writing.
3. If no Agreement is reached by the City, Developer and Project Owner, 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 Developer, Project Owner, its agents or subcontractors.
4. Notwithstanding the above, the Developer and Project Owner 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 Developer and Project Owner, and the City may withhold any payment to the Developer or Project Owner for the purpose of setoff until such time as the exact amount of damages due to the City from the Developer and Project Owner is determined.

D. RETURN OF MATERIAL

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

E. REMEDIES

Where either party violates or breaches contract terms, the other party, in 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.

F. REVERSION OF ASSETS

Upon expiration of this Agreement, the Developer and Project Owner 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.

G. REPAYMENT

The Developer and Project Owner expressly agrees to repay to the City any funds paid on behalf of the Developer, Project Owner 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 herein.

[Signature and notary pages to follow]

DRAFT

