

SUBRECIPIENT AGREEMENT

United States Department of Housing and Urban Development HOME Program

This SUBRECIPIENT AGREEMENT (the "Agreement"), is made and entered into by and between MILWAUKEE COUNTY (the "COUNTY"), a municipal body corporate, and the CITY OF WEST ALLIS (the "SUBRECIPIENT"), a municipal corporation. Referenced together, the COUNTY and the SUBRECIPIENT are the parties to this Agreement.

RECITALS:

WHEREAS, Pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (the "ACT"), the COUNTY has received federal HOME Investment Partnership Program ("HOME Program") funds for certain eligible activities ("Program Activities"); and

WHEREAS, in accordance with federal regulations, including 24 CFR Part 92, the COUNTY is responsible for ensuring the administration of HOME Program funds in accordance with all HOME Program requirements; and

WHEREAS, the SUBRECIPIENT has applied for HOME Program funds from the COUNTY to be used for its Program Activities; and

WHEREAS, 24 CFR § 92.504(b) states that before disbursing any HOME Program funds to any entity, the COUNTY, as the participating jurisdiction, must enter into a written agreement with that entity.

NOW, THEREFORE, all recitals set forth above are incorporated herein and made a part hereof, the same constituting the factual basis for this Agreement, the terms of which are set forth below:

PROVISIONS:

A. Program Activities:

The express purpose of this Agreement is to provide the SUBRECIPIENT with HOME Program funds which will be used to reimburse the SUBRECIPIENT for its administrative costs and direct project related soft or hard costs for eligible Program Activities and for program administration tasks as described in Section G herein. The Scope of Services, including the HOME Program requirements, and the Budget for Program Activities, are contained in **Attachments A and B**, respectively.

B. Program Income/Reversion of Assets:

Program Income means gross income received by the SUBRECIPIENT, which is directly generated from the use of HOME Program funds, including but not limited to repayments of funds that have been provided to beneficiaries, payments of principal and interest on loans made with HOME proceeds, funds from the sale of real property that is acquired, rehabilitated, or constructed with HOME Program funds, and interest or return on investment of HOME Program and matching funds.

In accordance with 24 CFR § 92.503, the SUBRECIPIENT shall convey to the COUNTY any Program Income that is not expended within ten (10) days after the end of each quarter in which the SUBRECIPIENT receives the Income. Program Income proceeds conveyed to the COUNTY will be tracked as a balance of funds that will be reserved for future HOME Program Activities within the jurisdiction of the SUBRECIPIENT. SUBRECIPIENT acknowledges that pursuant to 24 CFR § 92.504(c)(2)(vi) all Program Income must be spent before it can receive any further HOME Program funds. In addition, Program Income must be committed within twelve (12) months of receipt or the Program Income shall revert to the County.

Upon expiration or termination of this Agreement, the SUBRECIPIENT shall transfer to the COUNTY any HOME Program funds on hand at the time of expiration and any accounts receivable attributed to the use of such funds. (*See* 24 CFR §§ 92.503(a)(3) and 92.504(c)(2)(vii)).

C. Payment Requests and Disbursements:

The COUNTY shall make disbursements to the SUBRECIPIENT on a reimbursement basis in compliance with this Agreement for eligible Program Activities.

All claims by the SUBRECIPIENT shall comply with the following requirements:

1. Processing of all requests for payment shall be contingent upon the SUBRECIPIENT's submission of the required documentation to the COUNTY that fully complies with all applicable federal, state, or local statutes, rules or regulations. In order to process requests for reimbursement, the SUBRECIPIENT must submit such requests on a Reimbursement Form, see **Attachment C**.
2. Upon the COUNTY's request, the SUBRECIPIENT shall forward to the COUNTY all billings, vouchers, and other documents representing any accounts payable or any other appropriate documents, in a timely and reasonable manner.
3. The SUBRECIPIENT has until January 31 to submit end of program year final billings. Requests for drawdowns submitted after that date will not be processed, unless the COUNTY and the SUBRECIPIENT agree in writing to allow SUBRECIPIENT additional time to provide the required documentation.
4. The SUBRECIPIENT shall cooperate with the COUNTY to facilitate the maintenance of HOME Program financial records by the COUNTY as required by Title 24 CFR Part 85 (Uniform Administrative Requirements) and OMB Circular A-87 (Cost Principles).
5. The SUBRECIPIENT may not request disbursement of funds under this Agreement until the funds are needed as reimbursement for payment of eligible costs as specified by the HOME Program. The COUNTY shall process the SUBRECIPIENT'S claims for reimbursement in a timely and reasonable manner

upon SUBRECIPIENT submitting all required supporting documentation as described in Section E herein.

D. Other Federal Requirements:

The SUBRECIPIENT hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements with respect to the acceptance and use of HOME Program funds in accordance with the ACT and with the COUNTY's policies, as applicable, to the HOME Program.

The SUBRECIPIENT shall comply with all Federal Requirements as set forth in 24 CFR Part 92, Subpart H, including the following:

1. The Federal requirements set forth in 24 CFR Part 5, Subpart A, are applicable to participants in the HOME Program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.
2. Fair Housing and Equal Opportunity. Requirements found in 24 CFR §§ 92.205 and 92.250; Title VI of Civil Rights Act of 1964 (42 U.S.C. 2000d et.seq.); Fair Housing Act (42 U.S.C. 3601-3620); Executive Order 11063 (amended by Executive Order 12259); Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); 24 CFR § 5.105(a); and an EEOC Certification form.
3. Affirmative Marketing. Affirmative Marketing requirements found at 24 CFR § 92.351 as applicable to Program Activities undertaken by the SUBRECIPIENT.
4. Handicapped Accessibility. Requirements of Section 504 of the Rehabilitation Act of 1973 are not applicable to HOME-funded Homeowner Rehabilitation activities. However, accessibility improvements are eligible costs under the Homeowner Rehabilitation program.
5. Section 3 of the Housing and Urban Development Act of 1968 (implemented at 24 CFR Part 135) when the amount of assistance exceeds \$200,000 or a contract or subcontract exceeds \$100,000.
6. Minority/Women Employment. Requirements of Executive Order 11625, 12432 and 12138; and 24 CFR § 85.36(e).
7. Labor Standards. Does not apply to HOME-funded homeowner rehabilitation of single-family units, as defined at 24 CFR § 92.2, and homebuyer assistance; they do apply to rental or new construction development. (See 24 CFR § 92.354).
8. Conflict of Interest. In the procurement of property and services by participating jurisdictions, state recipients, and subrecipients, the conflict of interest provisions in 24 CFR § 85.36 and 24 CFR § 84.42, respectively, apply. In all cases not

governed by 24 CFR §§ 85.36 and 84.42, the provisions of 24 CFR § 92.356 apply. (See 24 CFR § 92.356).

9. Environmental Reviews. Requirements found in 24 CFR §§ 92.352 and 58.35 a(4), the National Environmental Policy Act (NEPA) of 1969; Flood Insurance requirements found in Section 202 of the Flood Disaster Act of 1973 (42 U.S.C. 4106); the SUBRECIPIENT is responsible for conducting an environmental review and providing verification of completion.
10. Lead-Based Paint. For pre-1978 units the requirements at 24 CFR § 92.353, Lead-Based Paint Poisoning Prevention Act of 1971 (42 U.S.C. 4821 et.seq.), 24 CFR Part 35, § 982.401(j) (except paragraph 982.401(j)(1)(i)); EPA *Renovation, Repair and Painting Final Rule*, 40 CFR Part 745. When occupants are present in a property, occupants shall be temporarily relocated, if determined to be necessary, as required at 24 CFR § 92.353(b).
11. Displacement, Relocation. Not required for owner-occupied units, but applicable if tenants are living in other units; requirements found in 24 CFR § 92.353, Uniform Relocation and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655), 49 CFR Part 24, 24 CFR Part 42 (subpart B), Section 104(d) "Barney Frank Amendments", add lead-based paint relocation for remediation purposes. (See 24 CFR § 92.353).
12. Conditions for Religious Organizations: requirements found at 24 CFR § 92.257.

E. Uniform Administrative Requirements:

SUBRECIPIENT shall administer the HOME Program funds in conformance with the regulations, policies, guidelines and requirements OMB Circular Nos. A-87 and A133 as they relate to the acceptance and use of federal funds for the Program Activities.

1. Procurement, Finances, Administration. SUBRECIPIENT shall administer HOME Program funds, such as procurement, financial management system, program income, and other administrative responsibilities in accordance with 24 CFR Part 85, as applicable and shall follow 24 CFR § 92.251 covering utilization of real property.
2. Audits. SUBRECIPIENT shall adopt the audit requirements of the OMB Circular A133 "Audits of State and Local Governments", as applicable.
3. Cost Principles and Eligible Costs. SUBRECIPIENT shall comply with the requirements of OMB Circular A-87 as applicable, regarding what are eligible direct and indirect costs.
4. SUBRECIPIENT shall permit the authorized representatives of the COUNTY, HUD and the Comptroller General of the United States to inspect and audit all data and reports of the SUBRECIPIENT relating to its performance under the

Agreement.

F. Reports and Records:

1. Reports.

- (a) Quarterly Progress Report. The SUBRECIPIENT shall provide to the COUNTY a Quarterly Progress Report, as contained in **Attachment D**. The reports shall be submitted to the COUNTY no later than the 15th day after the end of each quarter
- (b) Minority Business Report. The SUBRECIPIENT shall provide the COUNTY with a Minority Business Report, as contained in **Attachment F**, by October 1 of each program year.
- (c) End of Year Report. The SUBRECIPIENT shall provide an End of the Year Report to the COUNTY, no later than the 15th day after the end of the program year, reporting on the status of the Program Activities in relation to the Scope of Services in **Attachment A**. This reporting process regarding the Program Activities funded under this Agreement will continue until the activities are completed.
- (d) Match Report. SUBRECIPIENT shall provide a HOME Match Report, as contained in **Attachment E**, with evidence of qualified matching funds and source of matching funds to the COUNTY in accordance with the HOME Program requirements as part of the End of the Year Report.
- (e) Audit. The SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with OMB Circular A133 (implemented in 24 CFR Part 44), as applicable, and to submit this audit to the COUNTY.
- (f) Project Files. SUBRECIPIENT shall keep a file on the Program Activities containing information as required by the HOME Program and by the COUNTY as administrator of the HOME Program. This includes documentation as required herein in addition to documents designated by means of the monitoring clause of this Agreement in Section H.
- (g) County Requests. Upon County's request, the SUBRECIPIENT shall provide all reports, budgets, certifications and other documents required pursuant to federal, state, or county rules, regulations and policies applicable to SUBRECIPIENT's Program Activities.

Failure of the SUBRECIPIENT to comply with the above Progress Report requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

2. Records.

- (a) The SUBRECIPIENT shall administer the HOME funds in conformance with the regulations, policies, guidelines and requirements of 24 CFR § 92 and OMB Circular No A-87 and the applicable requirements of 24 CFR § 84 applying to SUBRECIPIENTS receiving HOME funds.
- (b) The SUBRECIPIENT shall maintain sufficient records to enable the COUNTY and HUD to determine whether the PROGRAM ACTIVITIES have met the requirements at 24 CFR §§ 92.508(a)(3)(iv), (v), (x) and 92.508(a)(7).
- (c) The SUBRECIPIENT shall retain records pertaining to this Agreement for seven (7) years after the date of completion entered into the Integrated Disbursement and Information System (IDIS) or seven (7) years after expiration of the affordability period, as applicable, whichever is later. (See 24 CFR § 92.508(c)(4)).
- (d) The SUBRECIPIENT shall provide access to any pertinent books, documents, papers, or other records having to do with the Program Activities to the COUNTY and to HUD in order to make audits and for monitoring purposes. (See 24 CFR § 92.508(d)(2)).

G. Budget:

The COUNTY shall provide SUBRECIPIENT HOME Program funds in an amount not to exceed \$ _____ subject to the terms of this Agreement and the availability of such funds. This Agreement price constitutes the COUNTY's entire participation and obligation in the performance and completion of all Program Activities to be performed under this Agreement.

All services shall be performed in compliance with the applicable Budget, as provided in **Attachment B** and summarized below.

Budget Item	HOME Funds Allocated	PI Funds Allocated	Total
Program Activity	\$	\$	\$
Program Activity	\$	\$	\$
Program Activity	\$	\$	\$
Administration (cannot exceed 10% of total funds)	\$	\$	\$
Total	\$	\$	\$

The following are included in the definition of administrative costs, as described in 24 CFR § 92.207: general management, oversight and coordination; staff and overhead; public information; fair housing; indirect costs; and other Federal requirements. Indirect costs may be charged to the HOME program under a cost allocation plan prepared in accordance with OMB Circulars A-87 or A-122, as applicable, and approved in advance by the COUNTY.

H. Roles and Responsibilities:

The SUBRECIPIENT and COUNTY shall at all times observe and comply with 24 CFR Part 92 and all applicable laws, ordinances or regulations of the federal, state, local government, which may in any manner affect the performance of this Agreement, and SUBRECIPIENT shall perform all acts with responsibility to the COUNTY in the same manner as the County is required to perform all acts with responsibility to the Federal government.

1. Monitoring: The SUBRECIPIENT will be responsible for monitoring all HOME-funded Program Activities for compliance with the applicable HOME Program requirements. The COUNTY will monitor the SUBRECIPIENT for compliance with all HOME Program requirements associated with the administration and management of all funded Program Activities.
2. IDIS: The COUNTY will be responsible for the data entry into and drawdown of funds from the Integrated Disbursement and Information System. The SUBRECIPIENT is responsible for providing the COUNTY with all data required by IDIS for Program Activities funded by this Agreement. This data will be submitted on a quarterly basis, in conjunction with the Quarterly Progress Report, and at the end of each program year, in conjunction with the End of the Year Report, as described in Section F.

I. Program Requirements:

The SUBRECIPIENT is responsible for ensuring that all households assisted under the Program Activities are eligible [as that term is defined in 24 CFR Part 5], the property is qualified, appropriate documents are executed, and Program Activities processing steps are met, as outlined in this Agreement and found in 24 CFR Part 92.

The SUBRECIPIENT agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

J. Termination:

1. Termination for Cause. If through any cause either party shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement in whole or

part by giving written notice of such termination to the other party and specifying therein the effective date of terminations. (See 24 CFR § 85.43)

2. Termination for Convenience. At any time during the term of this Agreement, either party may, at its option and for any reason terminate this Agreement upon ten (10) days written notice to the other party. Upon termination, the COUNTY shall pay the SUBRECIPIENT for services rendered pursuant to this Agreement through and including the date of termination. (See 24 CFR § 85.44).
3. Termination due to cessation. In the event the HOME Program funds grant is suspended or terminated, this Agreement shall be suspended or terminated effective on the date that HUD specifies.

K. Remedies for Noncompliance:

If SURECIPIENT materially fails to comply with any term of this Agreement, whether stated in its terms, in a federal statute or regulation, or elsewhere, the COUNTY may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the SUBRECIPIENT or more severe enforcement action by COUNTY;
2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the current funding award for the SUBRECIPIENT's project;
4. Withhold further funding for the Program Activity;
5. Require that the SUBRECIPIENT refund the dollar amount paid by the COUNTY for the funded Program Activity, in the event that the nature by which the funds utilized do not comply with the body of work agreed upon, through discovery by COUNTY's monitoring of the SUBRECIPIENT or otherwise; or
6. Take other remedies that may be legally available.

L. Miscellaneous Provisions:

1. Indemnification. The parties to this Agreement agree to indemnify, defend and hold harmless the other party and their elected officials, officers, employees and agents, from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by or resulting from any wrongful, intentional or negligent act or omission of the indemnifying party, or its officers, employees, agents or representatives which may arise out of or are connected with the activities covered by this Agreement.

Milwaukee County's liability shall be limited by Wisconsin State Statutes §§ 345.03(3) and 893.80(3).

2. Insurance. SUBRECIPIENT shall, during the term of this Agreement, keep in full force and effect a policy of general liability insurance or its equivalent and automobile insurance in an amount not less than \$1,000,000 combined single limit. SUBRECIPIENT shall also maintain insurance coverage for worker's compensation (waiver of subrogation endorsement in favor of Milwaukee County) as required by the State of Wisconsin, including employer's liability. Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Milwaukee County as its interests may appear shall be named as an additional insured for general liability. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the COUNTY for the duration of this Agreement.
3. Amendments. This Agreement may not be amended without mutual agreement between parties. Any amendment to this Agreement must be in writing and signed by a duly authorized representative of both organizations. However, the COUNTY may amend this agreement without SUBRECIPIENT approval, to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendment(s) results in a change in 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 the COUNTY and SUBRECIPIENT.
4. Subcontracts. Any work or services subcontracted by the SUBRECIPIENT shall be specifically by written contract or agreement, and such subcontracts shall be subject to each provision of this Agreement and applicable County, state, and federal guidelines and regulations. Prior to execution by the SUBRECIPIENT of any subcontract hereunder, such subcontracts must be submitted by the SUBRECIPIENT to the COUNTY for its review and approval. (See 24 CFR § 92.504(c)(2)(x)).
5. Assignment. This Agreement and the rights and obligations of the SUBRECIPIENT may not be assigned by the SUBRECIPIENT without the written approval of the COUNTY.
6. Subject to Financial Assistance. This Agreement is made subject to financial assistance agreements between the COUNTY and HUD, with the rights and remedies of the parties hereto being in accordance with this Agreement.

SIGNATURE PAGE FOLLOWS:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates recited below.

COUNTY OF MILWAUKEE

By: _____

Date: _____

ATTEST:

By: _____

Date: _____

CITY OF WEST ALLIS

By: _____

Print name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Print name: _____

Title: _____

Date: _____

Approved as to form and independent status:

Reviewed by:

By: _____ Date: _____
Corporation Counsel

By: _____ Date: _____
Risk Management

LIST OF ATTACHMENTS

Attachment A – Scope of Services

There will be a separate Scope for each of the four major HOME project types, Homeowner Rehab and Homebuyer; Rental Rehabilitation; and Rental Development

Attachment B – Budget and Sources/Uses Form

Attachment C – Reimbursement Form

Attachment D – Quarterly Progress and End of Year Reporting Forms

Attachment E – HOME Match Report

Attachment F – Minority Business Report