

**HOME PROGRAM
INTERGOVERNMENTAL AGREEMENT
FOR SERVICES**

THIS HOME PROGRAM INTERGOVERNMENTAL AGREEMENT FOR SERVICES (this "Agreement") is made and entered into under the joint exercise of powers provisions of the Government Code of the State of California, California Government Code Section 6500-6536 this ____ day of _____, 2020 ("Effective Date") by and between the Town of Yountville, a municipal corporation ("Grantee") and the Housing Authority of the City of Napa, a California public agency and Subrecipient of the Grantee (hereinafter "Program Operator"). Grantee and Program Operator are public entities organized and operating under the laws of the State of California and each is a public entity as defined in California Government Code Section 6500. Grantee and Program Operator may be referred to collectively as "the Parties."

A. The Grantee has applied for and received grant funds from the California State Department of Housing and Community Development ("HCD") HOME Investment Partnerships Program ("HOME Program Grant") allocated to the State from the U.S. Department of Housing and Urban Development ("HUD") under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, and in implementing regulations set forth in part 92 of Title 24 of the Code of Federal Regulations ("CFR"), and in section 8200 *et seq.* of Title 25 of the California Code of Regulations ("CCR").

B. The Grantee's use of the Grant Funds is governed by that certain Standard Agreement _____ by and between the Grantee and HCD dated _____ attached hereto as Exhibit A and incorporated herein by this reference ("the Standard Agreement"). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Standard Agreement.

C. The Grantee wishes to utilize the HOME Program Grant and any Program Income to fund an Owner-Occupied Rehabilitation Program ("Rehabilitation Program") and a Tenant Based Rental Assistance Program ("TBRA Program") and to engage the Program Operator to assist the Grantee in administering such programs.

NOW, THEREFORE, it is agreed between the parties as follows:

1. SCOPE OF SERVICE

A. Activities. The Program Operator will be responsible for administering the Rehabilitation and Tenant Based Rental Assistance Programs in the Town of Yountville ("Town"), in a manner reasonably satisfactory to the Grantee and consistent with all standards required by the Standard Agreement. The Program Operator shall comply with all terms and conditions of the Standard Agreement applicable to the Services (defined below) being provided by Program Operator pursuant to this Agreement. The Program Operator will perform the program

delivery activities and general administration activities described in subsections (1) and (2) below (collectively, "Services").

- (1) Program Delivery Activities. Program Operator will provide the following delivery activities:

(A) Rehabilitation Program: Loan application processing and selection of loan recipients, income determination, inspecting and documenting conditions of dwellings, developing bid specifications, conducting bid walks, pre-construction conference, preparing Minor Rehabilitation Residential Environmental Reviews, preparing contracts and loan documents, monitoring construction activities, preparing payment requests and lien waivers, preparing and recommending approval of change orders, inspecting completed work, preparing and recording Notices of Completion, and preparing project closing documents and draw requests, and providing technical assistance.

Determination of applicant eligibility, scope of work, amount of loans, change orders, and other similar decisions shall be the decision of the Grantee based upon the recommendation of the Program Operator.

(B) TBRA Program: Rental assistance application processing, income determination, determination of rental assistance amounts, program briefings, Housing Quality Standards Inspections, preparation of landlord and tenant participation forms, interim examinations and recertifications, issuance of monthly TBRA payments to landlords, preparation of TBRA setup and draw requests to HCD, and provision of technical assistance.

Determination of applicant eligibility, amount of rental assistance, and other similar decisions shall be the decision of the Grantee based upon the recommendation of the Program Operator.

Delivery Activities for Program Income are not included within the Services. However, if Grantee desires Program Operator to provide such services, Program Operator will provide them on a time and materials basis at the rates set forth in Section 4 upon mutual agreement of the Parties.

- (2) General Administration. The Program Operator shall provide the following administrative activities: program outreach and marketing,

annual occupancy monitoring for Rehabilitation Program borrowers, and preparation of reports required by the HOME Program, including quarterly and annual Program Income Reports and Performance Reports, and any applicable labor reports.

B. Program Goals. In providing the Services, the Program Operator shall use best efforts to provide technical assistance and rehabilitation loans to approximately 15 households and Tenant Based Rental Assistance to approximately 15 households in the Town.

C. Staffing. The Program Operator shall provide staff to operate the Programs. Staff assigned to the Programs may include a Housing Rehabilitation Specialist, Housing Rehabilitation Supervisor, Rental Programs Supervisor, Affordable Housing Representative, Housing Secretary, Office Assistant, Management Analyst, Housing Inspector, Housing Specialist, Assistant Housing Manager and Housing Manager.

D. Performance Monitoring. The Grantee will monitor the performance of the Program Operator against goals and performance standards set forth herein. Substandard performance including, without limitation, as provided in Section 6.C, herein, as reasonably determined by the Grantee will constitute a material breach of, and non-compliance with, this Agreement. If action to correct such substandard performance is not taken by the Program Operator within 15 calendar days after being notified in writing by the Grantee, Grantee will be entitled to suspend and/or terminate this Agreement with 15 calendar days' notice.

2. TIME OF PERFORMANCE. This Agreement shall have a term of Five (5) years, starting on the ____ day of _____, 2020 and ending on the ____ day of _____, 2025 (the "Term"); provided however, the Term of this Agreement shall be automatically extended to cover any extensions of the deadline to expend Program funds set forth in Section 3A of Exhibit A of the Standard Agreement.

3 BUDGET.

Rehabilitation Activity Delivery	\$ 90,000.00
TBRA assistance payments	\$237,500.00
TBRA Activity Delivery	12,500.00
Program Administration	<u>\$ 20,000.00</u>
Total for Term of Agreement	\$360,000.00

Grantee will compensate Program Operator for the performance of Services under this Agreement in an amount not to exceed Three Hundred Sixty Thousand Dollars, \$360,000.00, as outlined above.

4. PAYMENT. The Grantee will pay Program Operator for:

(A) Program Operator's time and expenses necessary to perform the Services as compensation in full for Services satisfactorily performed in compliance with this Agreement. The rate for Program Operator's time shall be the then-current fully burdened overhead rate (the "Fully Burdened Overhead Rate") for the employee performing the Services. The Fully Burdened Overhead Rate is an hourly billable rate that captures all Program Operator costs associated with an employee, over and above gross compensation or payroll costs. Typical costs associated with the Fully Burdened Overhead Rate include payroll taxes, worker's compensation, health insurance, paid time off, pension contributions, and other benefits. The applicable Fully Burdened Overhead Rate will depend on the Program Operator employee performing the Services as each employee has a different Fully Burdened Overhead Rate that is calculated based on that particular employee's salary and benefits.

(B) The amount of TBRA payments issued by Program Operator for the TBRA Program. This includes all rental assistance payments made to landlords and, if applicable, all utility allowances paid to tenants

It is expressly agreed and understood that the total amount to be paid by the Grantee to Program Operator for the Services provided under this Agreement shall not exceed the total set forth in Section 3. Payments to Program Operator shall be made against the line item budgets specified in Section 3, herein. The Program Operator shall comply with the provisions in OMB Circular A-87 regarding charges for Services and will charge Grantee for actual costs rather than a fixed fee. Program Operator shall not be entitled to any compensation for additional services provided without Grantee's prior written authorization.

Program Operator will submit a monthly itemized invoice to the Grantee for the Services provided during the preceding month. The invoice will identify the Services performed, itemized listing of TBRA payments, the hours spent performing the Services, the applicable Fully Burdened Overhead Rate(s), and any authorized expenses. Grantee may require a more detailed invoice from Program Operator for the cost of Services provided under this Agreement, and the Program Operator shall provide such supplementary information within 30 calendar days in the form and content prescribed by the Grantee. The Grantee will pay the Program Operator within 30 days after receipt of each invoice.

5. NOTICES. Communication and details concerning this Agreement shall be directed to the following contract representatives:

Grantee:

Town Manager
Steven R. Rogers, Town Manager
6550 Yount Street
Yountville, CA 94599

Program Operator:

Housing Authority of the City of Napa
Lark Ferrell, Housing Manager
P. O. Box 660
Napa, CA 94559

6. SPECIAL CONDITIONS.

A. General Compliance. During the performance of this Agreement, the Program Operator agrees to comply with the requirements of 24 CFR Part 92 and Section 8200 through, and including, Section 8220 of Title 25 of the CCR concerning the HOME Investment Partnerships Program, and California Health and Safety Code Section 50886 except that: (1) the Program Operator does not assume the Grantee's responsibility for compliance with the National Environmental Policy Act, and (2) the Program Operator does not assume the Grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Program Operator also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the Services provided under this Agreement.

B. Workers' Compensation. The Program Operator shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

C. Suspension or Termination. In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Program Operator materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

- (1) Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- (2) Failure, for any reason, of the Program Operator to fulfill in a timely and proper manner its obligations under this Agreement;
- (3) Ineffective or improper use of HOME Program Grant funds; or
- (4) Program Operator's submission to the Grantee of reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Program Operator, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of this Agreement will not accomplish the purpose for which this Agreement was made, the Grantee may terminate this Agreement in its entirety. If this Agreement is terminated for convenience, Program Operator will be entitled to compensation

for Services performed up to the notice of termination. Unless otherwise approved by Grantee, Program Operator shall refrain from providing any, and will not be entitled to compensation for, any services provided after the termination of this Agreement.

7. ADMINISTRATIVE REQUIREMENTS.

A. Documentation and Record-Keeping.

(1) Records to be maintained. The Program Operator shall maintain all documents and records required by 24 CFR Part 92.508 and 25 CCR 8216 that are pertinent to the Services to be provided by Program Operator under this Agreement. Title to and ownership of all such documents and records shall be in Grantee, which shall at all times be entitled to have access to, and possession and copies of, such documents and records. Such documents and records shall include, but not be limited to:

- (a) Records providing a full description of each activity undertaken;
- (b) Records required to determine the eligibility of activities;
- (c) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with HOME assistance;
- (d) Records documenting compliance with the fair housing and equal opportunity components of the HOME program; and
- (e) Financial records as required by 24 CFR Part 570.502 and OMB; and Circular A-110.

(2) Retention. The Program Operator shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the expiration or termination of this Agreement. Records for any displaced person must be kept for three (3) years after s/he has received final payment or five (5) years after the expiration or termination of this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

(3) Client Data. The Program Operator shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

(4) Disclosure. The Program Operator understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Program Operator's responsibilities with respect to the Services provided under this Agreement, is prohibited unless written consent is obtained from such persons receiving service and, in the case of a minor, that of the responsible parent/guardian. Notwithstanding the foregoing, Program Operator understands and agrees that such information is not private or confidential as to Grantee in Grantee's administration and oversight of Program Operator's responsibilities under this Agreement, and that Program Operator shall at all reasonable times provide Grantee with complete access to and complete copies of such information, including without limitation, all documents, records and materials retained by Program Operator, as determined to be necessary by Grantee.

(5) Audits, Access and Inspections. Notwithstanding any other provision of this Agreement, all Program Operators documents, information, books, records and other materials with respect to any matters covered by this Agreement shall be made available to the Grantee, HCD, their designees or the Federal and State Government, at any time during normal business hours, as often and as promptly as the Grantee or HCD deems necessary, to audit, examine, copy and make excerpts or transcripts of all relevant information and data. Any deficiencies noted in audit reports that relate to matters within the responsibility and control of Program Operator must be corrected by the Program Operator in accordance with the audit report. Failure to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Program Operator hereby agrees to comply with current Grantee policy concerning Program Operator's year-end audit/financial statement requirements, as applicable, in OMB Circular A-133.

C. Reporting. Upon Grantee's request, the Program Operator shall submit a progress report to the Grantee in the form and content as required by the Grantee.

D. Procurement.

(1) OMB Standards. Unless specified otherwise within this Agreement, the Program Operator shall procure all materials, property, or services in accordance with the requirements of 24 CFR 92.505.

(2) Travel. The Program Operator shall obtain prior written approval from the Grantee for any travel costs.

8. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT. During the performance of the Services, the Program Operator agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24; and Section 104 (d) of the Housing and Community Development Act of 1974, as amended, and implementing regulation 24 CFR 92, and applicable State HOME Regulations.

9. PERSONNEL AND PARTICIPANT CONDITIONS.

A. Civil Rights.

(1) Compliance. During the performance of the Services, the Program Operator agrees to comply with all applicable local and state laws including, but not limited to, 14-S01, the California Fair Employment and Housing Act and 14-F03, the California Civil Rights Act of 1964, as amended, and with Title VI of the Civil Rights Act of 1964, as amended, Title VII of the Civil Rights Act of 1968, as amended, Section 104 (b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1976, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375 and 12086.

(a) During the performance of the Services, the Program Operator further certifies that its physical facilities will be accessible in compliance with Section 504 of the Rehabilitation Act of 1973.

(b) During the performance of the Services, the Program Operator certifies that it will make provisions in the Programs for communicating with hearing and speech impaired persons.

(c) During the performance of the Services, the Program Operator certifies that any advertising and outreach materials for the Programs will contain the Program Operator's TDD/TTY number or the telephone number of the California Relay Service.

(2) Nondiscrimination. During the performance of the Services, the Program Operator will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national

origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The Program Operator will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Program Operator agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

(a) The Program Operator will conduct an analysis of racial and ethnic participation rates in the HOME Program, as well as the participation rates by female-headed households and persons with disabilities where applicable, to determine whether any group is actually, or is projected to be, participating at levels below the representation of these groups in the City's population, based on general population data available from the U.S. Census. Program Operator will develop an affirmative marketing strategy to promote interest among such under represented groups in the Grantee's programs. The Program Operator will include information in its performance report as to the affirmative outreach methods it has employed within the past year in compliance with this subsection.

(3) Land Covenants. The Standard Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with the HOME Program Grant, the Program Operator shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or improvements erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Program Operator, in undertaking its obligation to carry out the Program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not, itself, so discriminate.

(4) Section 504. During the performance of the Services, the Program Operator agrees to comply with any Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any Federally assisted program. The Grantee shall provide the Program Operator with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action.

(1) Approved Plan. To the extent applicable to Program Operator's performance of the Services, the Program Operator agrees that it shall be committed to carry out, pursuant to the Grantee's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.

(2) M/WBE. To the extent applicable to Program Operator's performance of the Services, the Program Operator will use its best efforts to afford minority-women-owned business enterprises (M/WBE) the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and women-owned business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Program Operator may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

(3) Access to Records. During the performance of the Services, the Program Operator shall furnish and cause each of its own subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HCD, HUD or its agent, or other authorized State and Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

(4) Notifications. To the extent applicable to Program Operator's performance of the Services, the Program Operator will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Grantee's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) EEO/AA Statement. To the extent applicable to Program Operator's performance of the Services, the Program Operator will, in all solicitations or advertisements for employees placed by or on behalf of Grantee, state that it is an Equal Opportunity or Affirmative Action employer.

(6) Subcontract Provisions. The Program Operator will include the provisions of Paragraphs 9.A, Civil Rights, and 9.B, Affirmative Action, in

every subcontract or purchase order under this Agreement, specifically or by reference, so that such provisions will be binding upon each of its own divisions or subcontractors.

C. Employment Restrictions.

(1) Prohibited Activity. The Program Operator is prohibited from using Home Program Grant funds or personnel employed in the administration of the Programs for: political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.

(2) Labor Standards. During the performance of the Services, the Program Operator agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276a-276a-5; 40 U.S.C. 276c) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Program Operator shall maintain documents related to compliance with this subsection. Such documentation shall be made available to the Grantee for review upon request.

(3) The Program Operator shall, except with respect to the rehabilitation or construction of residential property containing (12) twelve or more HOME-assisted units, comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Program Operator of its obligation, if any, to require payment of the higher wage. The Program Operator shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirement of this paragraph.

(4) Housing and Urban Development Act of 1968 "Section 3" Clause.

(a) Compliance. To the extent applicable to Program Operator's performance of the Services, Program Operator shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued prior to the execution of this Agreement. Failure to fulfill these requirements shall subject the Grantee, the Program Operator and any of the Program Operator's subcontractors, their successors

and assigns, to those sanctions specified by the Standard Agreement. The Program Operator certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

The Program Operator further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program provided direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

To the extent applicable to Program Operator's performance of the Services, the Program Operator further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the HOME-funding project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the HOME-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Program Operator certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

(b) Notifications. To the extent applicable to Program Operator's performance of the Services, the Program Operator agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under the Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(c) Subcontracts. The Program Operator will include the Section 3 clause in every subcontract under this Agreement and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by HUD. The Program Operator will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135, and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

(5) Drug Free Workplace. During the performance of the Services, the Program Operator agrees to comply with the requirements of the Secretary of HUD in accordance with the Drug-Free Workplace requirements and all other applicable Federal, state and local laws and regulations pertaining to drug-free workplace standards, insofar as those acts apply to the performance of this Agreement. The Program Operator shall maintain a written Drug-Free Workplace policy. Such policy shall be made available to the Grantee for review upon request.

D. Conduct.

(1) Assignability. The Program Operator shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee. Any unauthorized assignment shall be void and unenforceable. Claims for money due or to become due to the Program Operator from the Grantee under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished to the Grantee.

(2) Subcontracts.

(a) Approvals. The Program Operator shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the prior written consent of the Grantee.

(b) Monitoring. The Program Operator will monitor all subcontracted services on a regular basis to assure compliance with this Agreement. Results of monitoring efforts shall be summarized in written reports provided to Grantee and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

(c) Content. The Program Operator shall cause this Agreement in its entirety to be included and made a part of any subcontract executed in the performance of this Agreement.

(d) Selection Process. The Program Operator shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competitive basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

(3) Hatch Act. During performance of the Services, the Program Operator shall comply with Chapter 15 of Title 5 of the United States Code.

(4) Conflict of Interest. During performance of the Services, the Program Operator agrees to abide by the provisions of 24 CFR 85.36 with respect to conflicts of interest for procurement of property and with 24 CFR 84.42 for procurement of services. In all cases not governed by these two sections, the Grantee and Program Operator shall comply with 24 CFR 92.356. The Program Operator covenants that in the performance of this Agreement no persons having such a financial interest shall be employed or retained by the Program Operator hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, or of any designated public agencies receiving funds under the HOME program.

(5) Lobbying. The Program Operator hereby certifies that:

(a) No Federal or State appropriated funds have been paid or will be paid, by or on behalf of it, 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 HOME Program Grant, the Standard Agreement or this Agreement;

(b) If any funds other than Federal or State appropriated 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, an officer or employee of Congress, or an employee of a Member of Congress in connection with the HOME Program Grant, the Standard Agreement or this Agreement, Program Operator will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) Program Operator will require that the language in this subsection 9(D)(5) be included in any subcontracts and that all Program Operator subcontractors shall certify and disclose accordingly; and

(d) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

(6) Faith-based Activities. The Program Operator shall comply with the requirements of 24 CFR 92.257 which provide, in part, that "Organizations that are directly funded under the HOME Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this part."

10. ENVIRONMENTAL CONDITIONS.

A. Flood Disaster Protection. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Program Operator shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

B. Lead-Based Paint. The Program Operator agrees that any construction or rehabilitation of residential structures funded with the HOME Program Grant shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior

to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.

C. Historic Preservation. The Program Operator agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and the procedures set forth in 36 CFR, Part 800, and Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

In general, this provision requires Program Operator to obtain concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

11. INDEPENDENT ENTITIES. Grantee and Program Operator are independent entities, and Grantee and Program Operator and their respective officers, agents and employees are not, and shall not be deemed, employees of the other agency for any purpose including, but not limited to, worker's compensation and employee benefits.

12. PRIVILEGES, IMMUNITIES AND OTHER BENEFITS. In accordance with California Government Code section 6513, all of the privileges and immunities from liability, all exemptions from laws, ordinances and rules, and all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of the trustees, officers, employees or agents of the Parties when performing their functions within the territorial limits of their respective Public Agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties associated with performance of this Agreement.

13. GENERAL PROVISIONS.

A. Amendments. The Grantee or Program Operator may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each Party, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Program Operator from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons; provided however, if such amendments result in a

change in the funding, the scope of Services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Program Operator.

B. Indemnification. To the full extent permitted by law, Program Operator will indemnify, hold harmless, release, and defend the Grantee (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "Liability") of any nature, arising out of, pertaining to, or relating to Program Operator's negligence, recklessness, or willful misconduct in the performance of its obligations under this Agreement. Consistent with Civil Code Section 2782, Program Operator will not be obligated to indemnify Grantee for the proportionate share of the Liability caused by the Grantee's active negligence, sole negligence, or willful misconduct.

To the full extent permitted by law, Grantee will indemnify, hold harmless, release, and defend the Program Operator (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all Liability of any nature, arising out of, pertaining to, or relating to Grantee's negligence, recklessness, or willful misconduct in the performance of its obligations under this Agreement and the Standard Agreement. Consistent with Civil Code Section 2782, Grantee will not be obligated to indemnify Program Operator for the proportionate share of the Liability caused by the Program Operator's active negligence, sole negligence, or willful misconduct.

C. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, this Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

D. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.

E. Attorney's Fees. If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

F. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Services. This Agreement supersedes all

prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

G. Interpretation. Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code Section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

H. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth above.

GRANTEE:
Town of Yountville

PROGRAM OPERATOR:
Housing Authority of the City of Napa

Steven R. Rogers, Town Manager

Steve Potter, Executive Director

Attest:

Attest:

Michelle Dahme, Town Clerk

Tiffany Carranza, Authority Secretary

Countersigned:

Joy Riesenbergs, Deputy City Auditor

Approved As To Form:

Approved As To Form:

Gary Bell, Town Attorney

Michael Barrett, Authority General Counsel