

AMENDED & RESTATED AGREEMENT FOR DELEGATION ACTIVITIES
HOME Investment Partnerships Program
(New Construction – Rental)

This Amended & Restated Agreement for Delegation Activities (“Agreement”) is made this ___ day of _____, 2023, by and between the City of Boulder, Colorado, a Colorado home rule city, (the “City”), the County of Boulder, Colorado, a body corporate and politic, (the “County”), and Coffman Place LLC a Colorado limited liability company (the "Owner"). The City, the County, and the Owner may be referred to each as a party and collectively as the “Parties”.

RECITALS

WHEREAS, the City allocated \$1,550,000 from the United States Department of Housing and Urban Development HOME Investment Program (“HOME Funds”) to the County and the County then disbursed the HOME Funds to the Owner for the construction of 73 affordable rental housing units (the “Units”) commonly known as The Spoke on Coffman (the “Project”) located at 518 Coffman St. Longmont, CO. 800501 with a legal description of:

All of Lot 1 of Coffman Place, according to the plat thereof recorded August 21, 2020 at Reception No.03808686 County of Boulder, State of Colorado.

WHEREAS, the County entered into an Agreement for Delegation Activities HOME Investment Partnerships Program (“Original Agreement”) with the Housing Authority of the County of Boulder, Colorado, a body corporate and politic, doing business as Boulder County Housing Authority (“BCHA”), on July 28, 2020 to allocate the HOME Funds for the Project.

WHEREAS, the City is responsible for providing oversight of the Owner’s, management of the Project, monitoring, reporting and record keeping ensuring compliance with applicable HOME regulations.

WHEREAS, HUD found the Original Agreement insufficient to meet the requirements of the HOME regulations and requires the City, as a Participating Jurisdiction and the Lead Agency for the Boulder Broomfield Regional Consortium, to enter into an agreement with the County, as the HOME Funds subrecipient, and Coffman Place LLC, as the Owner of the Project.

WHEREAS, the City, County, and the Owner desire to amend and restate the 2020 HOME Agreement to add the City and Owner as parties as required by HUD, and BCHA consents to the amendment and restatement.

NOW, THEREFORE, the Parties, for and in consideration of the promises and mutual obligations set forth below, hereby amend and restate the Original Agreement as follows:

COVENANTS

1. HOME Agreement: This Agreement consists of the body and the following Appendices, which are incorporated herein:

- Appendix A – Approved Activity & Schedule
- Appendix B – Budget
- Appendix C – Monitoring Schedule
- Appendix D – Subpart H, Other Federal Requirements
- Appendix E – Section 3 Clause

Together, they embody the entire Agreement between the City, County, and the Owner with respect to this grant program. All prior agreements, representations, negotiations, and understandings with respect to this program are superseded hereby. Should anything in this Agreement be construed to conflict with HOME regulations, the HOME regulations shall prevail.

2. Purpose of Agreement: The purpose of this Agreement is to set forth the terms and conditions under which the City shall grant HOME funds to the Owner for its affordable housing project. This Agreement sets forth rights and responsibilities of the Parties in connection with the Owner's project. In this Agreement, the City assumes full responsibility for adherence to all applicable laws, assurances, regulations, and guidelines associated with the Program.
3. HOME Award: Subject to the terms of this Agreement, the City agrees to provide up to \$1,550,000 (2018 \$665,653.06, 2019 - \$717,458.30 and 2020 - \$166,888.64) in HOME funds to the County which will then disburse funds to the Owner to pay for costs associated with the Project and more specifically described in Appendix A.
4. Approved Activity & Schedule of Completion: The Parties agrees that funds awarded pursuant to this Agreement shall be used for the work specified in Appendix A, and such work will be completed in compliance with the requirements of 24 CFR Part 92, HOME Investment Partnerships Program.
5. Eligible & Ineligible Project Costs: HOME funds may be used for costs associated with the construction of the Units which are eligible Project costs as outlined in 24 CFR 92.206. HOME funds may not be used for prohibited activities and fees as outlined in 24 CFR 92.214.
6. Charges & Fees: All charges and fees must be reasonable, necessary and comparable to other affordable housing properties. The Owner may only require customary charges and fees are that are considered reasonable costs that are normally charged to all tenants. The Owner is prohibited from charging servicing, origination, or other fees for the cost of administering the HOME program.
7. Project Costs: Any activity performed by the County or the Owner in the period prior to the execution of this Agreement shall be performed at the sole risk of the County and Owner. In the event this Agreement is not duly executed by the Parties, the City is under no obligation to pay the County or the Owner for any costs incurred, or monies spent in conjunction with such activities, or to otherwise pay for any activities performed during such period.

At any time during the term of this Agreement, the City may review all Project Costs incurred by the County and Owner and all payments made to date. Upon such review the City shall disallow any items or expenses that are not determined to be allowable or are determined to be in excess of approved expenditures and shall, by written notice specifying the disallowed expenditures, inform the County and Owner of any such disallowance.

8. Environmental Review: An Environmental Assessment was completed on June 01, 2020, and the Authority to Use Grant Funds was issued by HUD on June 8, 2020.
9. Duration of Agreement: The duration of this Agreement shall commence upon the execution of this Agreement and is in effect through the period of affordability described in paragraph 21c. The Owner shall have up to four years to complete the project and fully expend funds. Failure to complete the project within the four-year period, the project is considered terminated and subject to repayment of HOME funds.
10. Disbursement of Funds: The City shall disburse funds to the County under this Agreement only when a written agreement per 24 CFR 92.504(c)(2) has been fully executed, the funds are needed for payment of specific allowable costs (per 24 CFR 92.206), and only in amounts needed to pay such costs as identified in 2 CFR.200. The Owner shall be reimbursed for eligible project costs after review and approval by the County of invoices, statements and other billings, supporting documentation, and property inspection, if applicable. The Owner shall begin to expend funds no later than one year after this Agreement is signed. The Owner may not request disbursement of funds under this Agreement until the funds are needed for reimbursement of eligible costs. The amount of each request must be limited to the amount needed.
 - a. In no event will the Owner receive disbursements in excess of the total amount of funds authorized by this Agreement and detailed in the budget set forth in Appendix B. The Owner understands that this Agreement is funded in whole or in part by federal funds. In the unlikely event the federal funds supporting this Agreement become unavailable or are reduced, the City may, at its sole discretion, terminate or amend this Agreement and, in such event, shall not be obligated to pay the County or the Owner.
 - b. The County and Owner shall not anticipate future funding from the City beyond the duration of this Agreement and in no event shall this Agreement be construed as a commitment by the City to expend funds beyond the termination of this Agreement.
 - c. The Owner agrees that it will return to the City any unexpended HOME Funds provided by the City under this Agreement.
11. Compliance with Laws: The financial assistance which is subject to this Agreement is authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, 42 U.S.C. 12701 et seq.
 - a. The Parties shall comply with all applicable provisions of 24 CFR 92 Subpart F entitled "Project Requirements" regardless of whether the law or regulation is specifically stated in this Agreement.

- b. The Parties shall comply with all applicable provisions of Subpart H entitled “Other Federal Requirements” which is found attached to this Agreement as Appendix D, regardless of whether the law or regulation is specifically stated in this Agreement.
 - c. The Parties shall comply with all applicable laws and regulations of the federal, state, and municipal laws, rules, statutes, charter provisions, ordinances, and regulations, including, without limitation, all rules, regulations and guidelines of the U.S. Department of Housing and Urban Development, except for the environmental responsibilities and review process under Executive Order 12372, which are the responsibility of the City.
12. Financial Management: The County and Owner shall establish a system and maintain records which assures effective control over the accountability for all funds used and follow the requirements of 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for federal awards. The County and Owner shall maintain a separate accounting records and source documentation for the program, provide for accurate, current, and complete disclosure of the financial status of the Program, establish records of budget and expenditures, and comply with all generally accepted accounting principles, 2 CFR Part 200.
13. Annual Audit: The County and Owner shall arrange for the performance of annual financial/compliance audits of the program. All audits must be performed by an independent qualified auditor. The audit period is identical with the County and Owner 's regular fiscal year. The audit(s) will be conducted in accordance with the requirements set forth in the U.S. Single Audit Act of 1984, as amended and Office of Management and Budget circular A-133, as amended.
- a. If the County or Owner expend \$750,000 or more in a year in Federal awards, the Owner shall have a single audit or program specific audit conducted for that year in accordance with the provisions of 2 CFR 200 Subpart F, as amended.
 - b. The County and Owner shall submit one copy of the fiscal year audit report covering the program. The audit reports shall be sent to the City within 30 days after the completion of the audit, but no later than one hundred eighty (180) days from the end of the County and Owner’s fiscal year.
14. Underwriting & Subsidy Layering Analysis: This Project is subject to the underwriting and subsidy layering guidelines in accordance with 24 CFR 92.250(b). Before committing funds to a project, the City will evaluate the proposal to determine that there will be a reasonable level of profit or return on the Owner’s investment in a project and that no more HOME funds are invested, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for the entire affordability period. The City will conduct a subsidy layering review prior to the award of any funds. The City will evaluate the reasonableness and need for the requested assistance by analyzing sources and uses statements and proposed development costs. The City’s evaluation will include:
- a. Examination of sources and uses of funds for the project and determine that costs are reasonable;

- b. Assess current market demand in the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer and firm written financial commitments for the project.

15. Return on Investment 92.250(b): Owner may financially benefit from HOME-assisted projects in several ways:

- Developer fees
- Sales revenues
- Tax benefits
- Equity appreciation
- Identity of interest (IOI) roles

The HOME regulations at (§92.250(b) require that any profit or return on the Owner's investment will not exceed the City's established standards. The City will determine a reasonable limit for overall returns and cash flow distributions to ensure that the Subrecipient does not receive excessive gains/profits from the project as a result of HOME funds. The City will conduct an analysis which includes profit that is projected to flow to the developer as operating cash flow from rental projects and any other professional fees being paid to the developer. The City will ensure that any profit or return on the Subrecipient's investment will not exceed the City's established standards.

16. Cost Allocation: Projects containing both HOME and Non-HOME units, HOME funds may be used to assist one or more housing units in a multi-unit project. Only the actual HOME eligible development costs of the assisted units may be charged to the HOME program.

- a. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on the HOME Standard Method of cost allocation.
- b. If the assisted and non-assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the HOME- assisted units can be determined by HUD's Proration Method or Hybrid Method of cost allocation. Prorating the total HOME eligible development costs of the project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME-assisted units in the project.

The City uses the HUD Cost Allocation Tool to ensure compliance with 24 CFR 92.205(d) and ensures that all ineligible costs are subtracted.

17. Match Contribution: The County agrees to provide matching funds in an amount equal to no less than 25 percent of the total HOME funds drawn down for all project costs except administration. The match obligation may be met with any of the following specific sources.

- Cash or cash equivalents from a non-federal source;
- Value of waived taxes, fees or charges associated with HOME projects;

- Value of donated land or real property;
- Cost of infrastructure improvements associated with HOME projects;
- A percentage of the proceeds of single- or multi-family housing bonds issued by state, state instrumentality or local government;
- Value of donated materials, equipment, labor and professional services;
- Sweat equity

18. Program Income: Program Income received by the Owner shall be returned to the City.

19. Suspension & Debarment: The County and Owner represents and warrants that they and their principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department. The County and Owner represent and warrant that to their knowledge, that neither the County nor Owner, nor the County's and Owner's principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or the City.

The Owner must certify that awards are not made to any party, prime contractor and subcontractors which are debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" (24 CFR 570.609 and 2 CFR 200.214). The Owner and prime contractor must be registered in the Federal Government's System for Award Management (SAM) at www.sam.gov. The Owner must check the Federal Government's System for Award Management (SAM) and conduct a public search of the prime contractor and all subcontractors before making an award.

20. HOME Affordability 24 CFR 92.252:

- Minimum and Maximum Subsidy Limits: The minimum amount of HOME Funds invested in this project must average \$1,000 or more for each HOME-assisted unit in the project. The HOME-subsidy per unit cannot exceed the average per unit development costs for the unit. The maximum amount of HOME Funds per unit is established periodically by the U.S. Department of Housing and Urban Development. The maximum HOME subsidy shall not exceed \$1,550,000.
- HOME Assisted Units: The Owner is developing 73 units and the City has designated 9 of them as HOME Assisted Units.
- The HOME Period of Affordability: The affordability requirements for the HOME-Units shall remain in effect for twenty-years from April 26, 2022, through April 26, 2042. This Agreement shall expire at that time.
- Floating HOME-Assisted Units: The 9 designated HOME-assisted units required for this project will be floating units throughout the period of affordability. Owner must ensure that the designated HOME-assisted units at any given point during the period of affordability are comparable in terms of size, features, and number of bedrooms to those units originally

designated.

21. Maximum HOME Income Limits: At initial lease-up of the property the Owner shall ensure that households have an income that does not exceed 60% of the Area Median Income (AMI). In projects of five or more HOME-assisted units, at least 20% of the HOME-assisted units must be occupied by households with income that does not exceed 50% AMI. After initial lease-up, the maximum income limit for all households occupying HOME-assisted units must not exceed the HUD Low Income Limit. throughout the HOME period of affordability.
22. Income Determination: Owner must determine household income eligibility by determining the household's annual income annually in compliance with 24 CFR 92.203 and 92.252(h). Owner must determine annual income through third-party verification prior to initial occupancy and every sixth year of the HOME period of affordability. Owner must verify annual household income as outlined in the Technical Guide for Determining Income and Allowances for the HOME Program which is attached to the County's Rental Compliance Manual. The Owner must recertify household income annually utilizing the methods outlined in the HOME rule.
23. Maximum HOME Rent Limits 92.252(a) and (b): HUD provides the following maximum HOME rent limits. The rent limits apply to the rent plus the utilities or the utility allowance. The maximum HOME rents are the lesser of:
 - a. The Fair Market Rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.11; or
 - b. The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in unit.

If the HOME-assisted unit receives Federal or State project-based rental subsidy and household pays as a contribution toward rent not more than 30 percent of the household's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project based rental subsidy program.

24. Rent Increases: Rent may be increased no more than once each year up to the applicable rents published annually by HUD. The Owner must provide tenants with at least sixty (60) days written notice before rent increases may be implemented.
25. Displacement/Relocation: Per displacement, relocation and acquisition requirements of 24 CFR 92.353, any project that might displace a person, family, business, non-profit organization, or farm must be approved by the City prior to any commitment of HOME funds for the project, or of entering into any type of agreement, whether verbal or written, with another party. Failure to receive approval may cause the forfeiture/repayment of any and all sums under this Agreement by the County and Owner.

26. Procurement: The Owner must ensure with the federal procurement requirements at Uniform Guidance 2 CFR Part 200, Subpart D, Procurement Standards and include the following:
- a. All procurement transactions for the acquisition of property or services must be conducted consistent with the standards in 2 CFR 200.318 and 2 CFR 200.319, and one of the procurement methods at 2 CFR 200.320.
 - b. The Owner must maintain records detailing the history of procurement, 2 CFR 200.318(2)(i). These records should include your rationale for the method of procurement used, selection of contract type, contractor selection/rejection process, and the basis for the contract cost or price.
 - c. When using a pre-qualified list of vendors/contractors, the Owner must ensure that the list is current, must be developed through open solicitation, must include several qualified sources, and must allow entry of other firms to qualify at any time during the solicitation period, 2 CFR 200.319(e).
 - d. To eliminate an unfair competitive advantage, the Owner must exclude contractors that develop or draft specifications, requirements, statements of work, invitations for bids (IFB), and/or requests for proposals (RFPs) from competing for such procurement, 2 CFR 200.319(b).
27. Section 3 Requirements 24 CFR Part 75: The Owner shall comply with Section 3 of the Housing & Urban Development Act of 1968. Owner ensure that “to the greatest extent feasible”, to provide preference for construction-related training, employment, and contracting opportunities to low and very low-income persons and businesses that are owned by low and very low-income persons or businesses that hire them. Additional guidance is outlined in Appendix E.
28. Conflict of Interest:
- a. In the procurement of supplies, equipment, construction and services by Owner, the conflict-of-interest provisions, 2 CFR 200, respectively, shall apply. In all cases not governed by the provisions of said circular and regulation, the provisions of subsection (b), below and 24 CFR 93.353 shall apply.
 - b. No member of the governing body, officers or employees of Owner or its designees or agents, or any other persons who exercise any functions or responsibilities with respect to the program assisted by this Agreement during the tenure or for one year thereafter, shall have any direct interest in any contract or subcontract, or the proceeds thereof, for the work to be performed in connection with the program.
29. Equal Opportunity: The Owner agrees to comply with all the requirements related to fair employment practices to the extent applicable. Owner will conduct and administer the grant in conformity with 24 CFR 92.350.

30. Lobbying: The Owner certifies to the best of their knowledge and believe that:

- a. No appropriated federal 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 any Owner , a Member of Congress, and 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 Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any County or Owner, a Member of Congress in connection with this Federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Disclosure Form to report Lobbying ([Disclosure of Lobbying Activities](#)), in accordance with its instructions.

31. Nondiscrimination & Equal Opportunity: The Owner shall comply with nondiscrimination requirements of 24 CFR 92.350. The Owner agrees that it will utilize and make available the HOME funds in conformity with the non-discrimination and equal opportunity requirements set out in the HUD regulations in the National Housing Affordability Act. These regulations include:

- a. The requirements of the Fair Housing Act, 42 U.S.C. 3601-20, and implementing regulations at 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) as amended by Executive Order 12259 and implementing regulations at 24 CFR 107; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and implementing regulations at 24 CFR Part 1 (Nondiscrimination in Federally Assisted Programs);
- b. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and the regulations at 24 CFR 146;
- c. The prohibitions against discrimination on the basis of handicap under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
- d. The requirements of the Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;
- e. The requirements of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1702u (Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Projects); and
- f. The requirements of Executive Orders 11625 and 12432 regarding Minority Business Enterprise, and 12138 regarding women's Business Enterprise, and regulations S.85.36(e) of Section 281 of the National Housing Affordability Act.

32. Insurance:

- a. The Owner is required to carry those coverage noted below, and shall provide proof thereof during the term of this Agreement:
 - 1) Commercial General Liability Coverage, including bodily injury, property damage, personal injury, and contractual liability, with limits no less than \$1,000,000 per incident;
 - 2) Fire and Casualty insurance in an amount not to be less than the value of all improvements on the property.
 - 3) An automobile liability insurance policy covering bodily injury, property damage and personal injury with limits of no less than \$1,000,000 per occurrence.
- b. As evidence of the liability insurance coverage required by this Agreement prior to the effective date of this Agreement, Owner shall furnish a certificate of insurance to: City of Boulder, PO Box 791, Boulder, CO 80306, and Attention: Housing Investment Senior Project Manager.
- c. The liability insurance certificate will name the County, its officers, agents and employees as Additional Insureds and must require 30 days' notice to the Additional Insureds before non-renewal or cancellation. Insurance coverage required under this Agreement shall be obtained from insurance companies authorized to do business in the State of Colorado. If Owner is self-insured under the laws of the State of Colorado, it shall provide appropriate declarations of coverage.
- d. The Owner shall not cancel, materially change, or fail to renew insurance coverage and shall notify the City of Boulder Housing Investment Senior Project Manager, PO Box 791, Boulder, CO 80306, of any material reduction or exhaustion of aggregate policy limits. Should any policy be canceled, Owner shall procure other insurance as specified.
- e. Nothing contained in these insurance requirements is to be construed as limiting the extent of Owner 's responsibility for payment of damages resulting from Owner's operation under this Agreement.

33. Labor: [Not Applicable]

34. Property Standards 92.251(a): HOME-assisted new construction projects must meet State or local residential and building codes, as applicable, or in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon project completion.

The Owner shall assure compliance with 24 CFR 92.251 as related to Property Standards as required by HUD, Uniform Physical Condition Standards (UPCS), Housing Quality Standards (“HQS”), Accessibility Standards under 24 CFR 92.251(a)(3) as applicable and Lead Based Paint Requirements as found in 24 CFR 92.355 and 24 CFR Part 35. The Owner shall exercise reasonable care to prevent loss, damage or theft of property acquired in whole or in part with the HOME Funds and shall maintain such property in good, safe, and usable condition in all respects, except for normal wear and tear in compliance with 24 CFR 92.251 for the duration of the HOME period of affordability.

35. Inspections: The County and Owner must conduct periodic site visits throughout the duration of the construction process to perform progress inspections to ensure that the work identified in the scope of work and this Agreement is being carried out in compliance with applicable requirements. When construction is complete the County must conduct a final inspection to verify compliance with applicable property standards at 24 CFR 92.251 upon completion of construction. The Owner must complete property and unit inspections annually throughout the HOME period of affordability. The project file must include records that document all inspections.
36. Site & Neighborhood Standards: The County must comply with regulations at 24 CFR 92.202 which require the HOME program to be administered in a manner that provides housing that:
 - a. Is suitable from the standpoint of facilitating and furthering compliance with the applicable provisions of the Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 and HUD regulations issued pursuant thereto, and
 - b. Promotes greater choice of housing opportunities.

New construction rental projects must meet site and neighborhood standards described in 24 CFR 983.57(e)(2) and (3) which places limiting conditions on buildings in areas of “minority concentration” and “racially mixed” areas. The County must ensure a site and neighborhoods standards review is conducted as part of the application for all new construction rental projects requesting HOME funds to ensure compliance with the site and neighborhood standards under 24 CFR 983.57(e)(2) through (4):

- 2) The site must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) of this section and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- 3) A project may be located in an area of minority concentration only if:
 - (i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration (see paragraph (e)(3)(iii), (iv), and (v) of this section for further guidance on this criterion); or

- (ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(vi)) of this section for further guidance on this criterion).
- (iii) As used in paragraph (e)(3)(i) of this section, “sufficient” does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.
- (iv) Units may be considered “comparable opportunities,” as used in paragraph (e)(3)(i) of this section, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.
- (v) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:
 - (a) A significant number of assisted housing units are available outside areas of minority concentration.
 - (b) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.
 - (c) There are racially integrated neighborhoods in the locality.
 - (d) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.
 - (e) Minority families have benefited from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.
 - (f) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.

- (g) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.
 - (vi) Application of the “overriding housing needs” criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”). An “overriding housing need,” however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.
- 4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
37. **Broadband Infrastructure:** To comply with 24 CFR 92.206(a)(3)(ii), the Owner must make utility connections, including connections from the property line to the adjacent street which includes broadband internet connections.
38. **Build America Buy America Preference:** Unless waived through HUD’s Notice, “General Applicability Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance” (87 FR 26219), Owner will comply with the requirements of the Build America Buy America Act (41 USC Ch. 83) as applicable to the Project.
39. **Affirmative Marketing:** The City's policy is to provide information and attract eligible persons to available housing without regard to race, color, national origin, sex, religion, familial status (persons with children under 18 years of age, including pregnant women), or disability. The procedures followed are intended to further the objectives of Title VII I of the Civil Rights Act of 1968 (Fair Housing Act), and Executive Order 11063, which prohibits discrimination in the sale, leasing, rent and other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.

In accordance with the Affirmative Marketing regulations of the HOME Program 24 CFR §92.351, the City has established an "Affirmative Marketing Plan" to ensure that all owners who are allocated HOME Funds employ a marketing plan that promotes fair housing and ensures outreach to all potentially eligible households, especially those least likely to apply for assistance.

The Owner must ensure compliance with affirmative marketing responsibilities as enumerated pursuant to 24 CFR 92.351. Such procedures are subject to approval of the City. The Owner shall comply with the City’s requirements to affirmatively market any HOME Unit available for rent in a manner to attract tenants without regard to race, color, national origin, sex, religion,

familial status or disability, per the Affirmative Marketing Agreement. The Owner agrees, in soliciting tenants, to do the following:

- a. Use the Equal Housing Opportunity logo in all advertising;
 - b. Solicit applications for vacant units from persons who are not likely to apply for the housing without special outreach e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies etc.
 - c. Display a Fair Housing poster in the rental leasing office;
 - d. Where appropriate, advertise, use media, including minority outlets, likely to reach persons least likely to apply for the housing;
 - e. Maintain files of the Owner's affirmative marketing activities for five (5) years and provide access thereto to the City Staff;
 - f. Not refrain from renting to any tenant holding a Section 8 Existing Housing Certificate, except for good cause, such as previous failure to pay rent and/or to maintain a rental unit, or the tenant's violation of other material terms and conditions of tenancy;
 - g. Comply with Section 8 Existing Housing Regulations when renting to any tenant holding a Section 8 Existing Housing Certificate; and
 - h. Exercise affirmative marketing of the units when vacated.
40. Tenant Selection Plan: The City seeks to reduce barriers to accessing housing. To further that goal, the Owner must develop a Tenant Selection Plan that adheres to the City's Tenant Selection Plan Guidelines as outlined in the Rental Compliance Manual and have a Tenant Selection Plan in place prior to leasing of units.
41. Preferences: The City focuses its efforts at targeting special population groups. In support of these efforts the Owner may give preference in a tenant selection process to persons with special needs, such as the homeless individuals, elderly and persons with disabilities. However, the Owner may not give preference to persons with a specific type of disability. Housing for persons with disabilities must be equally available to all persons with disabilities regardless of the nature of their disability. Preferences must not violate HUD's anti-discrimination policies.

Preferences must be clearly outlined in the Tenant Selection Plan and Affirmative Fair Housing Marketing Plan. Supplemental documentation must be submitted with the AFHMP to provide a justification for applying preferences. The proposed plans must be reviewed and approved by HUD and/or Fair Housing Equal Opportunity Office (FHEO) prior to implementation. A copy of the approved plans must be submitted to the City for review and approval prior to implementation.

42. Wait List: The Owner must provide applicants with the opportunity to complete an application for a permanently affordable rental unit. Applications must be available through the property management office and available by mail, email or fax. The Owner must accommodate persons with disabilities, who as a result of their disabilities cannot utilize the Agency's preferred application process by providing an alternative method of taking applications. Through the Owner's screening process, the Owner must maintain a waiting list of eligible applicants and select applications from the waiting list in chronological order to fill vacancies.
43. Notice to Applicants: The Owner must provide prompt notification to the applicant in writing of the denial of their application and specify the reason for the denial. Prompt notification is generally considered to be within 30-days of application.
44. Lease Requirements: Leases between Owner and households occupying HOME-assisted units must be for not less than one year unless mutually agreed upon by Owner and household. The template form of lease and any subsequent form of addenda must be submitted to the County for review and approval prior to initial lease-up and occupancy.
45. Prohibited Lease Terms 24 CFR 966.6: No residential lease for the Property or any part thereof may contain any of the following provisions:
 - a. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;
 - b. Agreement by the tenant that Owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. Owner may dispose of this personal property in accordance with state law;
 - c. Agreement by the tenant not to hold the Owner or the Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
 - d. Agreement of the tenant that the Owner may institute a lawsuit without notice to the tenant;
 - e. Agreement by the tenant that Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
 - f. Agreement by the tenant to waive any right to a trial by jury;
 - g. Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease; and
 - h. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by Owner against the tenant. The tenant may be obligated to pay costs if the tenant loses.

46. Termination & Non-Renewal of Lease: Owner may not terminate the tenancy or refuse to renew the lease of a tenant of the Property except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state or local law; or for other good cause as determined by the City of Boulder policies. Any termination of tenancy or refusal to renew must be preceded by not less than thirty (30) days by service upon the tenant of a written notice from Owner specifying the grounds for the action unless the tenant's action threaten the health or safety of other residents.
47. Violence Against Women's Act (VAWA): The Owner must meet all of the VAWA requirements in accordance with 24 CFR 92.359 throughout the HOME period of affordability.
- a. Notification Requirements: The Owner must provide a notice and certification form that meets the requirements of 24 CFR 5.2005(a) to the applicant for a HOME-assisted unit at the time the applicant is admitted to a HOME-assisted unit, or denied admission to a HOME-assisted unit based on Owner's tenant selection policies and criteria. The Owner of HOME-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HOME-assisted unit.
 - b. Bifurcation of Lease Requirements: For the purposes of this part, the following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):

If a household living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.
 - c. VAWA Lease Term/Addendum: The Owner must develop a VAWA lease term/addendum to incorporate all requirements that apply to the tenant's lease under 24 CFR part 5, Subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if Owner determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). When HOME tenant-based rental assistance is provided, the lease term/addendum must require Owner to notify the City before the Owner bifurcates the lease or provides notification of eviction to the tenant. If HOME tenant-based rental assistance is the only assistance provided (*i.e.*, the unit is not receiving project-based assistance under a covered housing program, as defined in 24 CFR 5.2003), the VAWA lease term/addendum may be written to expire at the end of the rental assistance period.
 - d. Emergency Transition Plan: The Owner is required to follow the County's Emergency Transfer Plan as outlined in the City's Rental Compliance Manual.
 - e. Early Termination of Lease: If a tenant who is living in an affordable unit is a victim of family violence, the Owner must allow the tenant to terminate their lease without penalty.
48. Reporting Requirements: The Owner shall submit quarterly, and annual reports as required by the City. The Owner must submit all reports on forms provided by the County prior to the report due date.

The Owner shall collect and maintain beneficiary information on households residing in HOME-assisted units which documents eligibility. Income documentation shall be in a form consistent with HOME requirements as stated in the HUD Technical Guide for Determining Income and Allowances under the HOME Program, Third Edition. The Owner shall submit an Annual Tenant Report which includes the following information:

- 1) ethnic characteristics
 - 2) racial characteristics
 - 3) female head-of-household
 - 4) household income
 - 5) disabled household: "Disabled household" is a household composed of one or more persons at least one of whom is an adult who has a disability. A person is considered to have a disability if the person is determined to have a physical, mental or emotional impairment that:
 - (i) is expected to be of long, continued and indefinite duration;
 - (ii) substantially impedes the person's ability to live independently; and
 - (iii) is of such a nature that the ability could be improved by more suitable housing conditions; or
 - (iv) has a developmental disability as defined in Section 102 of the Developmental Disabilities Act and Bill of Rights Act.
- a. Quarterly progress reports shall be due January 31, April 30, July 31 and October 31 until the Funds are fully expended.
 - b. The Owner must submit quarterly reports regarding their Section 3 activities on the Section 3 Compliance Report provided by the County. Owner is required to submit a final Section 3 report as part of project close-out.
 - c. The Owner must submit quarterly contract/subcontract activity reports.
 - d. The County must submit proper documentation of eligible expenses for HOME match to the City on an annual basis.
 - e. Submit project close-out report
 - f. The County must provide information for the Consolidated Annual Performance and Evaluation Report (CAPER) within required timeframes.
49. Records: The County and Owner shall maintain adequate documentation and reasonable records of its performance under this Agreement. Records that include documentation of compliance with other federal requirements in accordance with 24 CFR 92.508 that includes the following requirements to the extent applicable to the Project:
- a. Documentation of Owner's efforts to affirmatively further fair housing, including both marketing efforts and records on the extent to which each racial and ethnic group and

single-headed households (by gender of household head) applied for, participated in, or benefited from the Project;

- b. Records related to compliance with the VAWA provisions of 24 CFR 92.359, including but not limited to evidence proper notices were provided to applicants and TBRA recipients and summaries of requests for VAWA protections and actions taken; and
 - c. Records supporting any requests for exceptions to the conflict-of-interest provisions in accordance with 24 CFR 92.356.
 - d. The Owner shall require documentation to verify the income status of all residents of the HOME-assisted units. Documentation may include, but is not limited to, third party income verification, W-2s, SSI, SSDI, child support and pay stubs.
 - e. The Owner must maintain records which demonstrate compliance with Section 3 requirements.
 - f. The documentation retained shall be sufficient to support the information provided by the Owner to the City.
 - g. Maintain files and records as required which relate to the overall administration of the Program.
50. Record Retention: All Project records shall be maintained by the County and Owner for a minimum of five (5) years beyond the final payment under this Agreement. Notwithstanding, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have commenced before the expiration of the retention periods outlined, such records must be retained until completion of the actions and resolution of all issues, or the expiration of the retention period, whichever occurs later.
51. Access to Records: The County and Owner will allow access to these records at any time during normal business hours by the City and the U.S. Department of Housing and Urban Development. These records will be kept in the County's and Owner's local office.
52. Project Close-Out: Project close-out will be completed when the City determines that construction has been completed, funds have been fully expended, certificate of occupancy has been issued and the City determines that all applicable actions and requirements have been met. The Owner must submit a Project Close-Out Report and supporting documentation as provided by the City. All findings from City's monitoring visits must be cleared prior to close-out.
53. Monitoring: The Owner and the Project will be monitored by the City for compliance with the regulations of 24 CFR 92 for the Affordability Period specified in this Agreement, in accordance with the regulations of the HOME program through project completion and long-term compliance throughout the HOME period of affordability. The Owner shall ensure the cooperation of its staff and other responsible officials in the efforts of the City to monitor and

evaluate the HOME-funded activities of the Owner. The Owner will actively assist the City in the following activities:

- a. On-site visits and/or remote monitoring by the City to monitor the progress of the activities funded, to review compliance with the terms of this Agreement, and to offer assistance in the conduct of the Project. Such on-site visits and/or remote monitoring will be undertaken according to the schedule set forth in Appendix C.
- b. The Owner agrees to provide any and all information to the City to assist in meeting administrative and monitoring requirements, including reporting progress of the Project in IDIS. Owner agrees to work cooperatively with the City to assist in meeting its obligations to HUD.
- c. Evaluations by the City and/or its agent(s) of the results of the delegated activities. Such evaluations will be conducted according to the schedule set forth in Appendix C.
- d. Any special monitoring or evaluation activities made necessary by the imposition by the County or HUD of additional reasonable requirements.

54. Remedies for Breach of HOME Requirements:

- a. Suspension or Termination for Cause: This Agreement may be suspended or terminated in accordance with 2 CFR 200.338 if the County or Owner materially fail to comply with any terms of this Agreement.
 - 1) A default shall be deemed to have occurred if the County or Owner breaches its obligations hereunder and fails to cure such breach within 30 days of written notice from the City specifying the breach. Upon default, in addition to other legal remedies available to it, including specific performance and damages, the City shall also have the right to suspend payments to the County and Owner and/or cancel this Agreement upon written notice of such action.
 - 2) In the event of any termination of this Agreement for any reason, all finished or unfinished documents, data, studies, and reports purchased or prepared by the County and Owner under this Agreement shall become the property of the City, and the County and Owner shall be entitled to compensation for any unreimbursed expenses reasonably and necessarily incurred in satisfactory performance of the Agreement. Notwithstanding the above.
 - 3) The County and Owner shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the County and Owner and the City may withhold any reimbursement to the County and Owner for the purpose of set-off until such time as the exact amount of damages due the City from the County and Owner is agreed upon or otherwise determined.
- g. Termination for Convenience: This Agreement may be terminated for convenience in

accordance with 2 CFR 200.339.

- 1) Either party may terminate this Agreement without cause upon 30 days written notice to the other party; provided, that the County shall not terminate this Agreement, absent a breach by the County and Owner, except upon the failure to receive the funds needed to fund the grant under this Agreement.
 - 2) The County and Owner may terminate this Agreement upon 30 days written notice to the City if the County or Owner is unable or unwilling to comply with such additional conditions as may be lawfully applied by the City or HUD. In such event, the City may require the County and Owner to ensure that adequate arrangements have been made for the transfer of the Owner's activities to the City.
55. Recovery by County of Funds: The full amount of any funds paid from City's funding sources shall be promptly returned to the City in the event that the County or Owner fail to complete construction on the Property within four years of the date of this Agreement and this Agreement shall become null and void.
56. Repayment/Recapture of HOME Funds: Any HOME funds that are subject to repayment or recapture must be remitted to the City as referenced in 24 CFR 92.504(b) and (c)(2)(x).
57. Reversion of Assets: Upon the expiration or termination of this Agreement, the County agrees that it will transfer to the City any HOME funds on hand at that time and any accounts receivable attributable to the use of HOME funds.
58. Termination of Period of Affordability 92.254(a)(5)(i)(A): The applicability of the regulations may be terminated upon foreclosure or transfer in lieu of foreclosure. The applicability of the affordability regulations shall be revived according to the original terms if during the original Period of Affordability, the owner of record, before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property. The County may use purchase options, rights of first refusal, or other preemptive rights to purchase the housing before foreclosure in order to preserve affordability.
59. Indemnification: To the extent allowed by law, the County and Owner shall defend, indemnify, and save harmless the City from and against all losses, claims, suits, judgments or liabilities incurred as a result of its activities pursuant to this Agreement, and as part of such indemnification obligation shall pay all costs and attorney's fees, if any, incurred by the City as a result of any such claims or suits. The time of any attorneys and legal assistants in the City Attorney's Office spent on any such claims or suits shall be paid for by the County and Owner in accordance with generally prevailing attorney's fees charged in Boulder County for similar services. Each party assumes responsibility for its officers', its agents', and its employees' negligent actions and omissions in the performance or failure to perform work under this Agreement. By agreeing to this provision, neither the City nor the County nor Owner waives or intends to waive as to any person not a party to this Agreement the limitations on liability

which are provided to the parties, their officers, and employees under the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S.].

60. Enforcement of Agreement: This Agreement may be specifically enforced against the Owner or any successor in interest of the Owner. Venue for such action shall be in Boulder County. Enforcement actions may include, without limitation, restriction of eligibility for future funding, contract litigation and equitable relief, and any other relief granted by law.
61. Security – Promissory Note and Deed of Trust: The County and Owner 's obligation to repay the HOME Funds to the City shall be secured by a promissory note and deed of trust on the title to the Property. The promissory note and deed of trust shall entitle the City to take possession of and sell this property in any manner provided by law and to credit the net proceeds against the Owner's obligation under this Agreement, the promissory note and the deed of trust, and against all costs, including, without limitation, court costs and reasonable attorney's fees, of foreclosure, possession and/or sale. The promissory note and deed of trust shall be in a form approved by the City Attorney. This Agreement, the note and deed of trust shall be executed by the Owner and recorded with the Boulder County Clerk and Recorder immediately after it receives the Funds.
62. Relationship of the Parties: Nothing in this Agreement shall be deemed to create an agency, partnership or employment relationship between the City, County or Owner.
63. Subcontracting & Assignment: Neither the County nor Owner shall assign, delegate nor subcontract this Agreement without prior written approval by the County. The County and Owner shall remain fully obligated and liable under the provisions of this Agreement, notwithstanding its designation of any third party or parties for the undertaking of all or part of the Project. The County and Owner shall require any such third-party to comply with all lawful requirements necessary to ensure that the Project is carried out in accordance with this Agreement.
64. Severability: If any provision of this Agreement, or portion thereof, is held invalid by any court of rightful jurisdiction, the remainder of this Agreement shall not be affected, providing the remainder continues to conform to applicable Federal and State law(s) and regulations and can be given effect without the invalid provision.
65. Modifications & Amendments: This Agreement may only be amended in writing signed by the City, County and the Owner. All modifications and amendments to this Agreement shall be in writing; such modification or amendment shall not take effect until specifically approved in writing by the City and signed by all parties to this Agreement.
66. Notice: Any notice required by this Agreement shall be in writing, made by hand-delivery or first-class mail, and addressed to the following:

County: Boulder County
P.O. Box 471
Boulder, CO. 80306-0471

Owner : Coffman Place LLC
c/o Boulder County Housing Authority
PO Box 471
Boulder, Colorado 80306

City: City Manager with copy to:
Deputy Director of Housing & Human Services
City of Boulder
P.O. Box 791
Boulder, Colorado 80306
CMO Fax: 303-441-4478

67. No Guarantee of Future Funding: The allocation of funds from the HOME Investment Partnerships program in no way guarantees the County or Owner that it will receive additional assistance from the County. Owner is encouraged to develop and endow a capital improvement fund to meet its future needs.
68. Complete Agreement: This document represents the complete agreement between the City, County and Owner. No Party shall assign, sublet or transfer its interest in the Agreement without the written consent of the other. No amendments or modifications shall be made to this Agreement unless it is in writing and signed by both parties.
69. Recording of this Agreement: The Parties intend to record this Agreement with the Boulder County Clerk and Recorder in order to put potential subsequent purchasers on notice of the terms and conditions contained herein.
70. Governing Law: The provisions of this Agreement shall be interpreted and enforced in accordance with Colorado law.
71. Authority to Sign: Each party warrants that the individual executing this Agreement is properly authorized to bind the party for which they sign to this Agreement.
72. Incorporation of Recitals: The Recitals set forth in this Agreement are hereby incorporated into and deemed a part of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREFORE, the Parties to this Agreement have caused it to be executed by each Party's authorized officer as of the Effective Date.

COUNTY

County of Boulder, Colorado,
a body corporate and politic

By: _____

Name: _____

Title: _____

[signatures to continue on the next page]

OWNER

Coffman Place LLC,
a Colorado limited liability company

By: Coffman Place GP LLC,
a Colorado limited liability company,
managing member

By: Housing Authority of the County of
Boulder, Colorado, a body corporate and
politic, sole member and manager

By: _____
Name: _____
Title: _____

[signatures to continue on the next page]

CITY

City of Boulder, Colorado,
a home rule city

By: _____

Name: _____

Title: _____

ATTEST:

City Clerk

Date: _____

APPROVED AS TO FORM:

City Attorney's Office

Date: _____

[signatures to continue on the next page]

The undersigned consents to this Agreement on the date first written above.

BCHA

Housing Authority of the County of Boulder,
Colorado, a body corporate and politic

By: _____

Name: _____

Title: _____

**APPENDIX A
APPROVED ACTIVITIES & SCHEDULE OF COMPLETION**

Owner: Coffman Place LLC

Project: The Spoke on Coffman

Type of Project: New Construction

Use of HOME Funds: Cost related to the construction of rental housing units.

Total # of Units in the Project: 73

Total # of Accessible Units: 12

Number of HOME Units: 9

| Work Program | Completion Date |
|--|--|
| Environmental Review Completed and funds released from HUD | Prior to the execution of Agreement for Delegation of Activities |
| Submit Affirmative Marketing Plan to City for Approval | Prior to the execution of Agreement for Delegation of Activities |
| Sign Agreement for Delegation of Activities | July 28, 2020 |
| Sign Promissory Note | July 28, 2020 |
| Submit Procurement Documents to the City for Approval | Prior to execution of Construction Contract |
| Submit 1 st Section 3 Report | Within 30 days of execution of Construction Contract |
| Submit requests for reimbursement documents | Quarterly as needed after the start of construction |
| Submit quarterly Section 3 reports | By the 15 th day of the month following the quarter |
| Final Section 3 Report | At the completion of construction |
| Construction Completion | Spring 2021 |
| Schedule Section 8 HQS inspections for all apartments. Copies of HQS inspection reports must be sent to City of Boulder. | Prior to lease up |
| Lease up of Apartments | Spring/Summer 2021 |
| List of initial floating units including Apartment number and size of unit sent to the City of Boulder | At lease up |

**APPENDIX B
BUDGET**

Owner: Coffman Place LLC

Project: The Spoke on Coffman

Type of Project: New Construction

Summary of Project and Approved Activities:

| Task | HOME Contribution | Other Sources | Contributions |
|---------------------------------|--------------------------|-------------------------------------|----------------------|
| Housing Construction Activities | \$1,550,000 | Construction to permanent financing | \$14,900,000 |
| | | CDBG-DR | \$3,730,000 |
| | | Taxable Tail | \$4,100,000 |
| | | LIHTC Equity | \$1,175,302 |
| | | State Equity | \$627,750 |

Total Project Cost: \$26,384,891

HOME Funds: \$1,550,000

Total Other Contributions: \$24,834,891

APPENDIX C MONITORING

Owner: Coffman Place LLC
Project: The Spoke on Coffman

The project will be visited during construction and an on-site monitoring and inspection will occur within 12 months after project completion. The Owner will be informed of the time of an on-site visit and the general subject matter to be covered. An exit review of tentative conclusions will be held with the Owner to be followed by a formal communication within thirty (30) days.

The Project monitoring review will cover:

Review of accounting system
Review Owner's understanding of program financial requirements
Review of files for required policies and procedures
Review the records system for maintaining appropriate documentation

If the City determined that the Owner or the Project has not met a requirement of the HOME Program, the City of Boulder will provide written notice of this determination and give the Owner an opportunity to demonstrate within a stated timeline that it has done so. If the Owner is unable to demonstrate compliance, the City of Boulder will take corrective action or remedial action. Said action will be designed to prevent a continuation of the deficiency; mitigate; to the extent possible, its adverse effects or consequences; and prevent its recurrence.

The Owner may be required to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency through one or more of the following:

- Prepare and follow a schedule of actions for carrying out the affected activities consisting of schedules, timetables, and milestones necessary to implement the affected activities;
- Establish and follow a management plan that assigns responsibilities for carrying out the remedial action;
- Cancel or revise activities likely to be affected by the performance deficiency before expending program funding for the activity.

In addition, an annual monitoring may be undertaken upon a 30-day written notice for scheduling and will ensure compliance of the Certifications submitted annually as outlined below. The Assisted Units will be monitored by the city throughout the HOME period of affordability. The city will conduct on-site monitoring and inspections of Assisted Units every three years after project monitoring is completed.

Monitoring activities will cover:

- Rents and income
- Property and HOME-assisted unit condition
- Financial condition

If it is determined that the Grantee or the HOME-assisted property has not met the requirements of the HOME Program, the City of Boulder may take the following action:

- Require more frequent reporting and monitoring
- Provide Owner and Property Management staff technical assistance

APPENDIX D

SUBPART H – OTHER FEDERAL REQUIREMENTS

§ 92.350 Other Federal requirements and nondiscrimination.

(a) 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; drug-free work; and housing counseling.

(b) The nondiscrimination requirements at section 282 of the Act are applicable. These requirements are waived in connection with the use of HOME funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

[[62 FR 28930](#), May 28, 1997, as amended at [81 FR 90657](#), Dec. 14, 2016]

§ 92.351 Affirmative marketing; minority outreach program.

(a) *Affirmative marketing.*

(1) Each participating jurisdiction must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME-funded programs, including, but not limited to, tenant-based rental assistance and down payment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If participating jurisdiction's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with [§ 92.253\(d\)\(3\)](#), the participating jurisdiction must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

(2) The affirmative marketing requirements and procedures adopted must include:

(i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(ii) Requirements and practices each subrecipient and owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the participating jurisdiction and by subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions; and

(v) A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(3) A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in [paragraphs \(a\) and \(b\)](#) of this section.

(b) **Minority outreach.** A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 200.321 of [title 2 Code of Federal Regulations](#) describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

[[61 FR 48750](#), Sept. 16, 1996, as amended at [78 FR 44678](#), July 24, 2013; [80 FR 75935](#), Dec. 7, 2015]

§ 92.352 Environmental review.

(a) **General.** The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) ([42 U.S.C. 4321](#)) and the related authorities listed in HUD's implementing regulations at [24 CFR parts 50](#) and [58](#). The applicability of the provisions of [24 CFR part 50](#) or part 58 is based on the HOME project (new construction, rehabilitation, acquisition) or activity (tenant-based rental assistance) as a whole, not on the type of the cost paid with HOME funds.

(b) **Responsibility for review.**

(1) The jurisdiction (e.g., the participating jurisdiction or State recipient) or insular area must assume responsibility for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under [24 CFR part 58](#). No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by [24 CFR part 58](#).

(2) A State participating jurisdiction must also assume responsibility for approval of requests for release of HOME funds submitted by State recipients.

(3) HUD will perform the environmental review, in accordance with [24 CFR part 50](#), for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction.

[[61 FR 48750](#), Sept. 16, 1996, as amended at [78 FR 44678](#), July 24, 2013]

§ 92.353 Displacement, relocation, and acquisition.

(a) ***Minimizing displacement.*** Consistent with the other goals and objectives of this part, the participating jurisdiction must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(b) ***Temporary relocation.*** The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of [paragraph \(b\)\(1\)](#) of this section.

(c) ***Relocation assistance for displaced persons -***

(1) ***General.*** A displaced person (defined in [paragraph \(c\)\(2\)](#) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) ([42 U.S.C. 4201-4655](#)) and [49 CFR part 24](#). A “displaced person” must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(2) ***Displaced Person.***

(i) For purposes of [paragraph \(c\)](#) of this section, the term *displaced person* means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After notice by the owner to move permanently from the property, if the move occurs on or after:

(1) The date of the submission of an application to the participating jurisdiction or HUD, if the applicant has site control and the application is later approved; or

(2) The date the jurisdiction approves the applicable site, if the applicant does not have site control at the time of the application; or

(B) Before the date described in [paragraph \(c\)\(2\)\(i\)\(A\)](#) of this section, if the jurisdiction or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(1) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

- (i) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or
 - (ii) The total tenant payment, as determined under [24 CFR 5.628](#), if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;
 - (2) The tenant is required to relocate temporarily, does not return to the building/complex, and either
 - (i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
 - (ii) Other conditions of the temporary relocation are not reasonable; or
 - (3) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.
- (ii) Notwithstanding [paragraph \(c\)\(2\)\(i\)](#) of this section, a person does not qualify as a *displaced person* if:
- (A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the participating jurisdiction determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.
 - (B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a “displaced person” (or for any assistance under this section) as a result of the project;
 - (C) The person is ineligible under [49 CFR 24.2\(g\)\(2\)](#); or
 - (D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.
- (iii) The jurisdiction may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.
- (3) ***Initiation of negotiations.*** For purposes of determining the formula for computing replacement housing assistance to be provided under [paragraph \(c\)](#) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or

acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(d) ***Optional relocation assistance.*** The participating jurisdiction may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to [paragraph \(c\)](#) of this section. The jurisdiction may also provide relocation assistance to persons covered under [paragraph \(c\)](#) of this section beyond that required. For any such assistance that is not required by State or local law, the jurisdiction must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) ***Residential anti-displacement and relocation assistance plan.*** The participating jurisdiction shall comply with the requirements of [24 CFR part 42, subpart C](#).

(f) ***Real property acquisition requirements.*** The acquisition of real property for a project is subject to the URA and the requirements of [49 CFR part 24, subpart B](#).

(g) ***Appeals.*** A person who disagrees with the participating jurisdiction's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the jurisdiction. A low-income person who is dissatisfied with the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

[[61 FR 48750](#), Sept. 16, 1996, as amended at [61 FR 51760](#), Oct. 3, 1996; [62 FR 28930](#), May 28, 1997; [67 FR 61756](#), Oct. 1, 2002; [78 FR 44678](#), July 24, 2013]

[§ 92.354 Labor.](#)

(a) *General.*

(1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act ([40 U.S.C. 3141](#)), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701](#)).

(2) The contract for construction must contain these wage provisions if HOME funds are used for any project costs in [§ 92.206](#), including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer

of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards, as applicable. Participating jurisdictions shall be responsible for ensuring compliance by contractors and subcontractors with labor standards described in this section. In accordance with procedures specified by HUD, participating jurisdictions shall:

- (i) Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations;
- (ii) Conduct on-site inspections and employee interviews;
- (iii) Collect and review certified weekly payroll reports;
- (iv) Correct all labor standards violations promptly;
- (v) Maintain documentation of administrative and enforcement activities; and
- (vi) Require certification as to compliance with the provisions of this section before making any payment under such contracts.

(b) **Volunteers.** The prevailing wage provisions of [paragraph \(a\)](#) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See [24 CFR part 70](#).

(c) **Sweat equity.** The prevailing wage provisions of [paragraph \(a\)](#) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

[[61 FR 48750](#), Sept. 16, 1996, as amended at [78 FR 44678](#), July 24, 2013]

[§ 92.355 Lead-based paint.](#)

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act ([42 U.S.C. 4821-4846](#)), the Residential Lead-Based Paint Hazard Reduction Act of 1992 ([42](#)

[U.S.C. 4851-4856](#)), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

[[64 FR 50224](#), Sept. 15, 1999]

§ 92.356 Conflict of interest.

(a) ***Applicability.*** In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in [2 CFR 200.317](#) and [2 CFR 200.318](#), apply. In all cases not governed by [2 CFR 200.317](#) and [2 CFR 200.318](#), the provisions of this section apply.

(b) ***Conflicts prohibited.*** No persons described in [paragraph \(c\)](#) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

(c) ***Persons covered.*** The conflict of interest provisions of [paragraph \(b\)](#) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) ***Exceptions: Threshold requirements.*** Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of [paragraph \(b\)](#) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) ***Factors to be considered for exceptions.*** In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of [paragraph \(d\)](#) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in [paragraph \(c\)](#) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

(f) ***Owners and developers.***

(1) No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required period of affordability specified in [§ 92.252\(e\)](#) or [§ 92.254\(a\)\(4\)](#). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) ***Exceptions.*** Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of [paragraph \(f\)\(1\)](#) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

- (ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question;
- (iii) Whether the tenant protection requirements of [§ 92.253](#) are being observed;
- (iv) Whether the affirmative marketing requirements of [§ 92.351](#) are being observed and followed; and
- (v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

[[61 FR 48750](#), Sept. 16, 1996, as amended at [62 FR 28930](#), May 28, 1997; [78 FR 44679](#), July 24, 2013; [80 FR 75935](#), Dec. 7, 2015]

[§ 92.357 Executive Order 12372.](#)

(a) **General.** Executive Order 12372, as amended by Executive Order 12416 ([3 CFR](#), 1982 Comp., p. 197 and [3 CFR](#), 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and HUD's implementing regulations at [24 CFR part 52](#), allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) **Applicability.** Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under [subpart J of this part](#) to units of general local government.

[§ 92.358 Consultant activities.](#)

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, [Pub. L. 104-204](#) (September 26, 1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

[[62 FR 28930](#), May 28, 1997]

[§ 92.359 VAWA requirements.](#)

(a) **General.**

(1) The Violence Against Women Act (VAWA) requirements set forth in [24 CFR part 5, subpart L](#), apply to all HOME tenant-based rental assistance and rental housing assisted with HOME funds, as supplemented by this section.

(2) For the HOME program, the “covered housing provider,” as this term is used in HUD's regulations in [24 CFR part 5, subpart L](#), refers to:

(i) The housing owner for the purposes of [24 CFR 5.2005\(d\)\(1\)](#), [\(d\)\(3\)](#), and [\(d\)\(4\)](#) and [§ 5.2009\(a\)](#); and

(ii) The participating jurisdiction and the owner for purposes of [24 CFR 5.2005\(d\)\(2\)](#), [5.2005\(e\)](#), and [5.2007](#), except as otherwise provided in [paragraph \(g\)](#) of this section.

(b) **Effective date.** The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking became applicable upon enactment of VAWA 2013 on March 7, 2013. Compliance with the VAWA regulatory requirements under this section and [24 CFR part 5, subpart L](#), are required for any tenant-based rental assistance or rental housing project for which the date of the HOME funding commitment is on or after *December 16, 2016*.

(c) **Notification requirements.** The participating jurisdiction must provide a notice and certification form that meet the requirements of [24 CFR 5.2005\(a\)](#) to the owner of HOME-assisted rental housing.

(1) **For HOME-assisted units.** The owner of HOME-assisted rental housing must provide the notice and certification form described in [24 CFR 5.2005\(a\)](#) to the applicant for a HOME-assisted unit at the time the applicant is admitted to a HOME-assisted unit, or denied admission to a HOME-assisted unit based on the owner's tenant selection policies and criteria. The owner of HOME-assisted rental housing must also provide the notice and certification form described in [24 CFR 5.2005](#) with any notification of eviction from a HOME-assisted unit.

(2) **For HOME tenant-based rental assistance.** The participating jurisdiction must provide the notice and certification form described in [24 CFR 5.2005\(a\)](#) to the applicant for HOME tenant-based rental assistance when the applicant's HOME tenant-based rental assistance is approved or denied. The participating jurisdiction must also provide the notice and certification form described in [24 CFR 5.2005\(a\)](#) to a tenant receiving HOME tenant-based rental assistance when the participating jurisdiction provides the tenant with notification of termination of the HOME tenant-based rental assistance, and when the participating jurisdiction learns that the tenant's housing owner intends to provide the tenant with notification of eviction.

(d) **Bifurcation of lease requirements.** For the purposes of this part, the following requirements shall apply in place of the requirements at [24 CFR 5.2009\(b\)](#):

(1) If a family living in a HOME-assisted rental unit separates under [24 CFR 5.2009\(a\)](#), the remaining tenant(s) may remain in the HOME-assisted unit.

(2) If a family who is receiving HOME tenant-based rental assistance separates under [24 CFR 5.2009\(a\)](#), the remaining tenant(s) will retain the HOME tenant-based rental assistance. The participating jurisdiction must determine whether the tenant that was removed from the unit will receive HOME tenant-based rental assistance.

(e) **VAWA lease term/addendum.** The participating jurisdiction must develop a VAWA lease term/addendum to incorporate all requirements that apply to the owner or lease under [24 CFR part 5, subpart L](#), and this section, including the prohibited bases for eviction and restrictions on construing lease terms under [24 CFR 5.2005\(b\)](#) and [\(c\)](#). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the participating jurisdiction determines that the tenant has met the conditions for an emergency transfer under [24 CFR 5.2005\(e\)](#). When HOME tenant-based rental assistance is provided, the lease term/addendum must require the owner to notify the participating jurisdiction before the owner bifurcates the lease or provides notification of eviction to the tenant. If HOME tenant-based rental assistance is the only assistance provided (*i.e.*, the unit is not receiving project-based assistance under a covered housing program, as defined in [24 CFR 5.2003](#)), the VAWA lease term/addendum may be written to expire at the end of the rental assistance period.

(f) **Period of applicability.** For HOME-assisted rental housing, the requirements of this section shall apply to the owner of the housing for the duration of the affordability period. For HOME tenant-based rental assistance, the requirements of this section shall apply to the owner of the tenant's housing for the period for which the rental assistance is provided.

(g) **Emergency Transfer Plan.**

(1) The participating jurisdiction must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies under the plan. The plan must meet the requirements in [24 CFR 5.2005\(e\)](#), as supplemented by this section.

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

(i) Establish a preference under the participating jurisdiction's HOME program for tenants who qualify for emergency transfers under [24 CFR 5.2005\(e\)](#);

(ii) Provide HOME tenant-based rental assistance to tenants who qualify for emergency transfers under [24 CFR 5.2005\(e\)](#); or

(iii) Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units.

APPENDIX E

SECTION 3 CLAUSE

1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). 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 this Agreement agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
3. The Subrecipient agrees to send to each labor organization or representative of workers with which the Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Subrecipient's commitments under this Section 3 clause and will post copies of the notice in conspicuous places 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 Subrecipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, 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 75. The Subrecipient will not subcontract with any subcontractor where the Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.
5. The Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Subrecipient is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the Subrecipient's obligations under 24 CFR Part 75.
6. Noncompliance with HUDs regulations in 24 CFR Part 75 may result in sanctions, terminations of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

Understanding Section 3 Training

<https://www.hudexchange.info/trainings/section-3/>