

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

**HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)**

**DEVELOPMENT AGREEMENT**

**LOAN NUMBER 11-HOME-6952**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated as of \_\_\_\_\_, 2012, and is made by and among Mercy Housing California 55, a California Limited Partnership (the "Borrower"); the County of El Dorado, a political subdivision of the State of California (the "County"); and the Department of Housing and Community Development, a public agency of the State of California (the "Department").

Recitals

- A. The Borrower is the owner of the real property located at Sunset Lane and Becken Lane, Shingle Springs, California, (Assessor's Parcel Numbers 090-430-21-100 and 090-430-22-100), County of El Dorado (the "Property"), more fully described in Exhibit A attached hereto and made a part hereof.
- B. By application dated September 1, 2010 (the "Application", attached hereto as Exhibit B and made a part hereof), the County has applied on behalf of Borrower to the Department for funds to finance, in part, the construction of a forty (40) unit rental housing development of which thirty-nine (39) units will be HOME Investment Partnerships Program (the "HOME Program") assisted to be located on the Property. In response, the Department has conditionally agreed to make a loan to Borrower in an amount not to exceed THREE MILLION AND 00/100 DOLLARS (\$3,000,000.00) (the "Loan") pursuant to, and with funds provided by, the HOME Program in accordance with Title 25, California Code of Regulations, Sections 8200, et seq., and 24 CFR Part 92, the federal regulations governing the HOME Program commitment (together, the "HOME Regulations"). In consideration of the Department's conditional commitment to make the Loan, the County and Department have entered into a Standard Agreement Number 11-HOME-6952 dated August 31, 2011 (the "Standard Agreement", attached hereto as Exhibit C and made a part hereof). The Standard Agreement, the Application and all amendments, exhibits and attachments thereto, are incorporated in full by reference into this Agreement.
- C. Borrower and County agree to abide by all provisions of the Standard Agreement with respect to the rental housing project (the "Development"). Borrower shall execute a Promissory Note (the "Note") bearing simple interest of three percent (3%) per annum with a term of fifty-five (55) years evidencing its obligation to repay the Loan and a Deed Of Trust With Assignment of Rents and Security Agreement (the "Deed of Trust") conveying Borrower's interest in the Property as security for the Loan. The Note and the

Deed of Trust shall be executed on or about even date herewith. Borrower agrees to be bound by all terms and conditions of the Note and Deed of Trust. In further consideration of the Loan, Borrower and County have agreed to enter into a Regulatory Agreement (the "Regulatory Agreement"), which shall be executed on or about even date herewith, governing the rent, occupancy, management, and operation of the Development and to comply with the terms and conditions therein. The Note, the Deed of Trust, the Standard Agreement, the Regulatory Agreement and this Agreement are collectively referred to herein as the "Loan Documents".

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement.
2. Development. The Borrower shall construct on the Property a rental housing project with forty (40) residential rental units in accordance with the plans and specifications approved by the County, the approvals of which are identified in Exhibit D. Borrower, County and Department hereby agree to the scope of the Development, as set forth in the Application (Exhibit B hereto).
3. Sources and Uses. The Borrower will receive funds for the purpose of developing, constructing and permanently financing the Development in the amounts and from the sources identified in the chart, entitled "Sources and Uses of Funds," in Exhibit E, attached hereto and made a part hereof. All funds shall be used and secured in the manner specified in Exhibit E. Borrower agrees to comply with and satisfy all the terms and conditions imposed on it in connection with the sources of funding identified in Exhibit E. The Borrower agrees that it will not use funds loaned pursuant to this Agreement, either directly or indirectly, as a contribution in order to obtain any Federal funds under any Federal programs without prior written approval of the Department.
4. Status of Borrower and County. Where the Loan Documents or the HOME Regulations require the inclusion of a particular term or requirement in any contract between a third party and the County, the County shall ensure that all such terms or requirements are included as appropriate in contracts between the Borrower and such third party. Any person or entity contracting with Borrower to provide goods or services in connection with the Development, not including any construction or permanent lender, shall be deemed to be a subcontractor of the Borrower.
5. Term. Unless terminated sooner pursuant to Paragraph 25, this Agreement shall be effective on the date set forth above and terminate fifty-five (55) years following the date of recordation of the Regulatory Agreement.
6. Subordination. The County agrees to subordinate the Deed of Trust and the Regulatory Agreement to the loan from Citibank, or an affiliate thereof, and the California Housing Finance Agency (CalHFA) HELP loan administered by the El Dorado County Public

Housing Authority, provided that the aggregate amount of those loans to which the Deed of Trust and Regulatory Agreement is subordinated does not exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000). County shall receive any notices of default issued by such lenders to Borrower; and County shall have the right to cure any default by Borrower within thirty (30) days after a notice of default. County shall have the right to review and approve the terms and conditions of Citibank's financing and subordination agreement, which approval shall not be unreasonably withheld. County shall have the right to record a request that County receive notice of any default by Borrower under Borrower's financing or other financing obtained by Borrower with respect to the Project. To implement any such subordination, County agrees to cooperate with Borrower and execute such subordination agreements that may be reasonably required, in form and content approved by County.

7. Representations and Warranties. Borrower and County represent and warrant to the Department as follows:
- a. Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own the Property and to own, develop, construct, operate and maintain the Development. The copies of the documents evidencing the organization of Borrower delivered to the Department are true, complete, and correct copies of the originals, as amended to the date of this Agreement.
  - b. Authority of Borrower and County. Borrower and County have full power and authority to execute and deliver this Agreement, the other Loan Documents and all documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.
  - c. Authority of Persons Executing Documents. The Loan Documents and all documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower and County, respectively. All actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement, the other Loan Documents and all documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.
  - d. Valid Binding Agreements. The Loan Documents and all documents or instruments executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of Borrower and County, respectively, enforceable against them in accordance with their respective terms.

- e. No Breach of Law or Agreement. None of the execution or delivery of the Loan Documents, as defined in Recital C, or of any document or instrument executed and delivered, or to be executed or delivered, pursuant to this Agreement, or the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission, or agency whatsoever binding on either Borrower or County or any provision of the organizational documents of either County or Borrower, will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, except for those liens identified in Exhibit E, and approved by the Department.
- f. Compliance with Laws; Consents and Approvals. The Development will comply with all applicable laws, ordinances, rules and regulations of federal (including but not limited to the HUD housing quality standards pursuant to 24 CFR 887.109, Section 504 of the Rehabilitation Act of 1973 as amended and the American Disabilities Act of 1992), state and local governments and agencies having jurisdiction over either the Borrower, the Property or the Development and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency. All permits, consents, permissions and licenses required by any federal, state or local government or agency to which Borrower, the Property or the Development is subject, which may be necessary in relation to this Agreement or the acquisition, development, construction or ownership of the Development, at or prior to the commencement of construction, have been, or will be, obtained, and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met. The Borrower, County and Department further acknowledge that this Agreement is intended to capture all provisions of the Standard Agreement (Exhibit C) and should any conflicts exist between this Agreement and the Standard Agreement, the provisions of the Standard Agreement shall govern.
- g. Pending Proceedings. Borrower is not in default under any law or regulations or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, the Property or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to acquire, construct or develop the Development or repay the Loan or impair the security to be given to the Department pursuant hereto.
- h. Title to Property. Upon recordation of the Deed of Trust, Borrower will have good and marketable title to the Property.

- i. Financial Statements. The financial statements of the Borrower, and any general partner of Borrower, and other financial data and information furnished by Borrower to the County or Department fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Borrower, or any general partner of Borrower, from that shown by such financial statements and other data and information.
  - j. Adequacy of Loan. The amount of the Loan, together with any funds to be provided by the Borrower or to the Borrower from any other sources, is adequate as construction and permanent financing for the Development in accordance with Exhibit E.
  - k. Payment of Taxes. All federal, state, county and municipal taxes required to be paid by the Borrower or on account of the Property due and payable as of the date of this Agreement have been paid in full as of such date.
  - l. Availability of Utilities. All utilities necessary for the development and occupancy of the Development are or will be available at or within the boundaries of the Property and all steps necessary to assure that such utility services will be available upon completion of the Development have been taken.
  - m. Hazardous Materials. Borrower has performed a due diligence review of the condition of the Property including a review to disclose the possible existence of asbestos and toxic or hazardous materials. All information regarding the condition of the property has been disclosed to the Department in writing as part of the Environmental Review Record, including but not limited to all Phase I, soils and hazardous materials reports regarding the condition of the Property.
8. Changes in the Plans and Specifications/Change Orders.
- a. There shall be no change in the approved Plans and Specifications or the approved Scope and Distribution of Work without the prior written consent of the Department. Change Orders shall be submitted on a form acceptable to the Department, signed by the Borrower and the general contractor ("Contractor") and such other parties as may be required by the Department, Contractor's surety or other entity with authority to approve Change Orders. Change Orders shall be accompanied by working drawings, an itemized cost statement, a written narrative of the proposed change and the reasons therefore, and such supporting documentation as the Department may reasonably require. Borrower acknowledges that this review and approval process may result in delay.
  - b. To the extent that the Department determines that a proposed Change Order will result in a cost increase, upon written demand from the Department Borrower shall provide evidence satisfactory to the Department that adequate funds are

available to pay such increased costs. Upon written demand by the Department, Borrower shall deposit into a construction escrow account such funds as the Department reasonably determines to be necessary to ensure payment of the increased costs.

- c. Within thirty (30) days after the filing of a notice of completion for the Development, Borrower shall provide to the Department without cost a copy of the final as-built Plans and Specifications, including actual changes to the work, for the completed Development.
9. Architect. For the performance of design and design supervision work on the Development, Borrower agrees to use the architect identified in Exhibit D. Any successor to or substitute for the Architect must be approved in writing by the Department. Borrower shall not terminate the services of the Architect without written approval of the Department.
  10. Contractors and Subcontractor. For the performance of any construction work on the Development, Borrower agrees to use the Contractor identified through a competitive procurement process. Any successor to or substitute for the Contractor must be approved in writing by the Department. The Borrower hereby certifies that the Contractor is not on the Federal Debarred list and is appropriately licensed by, and in good standing with, the California State Contractors' License Board and agrees that the Borrower shall only contract with contractors, and shall ensure that the Contractor and any successor thereto shall only contract with subcontractors, which are so licensed. By signing this Agreement the Borrower and the County agree that it shall not knowingly enter into any lower tier transaction with a person or entity that is proposed for debarment under 48 CFR 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction. For purposes of this Agreement, a "lower tier transaction" refers to contracts let by the County, Borrower, County's contractors or Borrower contractors utilizing funds provided through this Agreement.
  11. Construction Contract. The Borrower shall enter into a written contract with the Contractor for the performance of the construction work as set forth in Paragraph 2 above. Said contract shall require the Contractor and its subcontractors, if any, to:
    - a. Perform the work in accordance with federal, State and local housing and building codes as applicable;
    - b. Provide security to assure completion of the Development by furnishing the Borrower and lenders with Performance and Payment Bonds, or other security approved in advance in writing by the Department;
    - c. Comply with the applicable Labor Standards/Prevailing Wage Provisions of Paragraph 12 of Exhibit D to the Standard Agreement (attached as Exhibit C to this Agreement);

- d. Comply with the applicable Equal Opportunity Requirements described in Paragraph 9 of Exhibit D to the Standard Agreement (attached as Exhibit C to this Agreement);
- e. Maintain at least the minimum State-required Workers' Compensation Insurance for those employees who shall perform the Work or any part of it; and,
- f. Maintain, if so required by law, unemployment insurance, disability insurance and liability insurance in an amount to be determined by the Department, which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the contractor or any subcontractor in performing the Work or any part of it.

The contract shall include an addendum in the form attached hereto as Exhibit F, "HOME Supplemental General Conditions," attached hereto and made a part hereof, which shall, among other things, require the Contractor to comply with the Davis-Bacon prevailing wage law set forth in 29 CFR Subtitle A, Parts 1, 3 and 5. Borrower shall not terminate or amend said construction contract, or addendum without the prior written approval of the Department. Borrower shall monitor and enforce the terms and conditions of said contract, including the HOME Supplemental General Conditions.

- 12. Construction Responsibilities. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property and the Development, including, but not limited to, the quality and suitability of the Plans and Specifications and the equipment used in the construction of the Development, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors and subcontractors of any tier, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements. If necessary, the Borrower shall submit to the Department a request for wage determination for the purpose of complying with the requirements of Davis-Bacon prevailing wage requirements.
- 13. Delay. Borrower shall promptly notify the County in writing of any event causing delay or interruption of construction, in excess of (3) three working days, or the timely completion of construction for a period of (5) five working days beyond the scheduled completion date. The notice shall specify the particular work delayed and the cause and period of each delay.
- 14. Purchase of Materials Under Title Retention Agreement. The Borrower shall not purchase or install or permit to be purchased or installed any materials, equipment, fixtures or other part of the Development under any agreements or arrangements wherein the supplier or seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation into the Development, unless authorized in writing by the Department.

15. Material Warranties. The Borrower shall procure from the Contractor all warranty documents, including warranties on appliances and on building components (such as the roof and siding, etc.), and all service manuals and operating instructions pertaining to the Development.
16. Use of Funds. Borrower agrees that Loan funds shall be expended only for the reimbursement of eligible costs in accordance with the statutes, regulations and rules governing the HOME Program and only for the purposes and activities and in the amount set forth in this Agreement.
17. Conditions of Disbursement. The Department shall not be obligated to make any disbursements or take any other action under the Loan Documents, as defined in Recital C above, unless all of the following conditions precedent are satisfied at the time of such action:
  - a. All Loan Documents have been duly executed in a form acceptable to the Department and where necessary acknowledged and suitable for recordation;
  - b. Borrower has obtained or will obtain all required permits and approvals required for the lawful construction of the Development;
  - c. Borrower has obtained all necessary insurance as described in Exhibit G, attached hereto and made a part hereof;
  - d. There exists no Event of Default, as defined in this Agreement, or any other of the Loan Documents, or event, omission or failure of condition which would constitute a default or Event of Default after notice or lapse of time, or both that will not be cured concurrently with the funding of the Loan;
  - e. Borrower has obtained commitments for any other required construction financing identified in Exhibit E (or equivalent, alternative financing approved by the Department) and has adequate funding to operate the Development;
  - f. Borrower shall have obtained for the Department, at Borrower's expense, the Title Policy insuring the Deed of Trust described in Paragraph 21 below;
  - g. Borrower and County have satisfied all requirements for receipt of the Loan in accordance with the HOME Regulations and the funds for the Loan are available to the Department;
  - h. Borrower has complied with all special conditions contained hereto in Exhibit H which are conditions precedent to the disbursement of funds; and



- i. Borrower has completed, executed and submitted to the Department, on a form provided by the Department, a Request for Project Drawdown indicating Borrower's request for disbursement of proceeds of the Loan.
  - j. Borrower submits to County requests for disbursement of funds under this Agreement prior to June 30, 2014.
18. Disbursement. Except as may otherwise be provided in this Agreement or approved in writing by the Department, all funds disbursed by the Department shall be to the County on a reimbursement basis. County shall make disbursements of funds to the Borrower only to the extent that: (a) funds are available from the HOME program; and, (b) the uses of the HOME funds are eligible in accordance with the HOME program regulations specified in Recital B above. If for any reason the HOME funds are not available from the HOME program, or any of the Borrower's uses of HOME funds are deemed ineligible uses under the HOME program regulations, then the County shall not have an obligation to make disbursements of HOME funds requested by the Borrower. The aggregate of the disbursements of the HOME funds provided to the Borrower under this Agreement shall not exceed the amount of the Loan.
19. Liens and Stop Notices. If a claim of lien is recorded affecting the Property or Development, except for those liens identified in Exhibit E, or a bonded stop notice is served upon the Department which affects the Loan or the Borrower's funds, Borrower shall, within twenty (20) days of such recording or service or within five (5) days of the Department's demand (whichever last occurs): (i) pay and fully discharge the same; (ii) effect the release thereof by recording or delivering to the Department a surety bond in sufficient form and amount, or otherwise; or (iii) provide the Department with other assurance which the Department deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the Department from the effect of such lien or bonded stop notice. If Borrower has not received actual notice of the claim of lien or bonded stop notice prior to the Department's demand, then the five (5) day period described above shall be extended to twenty (20) days. Borrower shall give the Department prompt written notice of all lien claims affecting the Property or Development, except for those liens identified in Exhibit E.
20. Conditions Precedent to Final Disbursement. The final disbursement of the proceeds of the Loan, including 10 percent retention, shall be made upon the satisfactory accomplishment of the following conditions:
  - a. all of the conditions set forth in Paragraph 17 above have been met;
  - b. submission to the Department of a Notice of Completion duly recorded by Borrower and a Certificate of Occupancy for the Development issued by the local government having jurisdiction over the Development, or any equivalent thereto acceptable to the Department;

- c. submission to the Department and County of property, comprehensive general liability and any special coverage insurance required in Exhibit G;
  - d. submission to the Department of all lien waivers required by the Department or passage of the applicable statutory periods for filing mechanic and other similar liens;
  - e. issuance of a certificate or certificates, each in form and substance satisfactory to the Department, executed by Borrower and the Architect, either jointly or severally, each certifying that the Development has been completed in accordance with the Plans and Specifications;
  - f. completion of the Development in accordance with Exhibit D and acceptance and approval of the Development by the Department and by any person or governmental agency whose approval may be required;
  - g. receipt by the Department of a Project Completion Report, on a form dictated by the Department of Housing & Urban Development, which is acceptable for entry into the federal disbursement and information system;
  - h. receipt by the Department, if so requested, of a cost audit for the Development satisfactory to the Department;
  - i. delivery to the Department of "as-built" Plans and Specifications for each lot and building in the Development, legible, in good order and marked to record all changes made during construction and approval of those "as-built" Plans and Specifications by the Department; and
  - j. the Borrower shall have obtained for the Department, at Borrower's expense, an endorsement to the Title Policy insuring that the Deed of Trust shall be a lien prior to any statutory lien for labor or materials upon the completion of construction.
21. Title Insurance. Borrower shall procure from a title insurer acceptable to the Department a 1970 (or other version acceptable to the Department) ALTA Lender's Policy of Title Insurance (the "Title Policy"), with all endorsements the Department may reasonably require, insuring the Department of the validity and the priority of the lien of the Deed of Trust upon the Property and Development at the position identified in Exhibit E, in the principal amount of the Loan, subject only to matters of record approved by the Department in writing. During the term of the Loan, Borrower shall procure and deliver to the Department, within five (5) working days of the Department's request, other endorsements to the Title Policy as the Department may reasonably require.
22. Record Maintenance and Retention. Borrower shall maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures incurred in the

construction of the Development for a period of not fewer than three years after the completion of the work.

23. Inspections.

a. Authorized representatives and agents of the County or Department shall be permitted upon reasonable demand to inspect all work, materials, payrolls, personnel records, materials invoices and other relevant data pertaining to the Development, and shall have the right of entry and full access to the Property and the Development. Based on the findings during any inspection, the County or Department may issue correction notices or stop work orders. In all cases, the Borrower shall cause to be corrected any items noted in the correction notice or stop work order, and request a reinspection, prior to proceeding to the next phase of work.

b. The Department, or the County with respect to this Loan, shall not have any affirmative duty to make any inspection, to make any investigation, or to supervise or inform Borrower or any third party as to any aspect of the construction of the Development and shall not incur any liability for failing to do so. Any inspection, investigation or review undertaken by the Department, or the County with respect to this Loan, shall be solely to determine whether the Borrower is properly discharging its obligations to the Department and may not be relied upon by Borrower or any third party. Once having undertaken any such inspection, investigation or review, the Department, or the County with respect to this Loan, shall not incur any liability for failing to do so properly or for failing to complete the same. The Department, or the County with respect to this Loan, owes no duty of care to Borrower or any third party to protect against, or to inform Borrower or any third party of, any negligent, faulty, inadequate or defective design or construction of the Development.

c. The fact that inspection, investigation or review of the design or construction of the Development may or may not have been made by the Department, or the County with respect to this Loan, shall not relieve the Borrower or the Contractor of any obligation that they may otherwise have to inspect the Development or to otherwise comply with the terms of this Agreement.

24. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder following notice to the Borrower or County as appropriate, by the Department, specifying (1) the applicable event, (2) the action required to prevent such event from becoming an Event of Default, and (3) a date, which shall be not fewer than thirty (30) days after the date the notice is mailed to Borrower, by which such action must be taken:

a. Monetary. (i) Borrower's failure to pay when due any sums payable under the Note or any of the other Loan Documents, as defined in Recital C above; (ii)

Borrower's failure or inability to secure anticipated permanent financing from parties other than the Department as specified in Exhibit E (or equivalent alternative financing approved by the Department), regardless of fault of the Borrower; (iii) Borrower's failure to use or apply Loan funds in the manner specified by, or consistent with the purposes of this Agreement and as specified in Exhibits D and E; or (iv) the occurrence of an event of default under the terms of the commitment for any of the loans or grants received from the construction or permanent financing sources specified in Exhibit E hereto which results in a termination or cancellation of such commitment.

- b. Construction; Use. (i) Borrower's failure to remedy any material deviation in the work of construction from the Scope and Distribution of Work that occurred without the Department's approval or defective workmanship or materials in, or use of defective workmanship or materials in constructing, the Development, in each case to the Department's satisfaction, within ten (10) days of the Department's written demand to do so; (ii) the cessation of construction of the Development prior to completion for a continuous period of more than fifteen (15) days (unless caused by war, rebellion, insurrection, strike, lockout, boycott or act of God, or other event beyond the Borrower's control as determined in the sole discretion of the Department); (iii) the prohibition, enjoining or delay (in any manner) of the construction of, or the prohibition or enjoining (in any manner) of the leasing of, any unit in the Development in accordance with the Loan Documents, as defined in Recital C, for a continuous period of more than thirty (30) days; or (iv) the curtailment in availability to the Development for a continuous period of more than thirty (30) days of utilities or other public services necessary for construction or the full occupancy and utilization of the Development.
- c. Performance of Obligations. Borrower's or County's default under any of the other Loan Documents, as defined in Recital C, or Borrower's failure to perform its obligations under this Agreement and, in each case, the expiration of any time provided for the remedy of such failure.
- d. Representations and Warranties. (i) Any of Borrower's or County's representations or warranties in any of the Loan Documents, as defined in Recital C, or any statements, certificates or schedules furnished by Borrower to the Department, shall prove to have been untrue in any material respect when made or the Borrower shall have concealed any material fact from the Department; (ii) any of the Borrower's or County's representations or warranties in any of the Loan Documents or any statement, certificates or schedules furnished by Borrower or County to the Department, other than representations, warranties, statements and certificates as to the financial condition of Borrower or any other person, shall cease to be true and shall remain untrue for fifteen (15) days after notice of such change to Borrower or County by the Department; or (iii) any material adverse

change in the financial condition of Borrower or County from the financial condition represented to the Department as of the date of this Agreement.

- e. Voluntary Bankruptcy; Insolvency; Dissolution. Borrower's or any general partner of Borrower's (i) filing of a petition for relief under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) filing any pleading in any involuntary proceeding under any state or federal law regarding bankruptcy, reorganization or other relief to debtors which admits the jurisdiction of the court or the petition's material allegations regarding the Borrower's insolvency; (iii) making a general assignment for the benefit of creditors; (iv) applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower, any general partner of Borrower or any of their respective properties; (v) inability or admission in writing of its inability to pay its debts as they are due; or (vi) death, if an individual; or the filing by Borrower or any general partner of Borrower of a petition seeking the liquidation or dissolution of Borrower or any general partner of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower or any general partner of Borrower.
- f. Involuntary Bankruptcy. Borrower's or any general partner of Borrower's failure to effect a full dismissal of any involuntary (i) petition under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) proceeding for the appointment of a receiver, trustee or liquidator for Borrower or any general partner of Borrower or all or a material part of the assets of the Borrower or any general partner of Borrower; or (iii) petition or proceeding under other state or federal law regarding bankruptcy, reorganization or other relief to debtors that is filed against Borrower or any general partner of Borrower or in any way restrains or limits Borrower or any general partner of Borrower or the Department regarding the Loan, the Property or the Development, in any event prior to the earlier of the entry of any order granting relief sought in the involuntary petition or proceeding, or sixty (60) days after the date of filing of the petition or beginning of the proceeding.
- g. Liens; Attachment; Condemnation; Encroachments. (i) The filing of any claim of lien, except for those liens identified in Exhibit E, against the Property or the Development or any part thereof, or service on the Department of any bonded stop notice relating to the Loan and the continuance of the claim for lien or bonded stop notice for twenty (20) days after Borrower receives actual notice thereof without discharge, satisfaction or provision for payment being made as provided for in Paragraph 19 hereof; (ii) the condemnation, seizure or appropriation of, or the occurrence of an uninsured casualty with respect to, any material portion of the Property or the Development, such materiality to be determined by the Department in its sole and absolute discretion; (iii) the sequestration or attachment of, assignment by Borrower for the benefit of its creditors of, or any levy or execution upon, the Property, the Development, other collateral provided by Borrower under any of the Loan Documents, monies in any

account as may be required under any Loan Document for the deposit of operating income, or substantial portion of the other assets of Borrower, which is not released, expunged or dismissed prior to the earlier of sixty (60) days after sequestration, attachment or execution or the sale of the assets affected thereby; or (iv) any survey provided to the Department upon a request for a disbursement of Loan funds shows encroachments which occurred without the written approval of the Department which, in its sole discretion, the Department requires to be removed or corrected, and the failure to remove or correct any such encroachments within thirty (30) days after receipt of the survey.

- h. General. Borrower's breach of any condition, covenant, warranty, promise or representation contained in this Agreement not otherwise resulting in an Event of Default hereunder and the continuance of such breach for a period of thirty (30) days after written notice thereof to Borrower.

25. Remedies upon an Event of Default. Upon the happening of an Event of Default, the Department's obligation to disburse proceeds of the Loan shall terminate and the Department shall have the right to either apply all or any part of the remaining proceeds of the Loan to payment of accrued interest and principal due under any obligations of Borrower hereunder or terminate this Agreement. Upon the occurrence of an Event of Default, the Department may also, in addition to all other rights and remedies available to the Department hereunder or under the Loan Documents, as defined in Recital C above, or applicable law, at its option, proceed with any or all remedies set forth herein:

- a. Terminate this Agreement;
- b. Call all sums disbursed under the Note and all interest accrued thereon which remains unpaid, immediately due and payable from Borrower, all without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notice or demand of any kind or character;
- c. Completion of Project. The Department shall have the right to enter into possession of the Property and the Development, to take over and complete the Development in accordance with the Plans and Specifications, to discharge and replace the Contractor and to employ personnel to protect the Property and the Development and, for those purposes, to make disbursements of proceeds of the Loan. All such disbursements shall be deemed to have been paid to the Borrower by the Department, advanced under the Note and secured by the Deed of Trust. Any funds so advanced shall be paid to the Department by Borrower on demand, together with interest thereon at the rate of ten (10%) percent per annum from the date of expenditure. Any contracts entered into or indebtedness incurred upon the exercise of such right may be in the name of the Borrower, and for such purposes and the other purposes of this Paragraph 25 the Department is hereby authorized and irrevocably appointed attorney-in-fact (said appointment being coupled with an interest) to enter into said contracts or agreements or contracts or agreements

theretofore made by or on behalf of Borrower and to do any and all things necessary or proper to complete the work of construction, including the signing of Borrower's name to such contracts and documents as may be deemed necessary by counsel for the Department.

In addition to the foregoing and not in limitation thereof, the Borrower hereby further empowers the Department as said attorney as follows: a) To use any funds of the Borrower, including any balance which may be held in the construction disbursement account established hereunder and any funds which have not yet been disbursed for the purpose of completing the construction of the Development in the manner called for by the Plans and Specifications; b) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Development in substantially the manner contemplated by the Plans and Specifications; c) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; d) to pay, settle or compromise all existing bills and claims which may be liens against the Property, the Development, or any part thereof, or as may be necessary or desirable for the completion of the construction of the Development, or for clearance of title; e) to execute all applications and certificates in the name of the Borrower which may be required by the construction contract or documents entered into in connection therewith; f) to prosecute and defend all actions and proceedings in connection with the Property or the construction of the Development and to take such action and require such performance necessary; and g) to do any and every act which the Borrower might do in its own behalf with regard to completion of the construction of the Development. In no event shall the Department be required to expend its own funds to complete the Development if the remaining Loan proceeds are insufficient, but the Department may, at its option, advance such funds. Any funds so advanced shall be advanced under the Note and secured by the Deed of Trust.

- d. Stoppage of Construction. Upon an Event of Default specified in subparagraph (b)(i), (b)(iv) or (g)(iv) of Paragraph 24, the Department may order immediate stoppage of construction and demand that the condition be corrected, notwithstanding any right of Borrower under this Agreement to correct or insure against such defects. After issuance of such an order in writing, no further work shall be done on the Development without the prior written consent of the Department and until said condition has been fully corrected.
- e. Curing of Defaults by Disbursement From the Loan. Upon the happening of any Event of Default which may be cured by payment of money, the Department shall have the right to make such payment from the proceeds of the Loan. If the payment of any such sums may, in the Department's good faith determination, result in the reduction in the total amount of remaining Loan proceeds below that required to complete construction of the Development, the amount which the Department determines in good faith to be necessary to provide for such

completion shall be deposited by Borrower with the Department or in such account as the Department may designate, within ten (10) days after written demand therefor by the Department.

- f. Judgment for Specific Performance; Appointment of a Receiver. Upon the occurrence of an Event of Default the Department may seek an order for specific performance in any court of competent jurisdiction or may apply to any such court for the appointment of a receiver to take over and operate the Development in accordance with the terms of the Loan Documents, as defined in Recital C above, or for such other relief as may be appropriate.

26. Certification Regarding Lobbying. The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure form to Report Lobbying" in accordance with its instructions.

27. Right to Advance or Post Funds. Where disputes have arisen which, in the good faith opinion of the Department, may endanger timely completion of the Development or fulfillment of any condition precedent or covenant herein or result in lien claims against the Property or the Development, the Department may agree to advance funds for the account of Borrower without prejudice to Borrower's rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form which the Department, in its discretion, deems proper, including, but without limiting the generality of the foregoing, agreements to indemnify a title insurer against possible assertion of lien claims, agreements to pay disputed amounts to the Contractor or any potential lien claimant in the event Borrower is unable or unwilling to pay the same, and the like. All sums paid or agreed to be paid pursuant to such undertaking shall be for the account of Borrower, and Borrower agrees to reimburse the Department for any such payments made upon demand therefor with interest at the rate of ten (10%) percent per annum, or such lower rate of interest as may be approved by the Department, from the date of



payment until date of reimbursement. Nothing in this or any other section of this Agreement shall be construed to require the Department to advance monies over and above the amount of the Loan proceeds, though the Department may, at its option, advance such amounts.

28. Right of Contest. Borrower shall have the right to contest in good faith any claim, demand, levy or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Department or the rights of the Department hereunder. Upon demand by the Department, Borrower shall make suitable provision by deposit of funds with the Department or by bond or by title insurance or other assurance satisfactory to the Department for the possibility that the contest will be unsuccessful. Such provision shall be made five (5) days after demand therefor, and, if made by deposit of funds with the Department, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Borrower or the adverse claimant.
29. Rights Cumulative, No Waiver. All the Department's rights and remedies provided in the Loan Documents, granted by law or otherwise, are cumulative and, except as provided herein, may be exercised by the Department at any time. No waiver shall be implied from any failure of the Department to take, or any delay by the Department in taking, action concerning any Event of Default or failure of condition under the Loan Documents, or from any previous waiver of any similar or unrelated Event of Default or failure of condition. Any waiver or approval under any of the Loan Documents, as defined in Recital C above, must be in writing and shall be limited to its specific terms.
30. Attorneys' Fees; Enforcement. If any attorney, including the California Attorney General, is engaged by the County or Department to enforce, construe or defend any provision of any of the Loan Documents, or as a consequence of any Event of Default not cured hereunder or default under any other Loan Document, as defined in Recital C above, with or without the filing of any legal action or proceeding, Borrower shall pay to the County or Department, immediately upon demand, the amount of all attorneys' fees and costs incurred by the County or State in connection therewith, together with interest thereon from the date of such demand at the rate of ten (10%) percent per annum.
31. Enforcement of the Construction Contract. The parties hereto agree that the Department shall have, and is hereby assigned, the right of the Borrower to enforce the provisions of the Construction Contract and all documents related thereto in the event, as determined by the Department, in its sole discretion, that the Borrower fails, refuses, or is otherwise unable to enforce them. The Department shall notify the Borrower, in writing, of its determination to effect this assignment, specifying the reasons therefor, at least fifteen (15) days prior to the Department's undertaking any such action.
32. Indemnification and Waiver.

- a. Indemnification. Borrower agrees to indemnify the County and Department and their agents, employees and officers against, and hold the County and Department and their agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), of every name, kind and description, which the County and/or Department may incur as a direct or indirect consequence of: (i) the making of the Loan to the Borrower, except for violations of banking laws or regulations by the County or Department; (ii) Borrower's failure to perform any obligations as and when required by this Agreement or any of the Loan Documents, as defined in Recital C above; (iii) any failure at any time of any of Borrower's representations or warranties to be true and correct; (iv) any act or omission by Borrower, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or Development; or (v) the presence of hazardous substances at the Development or on the Property. Borrower shall pay immediately upon the County or Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. The duty of the Borrower to indemnify and hold harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. Borrower shall indemnify and hold harmless the County and Department and their agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the County, the Department or the Borrower or their respective agents, officers, employees, contractors or subcontractors; provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from gross negligence or willful misconduct of the County or Department. Borrower's duty to indemnify the County and Department shall survive the term of this Development Agreement, the release and cancellation of the Note and the reconveyance or partial reconveyance of the Deed of Trust.
- b. Waiver and Release. The Borrower waives and releases any and all rights to any types of express or implied indemnity against the County or Department or their agents, officers or employees.
- c. Waiver. The Borrower expressly waives the protections of Section 1542 of the Civil Code in relation to subparagraphs (a) and (b) above.
33. Further Assurances. At the Department's request and at Borrower's expense, Borrower shall execute, acknowledge and deliver any other instrument and perform any other act necessary, desirable or proper (as determined by the Department) to carry out the purpose of the Loan Documents, as defined in Recital C above, or to perfect and preserve any liens created by the Loan Documents, as defined in Recital C above.
34. Notices. All written notices and demands under the Loan Documents, as defined in Recital C above, shall be deemed served upon delivery or, if mailed, upon the date shown

on the delivery receipt (or the date on which delivery was refused as shown on the delivery receipt) after deposit in United States Postal Service certified mail, postage prepaid, return receipt requested, or after delivery or attempted delivery by an express delivery service, and addressed to the party in question at the address shown below:

Department: Department of Housing and Community Development  
Home Investment Partnerships Program  
P.O. Box 952054  
Sacramento, CA 94252-2054

County: County of El Dorado  
c/o Health and Human Services Agency  
3057 Briw Road, Suite A  
Placerville, CA 95667

Borrower: Mercy Housing California 55  
3120 Freeboard Drive, Suite 202  
West Sacramento, CA 95691

With a copy: Enterprise Community Investment, Inc.  
10227 Wincopin Circle  
Columbia, MD 21044  
Attention: General Counsel

Notice of change of address may be given in the same manner, provided Borrower's address shall be in the State of California or the state where Borrower's principal place of business is located, as represented to the County and Department in the Loan Documents, as defined in Recital C above.

35. Displacement and Relocation. If the acquisition, construction or development of the Development will result in the temporary or permanent displacement of occupants, the Borrower shall provide relocation payments and assistance in accordance with the applicable Federal and State requirements.
36. Amendments and Additional Agreements. This Agreement shall not be altered or amended except in writing executed by all parties. The Borrower and County agree that any other agreements entered into by the Borrower and County relating to the performance of this Agreement shall be subject to the written approval of the Department.
37. Books and Records. Borrower shall maintain complete books of accounts and other records for the Development and for the use of the Loan proceeds; including, but not limited to, records of preliminary notices, lien releases, invoices and receipts, and certificates of insurance pertaining to the Contractor and each subcontractor; and the

same shall be available for inspection and copying by the County or Department upon reasonable notice to Borrower.

38. No Third Parties Benefited. No person other than the Department, County and Borrower, and their permitted successors and assigns shall have any right of action under any of the Loan Documents, as defined in Recital C above.
39. Authority to File Notices. At any time subsequent to the funding of the Loan, Borrower irrevocably appoints and authorizes the Department, as Borrower's attorney-in-fact, which agency is coupled with an interest, to execute and record, on either of them, in the Department's or Borrower's name, any notices, instruments or documents that the Department deems appropriate to protect the Department's interest under any of the Loan Documents.
40. Actions. At any time subsequent to the funding of the Loan, the Department may commence, appear in or defend any action or proceeding purporting to affect the Property, Development, Loan Documents, as defined in Recital C above, or the rights, duties or liabilities of Borrower or the Department under the Loan Documents, as defined in Recital C above. In exercising this right, the Department may incur or incur and pay reasonable costs and expenses including, without limit, attorneys' fees and court costs and Borrower agrees to pay all such expenses so incurred and reimburse the County and Department for any expenses so paid.
41. Relationship of Parties. The relationship of Borrower and the Department under the Loan Documents is, and shall at all times remain, solely that of borrower and lender. The Department neither undertakes nor assumes any responsibility or duty to Borrower or to the County or to any third party with respect to the Property for the Development, except as expressly provided in the Loan Documents, as defined in Recital C above.
42. Assignment of Loan Documents. Neither Borrower nor County shall assign any interest, or any portion thereof, under any of the Loan Documents, as defined in Recital C above, or in any monies due or to become due thereunder, without the Department's prior written consent. Any such assignment made without the Department's consent shall be void. Borrower recognizes that this is not an ordinary commercial loan and that the Department would not make the Loan except in reliance on Borrower's expertise and reputation, the Department's knowledge of Borrower, and the Department's understanding that this Development Agreement is more in the nature of an agreement involving personal services than a standard loan where the Department would rely on security which already exists. In this instance, the work to be funded has not been performed at the time of Loan approval and the Department is relying on Borrower's expertise and prior experience to construct and develop the Development in accordance with the terms of the Loan Documents, as defined in Recital C above.
43. Restrictions on Transfer of Property, Project and Interest in Borrower. Borrower shall not assign, sell, transfer or convey any interest in the Borrower, the Property, or the

Development, including, without limitation, any general partnership interest in the Borrower, except as provided for in this Agreement, without the Department's prior written consent. Borrower shall promptly notify the County and the Department of such transfers and shall provide the County and the Department with any documents respecting such transfer as the County or Department may reasonably request; provided however that Borrower, if Borrower is a limited partnership, may sell, assign, transfer or convey limited partnership interests without the prior approval of the County and Department.

44. Signs. Any signs placed on the Property during construction which identify the sponsor of, or lenders to, the Development shall include the County and Department as one of the entities providing financing to the Development. During the construction period the County or Department may place one or more signs on the Property stating that it is providing financing for the Development.
45. Department's Agents. The Department may designate an agent or independent contractor to exercise any of the Department's rights under the Loan Documents, as defined in Recital C above. Any reference to the Department in any of the Loan Documents shall include the Department's agents, employees or independent contractors.
46. Severability. If any provision of the Loan Documents, as defined in Recital C above, shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from the Loan Documents, as defined in Recital C above, and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been part of the Loan Documents, as defined in Recital C above.
47. Heirs, Successors and Assigns. The terms of the Loan Documents, as defined in Recital C above, shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties; provided however, that this Paragraph shall not waive the provisions of Paragraph 43.
48. Time. Time is of the essence of each term of the Loan Documents, as defined in Recital C above.
49. Headings. All headings appearing in any of the Loan Documents, as defined in Recital C above, are for convenience only and shall be disregarded in construing the Loan Documents, as defined in Recital C above.
50. Governing Law. The Loan Documents, as defined in Recital C above, shall be governed by, and construed in accordance with, the laws of the State of California, except to the extent preempted by Federal laws. Borrower and all persons and entities in any manner obligated to the Department under the Loan Documents, as defined in Recital C above, consent to the jurisdiction of any Federal or State Court within the State of California

having proper venue and also consent to service of process by any means authorized by California or Federal law.

51. Integration; Interpretation. The Loan Documents, as defined in Recital C above, contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated herein and supersede all prior negotiations. No Loan Document, as defined in Recital C above, shall be modified except by written instrument executed by all the parties thereto. Any reference in any of the Loan Documents, as defined in Recital C above, to the Property or Development shall include all or any parts of the Property or Development. Any reference to the Loan Documents, as defined in Recital C above, in any of the Loan Documents, as defined in Recital C above, includes any amendments, renewals or extensions approved by the Department. Any reference in this Agreement to the Loan Documents, as defined in Recital C above, shall include all or any of the provisions of this Agreement and the Loan Documents, as defined in Recital C above, unless otherwise specified.
52. Joint and Several Liability. The liability of all persons and entities who are in any manner obligated under any of the Loan Documents, as defined in Recital C above, shall be joint and several.
53. Incorporation. The following Exhibits, all attached hereto, are hereby incorporated into this Agreement:
- Exhibit A: Legal Description
  - Exhibit B: HOME Application Dated September 1, 2010
  - Exhibit C: Standard Agreement 11-HOME-6952
  - Exhibit D: Plans and Specifications/Scope and Distribution of Work
  - Exhibit E: Sources and Uses of Funds
  - Exhibit F: HOME Supplemental General Conditions
  - Exhibit G: Insurance Requirements
  - Exhibit H: Special Conditions
54. Non-Discrimination. During the performance of this Agreement, Borrower and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Borrower and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Borrower and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Borrower and its

subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Borrower shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

WHEREFORE the parties enter into this Agreement as of the date first written above.

**BORROWER**

**COUNTY**

MERCY HOUSING CALIFORNIA 55, LP  
A CALIFORNIA LIMITED PARTNERSHIP

El Dorado County

By: Sunset Lane Apartments, LLC,  
its general partner

By: \_\_\_\_\_  
Daniel Nielson, M.P.A.  
Director  
Health and Human Services Agency

By: Mercy Housing Calwest,  
member/manager (GP for the LP)

By: \_\_\_\_\_  
Name:  
Title:

**DEPARTMENT**

Department of Housing and  
Community Development  
Home Investment Partnerships Program

By: \_\_\_\_\_  
Name:  
HOME Program Manager

EXHIBIT A TO DEVELOPMENT AGREEMENT  
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA,  
COUNTY OF EL DORADO, UNINCORPORATED AREA, AND IS DESCRIBED AS  
FOLLOWS:

A PORTION OF SECTION 1, TOWNSHIP 9 NORTH, RANGE 9 EAST, M.D.B.&M.  
DESCRIBED AS FOLLOWS:

PARCELS A AND B, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN  
THE OFFICE OF THE COUNTY RECORDER, COUNTY OF EL DORADO, STATE  
OF CALIFORNIA ON SEPTEMBER 12, 1979 IN BOOK 25 OF PARCEL MAPS AT  
PAGE 32.

Assessor's Parcel No.: 090-430-21-100

Assessor's Parcel No.: 090-430-22-100

DRAFT



EXHIBIT B TO DEVELOPMENT AGREEMENT  
HOME APPLICATION DATED SEPTEMBER 1, 2010

DRAFT

EXHIBIT C TO DEVELOPMENT AGREEMENT  
STANDARD AGREEMENT 11-HOME-6952

DRAFT

EXHIBIT D TO DEVELOPMENT AGREEMENT  
PLANS AND SPECIFICATIONS/SCOPE AND DISTRIBUTION OF WORK

Plans and specifications for the Development were approved by the County of El Dorado under a staff level design review, approval dates as follows:

California Environmental Quality Act	3/21/11
National Environmental Protection Act	6/28/11
Toxic Report	3/10/11
Soils Report	3/10/11
Design Review Completed	3/21/11

The approved architect is:

Stantec Consulting  
1016 12<sup>th</sup> Street  
Modesto, CA 95354

DRAFT

EXHIBIT E TO DEVELOPMENT AGREEMENT  
SOURCES AND USES OF FUNDS

Attached on the subsequent pages.

DRAFT

## SOURCES AND USES OF FUNDS

### CONSTRUCTION PERIOD SOURCES OF FUNDS

<i>Source Name (listed in order of lien priority)</i>	<i>Lien No.</i>	<i>Amount</i>	<i>Interest Rate</i>	<i>Loan Term (months)</i>	<i>Amount</i>	<i>Uses</i>
Citibank construction loan	1	\$5,645,091	4.50%	20	\$5,645,091	Construction Costs
CalHFA HELP loan via County	2	\$1,400,000	3.50%	20	\$1,400,000	Land Acquisition, Permits and Fees, Pre-Development Costs
State HOME loan via County	3	\$3,000,000	3.00%	660	\$3,000,000	Construction Costs
MHSA via CalHFA	4	\$540,800	3.00%	660	\$540,800	Construction Costs
CDBG loan via County	5	\$483,000	3.00%	660	\$483,000	Offsite Improvement Costs
County TIM Fee offset	6	\$1,060,020	0.00%	0	\$1,060,020	TIM Fee Offset
<b>Equity Investor</b>	Enterprise	\$700,000			\$700,000	Construction Costs
	<b>TOTALS</b>	\$12,828,911			\$12,828,911	

### PERMANENT SOURCES OF FUND

<i>Source Name (listed in order of lien priority)</i>	<i>Lien No.</i>	<i>Amount</i>	<i>Interest Rate</i>		<i>Amortization Period (yrs.)</i>	<i>Repayment Terms</i>		<i>Required Residential Debt Service</i>	<i>Amount</i>
			<i>Rate</i>	<i>Type</i>		<i>Type</i>	<i>Due in (yrs)</i>		
First Mortgage Citibank	1	\$542,200	7.00%	Fixed for Term	15	FAM	15	\$58,481	\$542,200
State HOME loan via County	2	\$3,000,000	3.00%	Fixed for Term	NA	RR	55		\$3,000,000
MHSA via CalHFA	3	\$540,800	3.00%	Fixed for Term	NA	RR	55		\$540,800
CDBG loan via County	4	\$483,000	3.00%	Fixed for Term	NA	DEF	55		\$483,000
County TIM Fee offset	5	\$1,060,020	0.00%	Fixed for Term	NA	None	0		\$1,060,020
Deferred developer fee		\$111,909			NA				\$111,909
GP equity		\$782			NA				\$782
<b>Equity Investor</b>	Enterprise	\$7,820,000							\$7,820,000
	<b>TOTALS</b>	\$13,558,711						\$58,481	\$13,558,711

<b>Source Name (listed in order of lien priority)</b>	<b>Uses</b>
First Mortgage Citibank	Payoff Construction Loan
State HOME loan via County	Construction Costs
MHSA via CalHFA	Construction Costs
CDBG loan via County	Offsite Improvement Costs
County TIM Fee offset	TIM Fee Offset
Deferred developer fee	Developer fee that is expected to be paid through operating cash flow. Only if available / not guaranteed.
GP equity	Payoff Construction Loan
Equity Investor	Payoff Construction Loan

DRAFT

EXHIBIT F TO DEVELOPMENT AGREEMENT  
HOME SUPPLEMENTAL GENERAL CONDITIONS

Attached on the subsequent pages.

DRAFT

**Exhibit/Attachment:** \_\_\_\_\_  
**of the**  
**Construction Contract dated:** \_\_\_\_\_  
*(mm/dd/yy)*

**STATE OF CALIFORNIA HOME INVESTMENT PARTNERSHIPS PROGRAM  
STATE RECIPIENT SUPPLEMENTAL GENERAL CONDITIONS**

The Project to be constructed pursuant to this Contract will be financed with assistance from the State of California Department of Housing and Community Development Home Investment Partnerships Program (“the Department”) and is subject to, but not limited to, the following Supplemental General Conditions.

The following Supplemental General Conditions are hereby made a part of this Contract and shall supplement and/or supersede any articles of these specifications in conflict therewith. Any subsequent and/or addenda issued after these specifications have been prepared shall supplement and/or supersede any articles of these specifications.

**Table of Contents**

1. Application to Subcontractors
2. Definitions
3. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Lower Tier Covered Transactions
4. Workers' Compensation
5. Bonding Requirements
6. Access to Records and Retention of Records
7. Equal Opportunity Provisions
  - (A) Minority/Women Business Enterprise
  - (B) Civil Rights, HCD, and Age Discrimination Acts Assurances
  - (C) State Nondiscrimination Clause
  - (D) Equal Employment Opportunity Clause
  - (E) Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity
  - (F) Standard Federal Equal Employment Opportunity Construction Contract Specifications
  - (G) Certificate of Non-Segregated Facilities
  - (H) "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities
  - (I) Section 504 Rehabilitation Act of 1973
8. Prohibition on the Use of Federal Funds for Lobbying
9. Lead-Based Paint
10. Clean Air Act, Federal Water Pollution Control Act, E.O. 11738 and EPA Regulatory Compliance Provisions
11. Postings
12. State Prevailing Wages and federal Davis-Bacon Wages
13. Federal Davis-Bacon Wages
14. State of California Prevailing Wages
15. Failure to Include or Use of Incorrect Wage Decision
16. Federal Labor Standards Provisions U.S. Department of Housing and Urban Development Office of Labor Relations HUD-4010 (07/2003)
17. Pre-construction Conference



1. **Application to Subcontractors**

No money under this Contract shall be disbursed by the Contractor to any Subcontractor or agency except pursuant to a written contract which incorporates the conditions listed herein to the extent they are applicable.

2. **Definitions**

The following terms as used in these Supplemental General Conditions are respectively defined as follows:

- (A) **"Contract"** means the entire agreement entered into between the Owner and the Contractor. It includes the Invitation for Bids, Instructions to Bidders, the form of Bid, the Bid Bond or Letter of Credit, the Performance and Payment Bond (or other form of assurance of completion), Non-Collusive Affidavit, Notice to Proceed, the form of Construction Contract, General Conditions of the Contract for Construction, any applicable Special Conditions, and specifications and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (B) **"Contractor"**: A person, firm or corporation with whom the Contract is made by the Owner or Developer.
- (C) **"HUD"** means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.
- (E) **"Project"**: Work to be performed at the location of the Project, including the transportation of materials and supplies to or from the location of the Project by employees of the Contractor and any Subcontractor.
- (F) **"Subcontract"**: Any agreement, other than one involving an employer-employee relationship, entered into by the Contractor calling for supplies or services required solely for the performance of the Contract or another Subcontract.
- (G) **"Subcontractor"**: A person, firm or corporation supplying labor and materials or only labor for work at the site of the Project for, and under separate Contract or agreement with, the Contractor.

3. *This Section is applicable to all Contracts and Subcontracts over \$100,000. No Contract shall be made to parties listed on the List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension."*

**Certification, Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Lower Tier Covered Transactions** (Required by the regulations implementing Executive Order 12549 and Executive Order 12689), Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' Responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160 – 19211)).

By signing this Contract, the Contractor (the prospective recipient of Federal assistance funds) hereby certifies that:

- (A) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (B) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal/Contract.

(C) Additionally:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
2. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the definitions and coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
4. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
5. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Procurement or Non-procurement Programs.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph (C)4, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the DOL may pursue available remedies, including suspension and/or debarment.

4. *This Section is applicable to all Contracts and Subcontracts.*

**Workers' Compensation**

By signing this Contract, the Contractor hereby certifies that it is aware of the provisions of §3700 et seq. of the State of California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will

comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract.

5. *This Section is applicable to all Contracts and Subcontracts of \$100,000 or more.*

**Bonding Requirements (24 CFR Part 85.36)**

For construction or facility improvement Contracts or Subcontracts exceeding the simplified acquisition threshold [4 USC §403(11) currently sets the threshold at \$100,000], the awarding agency [the Department] may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- (A) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (B) A performance bond on the part of the Contractor for 100 percent of the Contract price. A "performance bond" is one executed in connection with a Contract to secure fulfillment of all the Contractor's obligations under such Contract.
- (C) A payment bond on the part of the Contractor for 100 percent of the Contract price. A "payment bond" is one executed in connection with a Contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the Contract.

6. *This Section is applicable to all Contracts and Subcontracts.*

**Access to Records and Retention of Records (24 CFR Part 92.508 & 24 CFR Part 85.36(I)(10) & (11))**

- (A) **Access to Records.** The HOME Recipient (State Recipient or Owner), the State of California, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor and Subcontractor which are directly pertinent to this specific Contract, for the purpose of making audit, examination, excerpts, and transcriptions from such records including, but not limited to, Contracts, invoices, materials, payrolls, records of personnel, conditions of employment and any other data relating to matters covered by this Contract. Such access shall be granted at any time during normal business hours and as often as the State of California, HUD and/or the Comptroller General of the United States may deem necessary.
- (B) **Documentation of Costs.** All costs shall be supported by properly executed payrolls, time records, invoices, Contracts, vouchers, orders, or other accounting documents. All documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.
- (C) **Retention of Records.** All required records must be maintained by the Contractor for five years after grantee makes final payments and all other pending matters are closed. (This is two years longer than the federal requirement of three years.)

7. **Equal Opportunity Provisions**

(A) *This Section is applicable to all Contracts and Subcontracts.*

**Minority Business Enterprise** (Executive Orders 11625 "Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise", dated October 13, 1971 and 12432 "Minority Business Enterprise Development", dated July 14, 1983) **and Women's**

**Business Enterprise** (Executive Order 12138 "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women's Business Enterprise", dated May 18, 1979).

Affirmative steps must be taken by all contractors to assure that small, minority and women-owned businesses and firms located in labor surplus areas are used when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

1. Include any such qualified firms on solicitation lists.
2. Assure that such firms are solicited whenever they are potential sources.
3. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit such firms maximum opportunities for participation through Subcontracting.
4. Where possible, establish delivery schedules which will encourage such participation.
5. Keep records of efforts and results.

**(B)** *This Section is applicable to all Contracts and Subcontracts.*

**Civil Rights, HCD, and Age Discrimination Acts Assurances.**

During the performance of this Contract, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this Contract, as required by Title VI of the Civil Rights Act of 1964 (42 USC 2000d <> 24 CFR Part 1), Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5309 <> 24 CFR Part 6), and the Age Discrimination Act of 1975, as amended (42 USC 6101-07 <> 24 CFR Part 146) which prohibits discrimination on the basis of age, and all implementing regulations.

**(C)** *This Section is applicable to all Contracts and Subcontracts.*

**State Nondiscrimination Clause.**

1. During the performance of this Contract, Contractor and its Subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractors and Subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractor and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f) et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full, Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all Subcontracts to perform work under the Contract.

**(D)** *This Section is applicable to all Contracts and Subcontracts of \$10,000 or more.*

**Equal Employment Opportunity Clause**

**Section 202 Equal Employment Opportunity Clause (Executive Order 11246 dated 9/24/65, as amended by Executive Order 11375 dated 10/13/67 and Executive Order 12086 dated Oct. 5, 1978, and as supplemented in Department of Labor Regulations (41 CFR, Part 60 1.4 (b))**

The Contractor hereby agrees that it will incorporate or cause to be incorporated the following equal opportunity clause into any Contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, Contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, Contract, loan, insurance, or guarantee:

**During the performance of this Contract, the Contractor agrees as follows:**

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965; and the rules, regulations and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government Contracts or federally assisted construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any

Subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

(E) *This Section is applicable to all Contracts and Subcontracts of \$10,000 or more.*

**Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity: Executive Order 11246:**

The "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" require timetables and goals for minority and female participation, *expressed in percentage terms* for the Contractor's aggregate workforce *in each trade* on all construction work *in the covered area*, as follows:

**MINORITY AND FEMALE PARTICIPATION**

**Percentages – Until Further Notice**

	<b>GOALS FOR <u>MINORITY</u> PARTICIPATION IN EACH TRADE</b>	<b>GOALS FOR <u>WOMEN</u> PARTICIPATION IN EACH TRADE</b>
<b>All Trades</b>	<b>County: El Dorado</b> 14.30 %	<b>6.9%</b> <b>(Statewide)</b>

County	Minority Goal	County	Minority Goal	County	Minority Goal
Alameda	25.80%	Marin	25.80%	San Luis Obispo	24.60%
Alpine	19.80%	Mariposa	19.80%	San Mateo	25.80%
Amador	19.80%	Mendocino	23.20%	Santa Barbara	19.70%
Butte	14.30%	Merced	19.80%	Santa Clara	19.60%
Calaveras	19.80%	Modoc	6.80%	Santa Cruz	14.90%
Colusa	14.30%	Mono	23.60%	Shasta	6.80%
Contra Costa	25.80%	Monterey	28.90%	Sierra	14.30%
Del Norte	6.60%	Napa	17.10%	Siskiyou	6.80%
El Dorado	14.30%	Nevada	14.30%	Solano	17.10%
Fresno	26.10%	Orange	11.90%	Sonoma	9.10%
Glenn	14.30%	Placer	16.10%	Stanislaus	12.30%
Humboldt	6.60%	Plumas	6.80%	Sutter	14.30%
Imperial	16.20%	Riverside	19.0%	Tehama	6.80%
Inyo	24.60%	Sacramento	16.10%	Trinity	6.60%
Kern	19.10%	San Benito	23.20%	Tulare	23.60%
Kings	23.60%	San Bernardino	19.0%	Tuolumne	19.80%
Lake	23.20%	San Diego	16.9%	Ventura	21.50%
Lassen	6.80%	San Francisco	25.80%	Yolo	16.10%
Los Angeles	28.30%	San Joaquin	24.30%	Yuba	14.30%
Madera	23.60%				

These goals are applicable to all of the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area and are applicable from the execution of this Contract until project completion, which is estimated to be \_\_\_\_ (mm/dd/yy).

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR Part 60-4, paragraph 3(a), and its efforts to meet the goals established for the geographical area where the Contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its Projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction Subcontract in excess of ten thousand (\$10,000) dollars at any tier of construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the Subcontractor; employer identification number of the Subcontractor, estimated dollar amount of the Subcontract; estimated starting and completion dates of the Subcontract; and the geographical area in which the Subcontract is to be performed. See #5 below for the list of OFCCP offices.
- As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is Shingle Springs, County of El Dorado, California.

5. List of California District OFCCP Offices

District Offices

Counties Served by District Office

OFCCP District Director  
U.S. Department of Labor  
11000 Wilshire Blvd., Suite 8103  
Los Angeles, CA 90024  
Ph (310) 235-6800/Fax (310) 235-6833

Inyo, Kern, Los Angeles, San Luis Obispo, Santa Barbara,  
Tulare, Ventura

OFCCP District Director  
U.S. Department of Labor  
1301 Clay St., Suite 1080-N  
Oakland, CA 94612  
Ph (510) 637-2938/Fax (510) 637-2946

Alameda, Amador, Butte, Colusa, Contra Costa, Del Norte,  
El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino,  
Modoc, Napa, Nevada, Placer, Plumas, Sacramento,  
San Francisco, San Joaquin, San Mateo, Shasta, Sierra,  
Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo,  
Yuba

OFCCP District Director  
U.S. Department of Labor  
5675 Ruffin Rd, Suite 320  
San Diego, CA 92123-5378  
Ph (619) 557-6489/Fax (619) 557-6609

Imperial, San Diego

OFCCP District Director  
U.S. Department of Labor  
60 S. Market St., Suite 410  
San Jose, CA 95113-2328  
Ph (408) 291-7384/Fax (408) 291-7559

Alpine, Calaveras, Fresno, Kings, Madera, Mariposa,  
Merced, Mono, Monterey, San Benito, Santa Clara,  
Santa Cruz, Stanislaus, Tuolumne

OFCCP District Director  
U.S. Department of Labor  
34 Civic Center Plaza, Suite 712  
Santa Ana, CA 92712-2800  
Phone (714) 836-2784/Fax (714) 836-2781

Orange, Riverside, San Bernardino

(F) *This Section is applicable to all Contracts and Subcontracts of \$10,000 or more.*

**Standard Federal Equal Employment Opportunity Construction Contract Specifications:  
Executive Order 11246 (41 CFR Part 60-1):**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer Identification Number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:



- (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, and the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, Subcontracts a portion of the work involving any construction trade, it shall physically include in each Subcontract in excess of ten thousand (\$10,000) dollars the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
  3. If the Contractor is participating (pursuant to 41 CFR Part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO Clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
  4. The Contractor shall implement the specific affirmative action standards provided in paragraphs (7a) through (7p) of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization, the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
  5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, nor the regulations promulgated pursuant thereto.
  6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
  7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and

shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor where possible, will assign two or more women to each construction Project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (7)b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female-focused news media, and providing

written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one (1) month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
  - j. Encourage present minority and female employees to recruit other minority persons and women, and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for Subcontracts from minority and female construction companies, Contractors and suppliers, including circulation of solicitations to minority and female-focused Contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a) through (7p). The efforts of a Contractor association, Joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7a) through (7p) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor.

The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government Contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing Subcontracts as may be imposed or ordered pursuant to Executive Order 11246 as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246 as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR Part 60-4-8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(G) *This Section is applicable to all Contracts and Subcontracts of \$10,000 or more (Secretary of Labor May 6, 1967 order on the Elimination of Segregated Facilities (32 F.R. 7439, 19 May 1967) 41 CFR Part 60-1.8.*

**Certificate of Non-Segregated Facilities.**

The federally assisted construction Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are

maintained. The federally assisted construction Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The federally assisted construction Contractor agrees that a breach of this certification is a violation of the Section 202 Equal Opportunity Clause in this Contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

The federally assisted construction Contractor agrees that (except where it has obtained identical certifications from proposed Subcontractors for specified time period) it will obtain identical certifications from proposed Subcontractors prior to the award of Subcontracts exceeding \$10,000 which are not exempt from the provisions of the Section 202 Equal Opportunity Clause, and that it will retain such certifications in its files; and that s/he will forward the following notice to such proposed Subcontractors (except where proposed Subcontractors have submitted identical certifications for specific time periods).

NOTE: Whoever knowingly and willfully makes any false, fictitious or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001.

**(H) This Section is applicable to all construction Contracts and Subcontracts of \$100,000 or more "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities Section 3 Housing and Urban Development Act of 1968 (12 U.S.C. 1701 u <> 24 CFR Part 135).**

This agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1801 u) as amended. The Section 3 clause requires that every applicant, recipient, contracting party, Contractor and Subcontractor shall incorporate, or cause to be incorporated, in all Contracts for work in connection with a Section 3 covered Project, the following clause (referred to as a Section 3 clause):

1. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted Projects covered by section 3, shall to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
2. The parties to the Contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
3. The Contractor agrees send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the said labor organization or workers' representative of Contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places available at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject

to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions and the anticipated date the work shall begin.

4. The Contractor agrees to include this Section 3 clause in every Subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the Subcontract or in this section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not Subcontract with any Subcontractor where the Contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
5. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.
6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted Contracts.

**Section 3 Plan:**

Specifically the Contractor agrees to implement, at a minimum, the following actions within the jurisdiction that the project is located. These actions are directed at increasing the utilization of lower income residents as employees and small businesses as Subcontractors and suppliers.

1. To implement Section 3 requirements by seeking the assistance of local officials in determining the exact boundaries of the applicable project area;
2. To attempt to recruit from the project area through local advertising media and signs placed at the proposed site for the project;
3. To continually recruit from a Contractor maintained directory of community service organizations, and public or private institutions operating within or serving the project area;
4. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists;
5. To formally contact unions, Subcontractors, and trade associations to secure their cooperation for this project;
6. To ensure that all appropriate project area business concerns are notified of pending Subcontract opportunities;
7. To maintain records, including copies of correspondence, memoranda, etc., which document all actions taken;
8. To provide the Section 3 workforce and business utilization reports required under this Contract;
9. To include the Section 3 clause in every Subcontract for work in connection this project;
10. To require all Subcontracting bidders on contracts exceeding \$10,000 to submit a Section 3 Plan including utilization goals and the specific steps planned to accomplish these goals; and
11. To insert this Section 3 Plan in all bid documents.

(I) *This Section is applicable to all Contracts and Subcontracts.*

**Section 504 Rehabilitation Act of 1973, as amended** (29 USC 794 <> 24 CFR Part 8); Affirmative Action for Workers with Disabilities (48 CFR 52.222-36)

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices, such as hiring, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Federal Rehabilitation Act of 1973, as amended (“Act”).
  3. In the event of the Contractor’s non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
  4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the United States Department of Labor - Office of Federal Contract Compliance Programs (OFCCP) provided by or through OFCCP. Such notices shall state the Contractor’s obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and the rights of applicants and employees.
  5. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other Contract understanding, that the Contractor is bound by the terms of Section 504 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment qualified individuals with physical or mental disabilities.
  6. The Contractor will include the provisions of this clause in every Subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 504 of the Act, so that such provisions will be binding upon each Subcontractor with respect to any Subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.
8. *This Section is applicable to all Contracts and Subcontracts of \$100,000 or more. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.*

**Prohibition on the Use of Federal Funds for Lobbying (31 U.S.C. 1352)**

The Contractor executing this Contract hereby certifies and acknowledges to the best of his or her knowledge and belief that:

- (A) No Federal funds have been paid or will be paid, by or on behalf of the local government, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement;
- (B) If any funds other than Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, on officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the local government shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352;
- (C) The language of this certification shall be included in the award documents for all subawards at all tiers (including Subcontracts, subgrants, and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The Contractor understands that this certification is a material representation of fact upon which reliance was placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Contractor also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

9. *This Section is applicable to all Contracts and Subcontracts of \$100,000 or more.*

**Lead-Based Paint (42 USC 4821 et seq. and 24 CFR Part 35)**

The use of lead-based paint in the federally assisted construction or rehabilitation of residential structures (including day cares, senior centers, and community facilities) is prohibited by Section 401(b) of the Lead-Based Paint Poisoning Prevention Act [42 USC 4831(b)] and regulations in 24 CFR 35B. To the extent that contracted work involves residential structures, the Contractor and Subcontractors must follow the new regulations issued under sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, which is the basic law covering lead-based paint in federally assisted housing.

1. The Contractor and Subcontractors shall not use lead-based paint in residential structures and shall eliminate any lead-based paint hazards in residential structures that are rehabilitated.
2. At a minimum the Contractor and Subcontractors must comply with the Lead Hazard Reduction Methods in 24 CFR 35.1330 and 1325.
3. All workers involved in the disturbance of lead-based paint bearing surfaces must be trained in lead safe work practices.
4. At the conclusion of residential rehabilitation, the property must pass a lead hazard clearance test by a certified technician and lab. The lead level must meet the federal and California lead level threshold standards. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in 24 CFR 35.1350(d).

Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831) prohibits the use of lead-based



paint on any interior or exterior residential surfaces constructed or rehabilitated with Federal Assistance in any form.

10. *This Section is applicable to all Contracts and Subcontracts of \$100,000 or more.*

**Clean Air Act, Federal Water Pollution Control Act, E.O. 11738 and EPA Regulatory Compliance Provisions**

The Contractor agrees to the following clause and will include it in any Subcontracts over \$100,000:

During the performance of this Contract, the Contractor and all Subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended. In addition to the foregoing requirements, all nonexempt Contractors and Subcontractors shall furnish to the Owner, the following:

- (A) A stipulation by the Contractor or Subcontractors that any facility to be utilized in the performance of any nonexempt Contract or Subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15.20.
- (B) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857c-8) and (33 U.S.C. 1318) relating to the inspection, monitoring, entry reports and information as well as all other requirements specified in said Section 114 and Section 308, and all regulations, and guidelines issued thereunder.
- (D) A stipulation that as a condition for the award of the Contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities.
- (E) Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraphs A through D of this section in every nonexempt Subcontract and requiring that the Contractor will take such actions as the Government may direct as a means of enforcing such provisions.

11. **Postings**

The following postings shall be prominently posted & accessible in conspicuous places at the site of work in locations that are available to employees and applicants for employment in the Project/work area:

- (A) All Projects
  1. United States Department of Labor - Occupational Safety & Health Administration:  
“You Have a Right to A Safe and Healthful Workplace”  
English (OSHA 3165) and Spanish (OSHA 3167)
  2. United States Department of Labor - Office of Federal Contract Compliance Programs:  
“The Equal Employment Opportunity (EEO) Poster”  
English, Spanish and Chinese
  3. Other federally required postings, as may be required by the United States Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), or the United States Department of Housing and Urban Development (HUD).
  4. State of California posters as may be required by the Division of Occupational Safety and Health (DOSH), Department of Industrial Relations (DIR), the Department of Fair Employment and Housing (DFEH), the Office of Environmental Health Hazard Assessment (OEHHA), or the Secretary of State.

- (B) Davis Bacon Projects (HOME Projects with 12 or more HOME-assisted units)
  - 1. Davis-Bacon Prevailing Wage Rates for the Project
  - 2. United States Department of Labor:  
“Notice to Employees Working on Federally Financed Construction Projects”  
English (WH-1321Eng) and Spanish (WH-1321SP)

- (C) State Prevailing Wage Projects  
Prevailing wage rate determinations. The body awarding any Contract for public work or otherwise undertaking any public work shall cause a copy of the prevailing wage determination for each craft, classification or type of worker needed to execute the Contract to be posted at each job site. (Labor Code section 1773.2)

**12. This Section is applicable to all Contracts and Subcontracts to which State of California Prevailing Wages and federal Davis-Bacon Prevailing Wages apply.**

**State Prevailing Wages and federal Davis-Bacon Wages**

The Contractor is solely responsible for paying the correct prevailing wage rates to each of its workers. The Contractor shall pay the higher of the State of California Prevailing Wages and federal Davis-Bacon Wages. Contractor shall cause all Subcontracts to include the provision that all Subcontractors shall pay the higher of the State of California Prevailing Wages and federal Davis-Bacon Wages to all workers employed by such Subcontractors in the execution of the work who are subject to the terms of the State of California Labor Code Section 1770 et seq. and Davis Bacon and Related Acts (40 USC 276(a) 7 et seq.) as supplemented by Department of Labor Regulations (29 CFR, Part 5), and with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) as supplemented by Department of Labor Regulations (29 CFR, Parts 5 and 1926).

**13. This Section is applicable to all Davis Bacon Projects (HOME Projects with 12 or more HOME-assisted units).**

**Federal Davis-Bacon Wages**

Wages paid on this Project shall not be less than the minimum wages determined by the U.S. Department of Labor as set forth in this Contract as Attachment number \_\_\_\_\_ (fill in attachment number). Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 276-a to a-7) as supplemented by Department of Labor Regulations (29 CFR, Part 5), and with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) as supplemented by Department of Labor Regulations (29 CFR, Parts 5 and 1926). All specifications for construction Contracts and Subcontracts will contain the prevailing wage rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276-a to 276-C-5) and provision that overtime compensation will be paid in accordance with the Contract Work Hours and Safety Standards Act Regulations (29 CFR, Parts 5 and 1926). The Contract provisions shall require that these standards be met.

The appropriate Schedule of Minimum Hourly Wage Rates (U.S. Department of Labor: Davis-Bacon Wage Determination) is attached to this Contract as Attachment number \_\_\_\_\_ (fill in attachment number). Contractor shall post, at each jobsite, a copy of such prevailing rate of per diem wages as determined by the U.S. Department of Labor.

The Owner shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Department) the Department against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Owner, its Contractors and Subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Davis-Bacon Act (as supplemented by Department of Labor Regulations), and with the Contract Work Hours and Safety Standards Act (as supplemented by Department of Labor Regulations) in connection with construction under this Contract.

14. *This Section is applicable to all State Prevailing Wage Projects.*

**State of California Prevailing Wages**

Pursuant to the provisions of Articles 1 and 2 of Chapter 1, Part 7, Division II, of the Labor Code of the State of California (Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations), not less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work contemplated under this Contract shall be paid to all workers, laborers and mechanics employed in the execution of the work by Contractor, or by any Subcontractor doing or contracting to do any part of the work.

The appropriate prevailing wage determination of the Director of the California Department of Industrial Relations is attached to this Contract as Attachment number \_\_\_\_\_ (*fill in attachment number*). The Contractor shall post, at each jobsite, a copy of such prevailing rate of per diem wages as determined by the Director for the California Department of Industrial Relations. Copies of such prevailing rate or per diem wage shall be on file in the Owner's principal office, copies of which shall be made available to any interested party on request. The Owner shall keep and retain, and shall cause its Contractor and Subcontractors to keep and retain, such records as are necessary to determine that prevailing wages have been paid as required by law. The Contractor shall post a copy of such determinations at each job site.

The Owner shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Department) the Department against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Owner, its Contractors and Subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction under this Contract.

15. **Failure to Include or Use of Incorrect Wage Decision**

Failure to include the required Department of Labor Davis-Bacon Wage Determination or State of California: Department of Industrial Relations Wage Determination in bid documents or Contracts will not relieve the owner, Contractor, or Subcontractor from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the owner must either terminate and re-solicit the Contract with the valid decision, or make the valid wage decision retroactive to the beginning of construction through supplemental agreement. The Contractor or Subcontractor, if not at fault, must be compensated for any increases in required wages resulting from such a change.

16. *This Section is applicable to all Davis Bacon Projects (HOME Projects with 12 or more HOME-assisted units.*

**Federal Labor Standards Provisions U.S. Department of Housing and Urban Development Office of Labor Relations HUD-4010 (07/2003)** previous edition is obsolete. Ref. Handbook 1344.1

**Applicability**

The Project covered by this Contract is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the requirements applicable to such Federal assistance.

- A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage

determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or HCD, as HUD's designee, agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or HCD, as HUD's designee, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or HCD, as HUD's designee, or will notify HUD/HCD within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)
- (c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or HCD, as HUD's designee, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD/HCD shall refer the questions, including

the views of all interested parties and the recommendation of HUD/HCD, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD/HCD or will notify HUD/HCD within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

- (d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
  - (iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
  - (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
2. **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal Contract with the same prime Contractor, or any other Federally-assisted Contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any Subcontractor, the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the Contract, HUD or HCD, as HUD's designee, may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD/HCD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or Subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act Contracts.
3. (i) **Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any

laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to HUD or HCD, as HUD's designee, if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the sponsor, or Owner, as the case may be, for transmission to HUD/HCD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have

been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section

231 of Title 31 of the United States Code.

- (iii) The Contractor or Subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or HCD, as HUD's designee, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, HUD/HCD may, after written notice to the Contractor, sponsor or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

- (i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal

certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

- 5. Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this Contract.
- 6. Subcontracts.** The Contractor or Subcontractor will insert in any Subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or HCD, as HUD's designee, may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the Contract clauses in this paragraph.
- 7. Contract termination; debarment.** A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.
- 8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- 9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and HUD or HCD, as HUD's designee, the U.S. Department of Labor, or the employees or their representatives.



**10. (i) Certification of Eligibility.** By entering into this Contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD Contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this Contract shall be Subcontracted to any person or firm ineligible for award of a Government Contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD Contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of influencing in any way the action of such Administration, makes, utters or publishes any statement knowing the same to be false shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any Subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable only where the amount of the prime Contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or HCD, as HUD's designee, shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal

Contract with the same prime Contractor, or any other Federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable only where the amount of the prime Contract exceeds \$100,000.

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.
- (3) The Contractor shall include the provisions of this paragraph in every Subcontract so that such provisions will be binding on each Subcontractor. The Contractor shall take such action with respect to any Subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

## 17. Pre-Construction Conference

After the Contract(s) have been awarded, but before the start of construction, a conference will be held for the purpose of establishing lines of communication, authority, and responsibilities, clarifying procedures to be followed during construction, and discussing and making known items of mutual interest such as, but not limited to, the following:

- a) All construction details;
- b) Time frame of Project;
- b) Project supervision;
- c) Coordination with City or County officials;
- d) On-site inspections;
- e) Progress schedules and reports;
- f) Payrolls, payments to Contractors;
- g) Contract change orders;
- h) All Bonds and Certificate of Insurance Requirements;
- i) Safety;
- j) Federal labor requirements:
  - 1) Federal Labor Standards and Davis-Bacon Act;
  - 2) Contract Work Hours and Safety Standards Act – Overtime Compensation;
  - 3) Contractors must submit certified copies of weekly payrolls to the assigned Project manager for verification that appropriate wage rates were paid;
  - 4) Section 3;

- 5) Prior to progress payments being made the Labor Compliance Officer will review all such payrolls upon receipt, sign and date the payroll following verification, and maintain such payrolls on file for review and monitoring purposes;
  - 6) The process of withholding progress payments;
  - 7) How disputes Concerning Labor Standards will be resolved;
  - 8) Compliance with Copland Regulations;
  - 9) Minutes of the pre-construction conference that document the discussion of federal regulations must be kept in the Project files;
  - 10) Certification of Eligibility (non-debarment);
  - 11) Required Subcontract Contract provisions.
- k) The construction site posting requirements;
- l) And other items pertinent to the Project, e.g., State Prevailing Wage requirements.

The Contractor shall arrange to have all supervisory personnel connected with the Project on hand to meet with representatives of the engineer/architect, prime Contractor, Subcontractor(s), inspector(s), labor standards officer and Owner to discuss any anticipated problems, responsibilities and obligations on a federally funded or federally assisted Project. The Pre-Construction Conference Agenda must be discussed and agreed upon by the Contractor and supervisory personnel before finalizing the document and conducting the Pre-Construction Conference. All those in attendance shall sign in.

Pre-construction detailed conference minutes shall be prepared by the Labor Compliance Officer that includes a list of all attendees. Copies of the minutes shall be distributed by the Labor Compliance Officer to all those in attendance. The pre-construction conference will in no way change the Contractor's responsibility to follow the requirements of the Contract documents.

**The undersigned have executed these Supplemental General Conditions on the dates set forth below their respective signatures. (Type or Print all information except signatures, which shall be hand-written in ink.)**

EXHIBIT G TO DEVELOPMENT AGREEMENT  
INSURANCE REQUIREMENTS

At close of escrow, the California Department of Housing and Community Development (the “Department”) and County of El Dorado (the “County”) must receive a one-year prepaid Certificate of Insurance policy (or a binder followed by a certificate within 30 days of loan closing).

Prior to construction loan closing, the Borrower shall procure and maintain, and provide proof of, all required insurance coverage during the term of the construction loan. Such insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Borrower, his agents, representatives, employees, contractors or subcontractors. All required evidence of insurance coverage must be in the form of a certificate of insurance and policy endorsements acceptable to the Department Home Investment Partnerships Program and the County.

All insurance certificates must include the following:

- NAIC # for each insurer affording coverage
- Project Name
- Project Address
- Insurance Contact Information, including name and telephone number

The Department should be identified on all insurance documents as follows:

The Department of Housing and Community Development  
Home Investment Partnerships Program (HOME)  
P.O. Box 952054  
Sacramento, CA 94252-2054

The County should be identified on all insurance documents as follows:

El Dorado County  
c/o Health and Human Services Agency, HCED  
3057 Briw Road, Suite A  
Placerville, CA 95667

***Acceptability of Insurers***

Insurance must be placed with insurers with a current A.M. Best rating of no less than A:VII. In the event the insurer’s A.M. Best rate declines below an A:VII rating, Borrower is required to provide a replacement policy from another acceptable insurer within 10 business days.

## MINIMUM SCOPE OF INSURANCE AND MINIMUM LIMITS OF INSURANCE

### *Borrower's Insurance Requirements*

Borrower's insurance shall include all contractors as insureds under its policies or shall furnish separate certificates and endorsements for the general contractor to the Department and County for review and approval. Borrower shall have insurance coverage that shall be at least as broad as:

1. Commercial General Liability Insurance - Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

General Liability: **\$1,000,000** per occurrence (or \$2,000,000 per occurrence for buildings with elevators) for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage for products and completed operations must remain in force for at least twelve (12) months following acceptance of the work by the Department.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

2. Owners and Contractors Protective Liability Insurance - Insurance Services Office Form (G0009 11 88 Owners and Contractors Protective Liability Coverage Form - Coverage for Operations of Designated Contractor).

Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

3. Automobile Liability Insurance - Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). An entity without autos should have "non owned and hired" coverage.

Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage. An entity without autos shall provide proof of "non owned and hired" coverage.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

4. Workers' Compensation Insurance - Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

## Workers' Compensation: Statutory Limits

Any entity without employees needs to provide written statement stating that they do not have any employees.

California Department of Housing and Community Development and the County of El Dorado to be named as certificate holders.

5. Course of Construction/Builder's Risk Insurance - Course of Construction insurance covering all risks of loss less policy exclusions on the structure, materials on and offsite, and materials in transit.

Course of Construction: Completed value of the project with no coinsurance penalty provisions.

Course of Construction/Builder's Risk Insurance must be provided on an "all risk" basis insuring the interests of the Department, the County, the Borrower, contractors and material suppliers. The Borrower shall be responsible for any loss within the deductible amount of the insurance.

Course of Construction policies shall contain the following provisions:

- A. California Department of Housing and Community Development and the County of El Dorado shall be named as Loss Payees with a 438BFU endorsement provided.
- B. The insurer shall waive all rights of subrogation against the Department or the County.
- C. A "Permit to Occupy" endorsement, or coverage, shall be included.

## ***Contractor's Insurance Requirement***

All coverages for general contractors shall be subject to all of the same requirements as the Borrower for the following insurance requirements:

1. Commercial General Liability Insurance - Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage for products and completed operations must remain in force for at least twelve (12) months following acceptance of the work by the Department.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

2. Automobile Liability Insurance - Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). An entity without autos should have “non owned and hired” coverage.

Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage. An entity without autos shall provide proof of “non owned and hired” coverage.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

3. Workers’ Compensation Insurance - Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

Workers’ Compensation: Statutory Limits

Any entity without employees needs to provide written statement stating that they do not have any employees.

California Department of Housing and Community Development and the County of El Dorado to be named as certificate holders.

### ***Architect, Engineer and Other Licensed Professionals Insurance Requirements***

All architects, Engineers and other licensed professionals shall be registered to practice within the State of California. A California licensed Architect is required on all projects with 16 units or more. For smaller developments, a licensed engineer may be acceptable.

All coverages for Architects, Engineers and subcontractors shall provide:

Errors & Omissions Insurance or Professional Liability Insurance for no less than \$1,000,000 per occurrence.

Commercial General Liability Insurance - Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage for products and completed operations must remain in force for at least twelve (12) months following acceptance of the work by the Department.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

2. Automobile Liability Insurance - Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). An entity without autos should have “non owned and hired” coverage.

Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage. An entity without autos shall provide proof of “non owned and hired” coverage.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

3. Workers’ Compensation Insurance - Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

Workers’ Compensation: Statutory Limits

Any entity without employees needs to provide written statement stating that they do not have any employees.

California Department of Housing and Community Development and the County of El Dorado to be named as certificate holders.

### ***Deductibles and Self-Insured Retentions***

Any deductibles in excess of \$5,000 must be declared and approved by the Department. In addition, the Borrower shall provide a financial guarantee satisfactory to the Department for the payment of any resulting losses and related investigations, claim administration and defense expenses.

### ***Verification of Coverage***

Borrower shall provide the Department and the County with original certificates and amendatory endorsements for all required insurance coverage, in a form and substance acceptable to the Department prior to the closing of the construction loan and prior to the commencement of construction. The Department and/or County reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time. Such coverage will be required until the final retention payment is released.

### ***Other Insurance Provisions***

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:



1. California Department of Housing and Community Development, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Borrower; and with respect to liability arising out of work or operations performed by or on behalf of the Borrower including materials, parts or equipment furnished in connection with such work or operations.
2. County of El Dorado, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Borrower; and with respect to liability arising out of work or operations performed by or on behalf of the Borrower including materials, parts or equipment furnished in connection with such work or operations.
3. For any claims related to this project, the Borrower's insurance coverage shall be primary insurance as respects the Department and/or the County, their officers, officials, employees, and volunteers.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Department and the County.
5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

#### ***Railroad Protective Liability Insurance***

Any exclusion or reduction in coverage due to the project's location at or near a railroad must be removed, or the Borrower shall obtain a separate Railroad Protective Liability policy acceptable to the Department.

#### ***Pollution Legal Liability Insurance***

If Pollution Legal Liability coverage is required, Borrower shall obtain for the duration of the contract and for 24 months following acceptance by the Department, Pollution Legal Liability Insurance as respects services or operations under this agreement. Extended discovery period must be no less than 24 months.

#### ***Flood Coverage***

If the Department determines that Flood insurance is required, Borrower shall obtain such coverage for the duration of the contract in an amount equivalent to the lesser of:

- the completed value of the project,
- the maximum amount allowed for the property under the National Flood Insurance Program (NFIP), or
- the outstanding balance of the loan.

EXHIBIT H TO DEVELOPMENT AGREEMENT  
SPECIAL CONDITIONS

1. In addition to the conditions of disbursement contained in paragraphs 17 and 20, the Department shall not be obligated to disburse funds unless it has received from Borrower, in a form acceptable to the Department, a construction inspection report prepared by a third party to evidence that the work for which the funds are requested has been completed in a good and workmanlike manner.
2. After completion of the project and prior to final disbursement of HOME funds, Borrower must submit a letter signed by the Labor Standards Coordinator certifying compliance with all Davis-Bacon Labor Standard requirements. Any outstanding issues (or non-compliance) must be remedied prior to final disbursement of HOME funds.
3. Prior to final disbursement of HOME funds and within 30 days of completion of the project (or 60 days if an investigation of underpayment is taking place), Borrower must submit the "Final Wage Compliance Report" signed by the Labor Standards Coordinator. (The form can be found in the HOME Contract Management Manual.)
4. Prior to final disbursement of HOME funds, Borrower must submit a bank statement evidencing the deposit of the required capitalized operating reserve funds.