

HOME PROGRAM WRITTEN AGREEMENT BETWEEN
City of Independence
AND
Truman Heritage Habitat For Humanity

1) PREAMBLE

The City of Independence (“the PJ”) enters into this HOME Written Agreement (“the Agreement”) with Truman Heritage Habitat For Humanity (“the CHDO”), a designated Community Housing Development Organization, for the operation of a single family homebuyer development project under the HOME Investment Partnership Act as set forth in 24 CFR Part 92 and as regulated by the US Department of Housing and Urban Development and the City of Independence

**2) AMOUNT AND TERM OF AGREEMENT [24 CFR
92.504(c)(3)(ix)]**

- a) The total amount of HOME Program funds awarded under this Agreement is \$ 0.00 for eligible projects costs, and \$ 24,118.00 for eligible CHDO Operating Expenses.
- b) HOME funding is being provided to cover reasonable and necessary operational costs of the CHDO with the understanding that the CHDO currently has a project underway being funded with HOME CHDO set-aside funds, or will submit a site-specific project application for HOME CHDO set-aside funding within 24 months of the award of an operating expense grant.
- c) HOME funding shall be made available on a reimbursement basis for eligible operating expenses incurred by the CHDO. HOME funding under this agreement may not be used for project specific expenses and is not subject to match requirements.
- d) The PJ’s payment of funds under this agreement is subject to the CHDO’s compliance with information reporting procedures issued pursuant to 24 CFR 92.502, or as may be modified by amendment to this agreement by the City.

- e) The Agreement shall have a one (2) year term from the effective date of August 15, 2021.

3) DEFAULT

- a) The CHDO shall be in default if the CHDO:
 - i) Fails to adhere to all applicable laws, rules and regulations associated with the HOME program, the cross cutting Federal laws and regulations, and State and Local law
 - ii) Fails to provide the required reports in a timely manner; and/or
 - iii) Fails to meet the terms and conditions of the Agreement
- b) Should default occur, the PJ may take whatever actions the PJ shall deem appropriate to enforce the Agreement

4) ENFORCEMENT (24 CFR 92.504(c)(3)(vii))

- a) The CHDO and the PJ acknowledge the PJ's right and responsibility to enforcement of this agreement
- b) The Agreement may be terminated by the PJ for lack of progress by the CHDO
 - i) Lack of progress is defined as failing to meet the benchmark schedule(s) contained herein

5) HOME ACTIVITY (24 CFR 92.504)

- a) The CHDO shall provide affordable housing production services under the terms, conditions, requirements and responsibilities of this agreement. The PJ agrees to make available to the CHDO up to \$24,118.00 in 2019 HOME Program funds for the sole purpose of developing the staff and operational capacity to expand production of affordable homeownership opportunities in Independence for the benefit of low- and moderate-income households.
- b) The use of HOME funds provided under this agreement is restricted to the line items cited in the project budget attached as *Exhibit A: CHDO Operating Expense Project Budget*.

- c) Housing production activities associated with this agreement shall be limited to the new construction of single-family homes affordable to qualifying low- and moderate-income homebuyers with Part V household incomes of between 50 percent and 80 per cent of Kansas City Metropolitan Statistical Area Median Income (AMI) as published by HUD and adjusted for family size.

6) AFFIRMATIVE MARKETING (24 CFR 92.351)

The CHDO is responsible for insuring that affirmative marketing activities are carried out in accordance with the PJ's current Affirmative Marketing Policies as stated in the Consolidated Plan and in accordance with 24 CFR 92.351.

7) PROGRAM/PROJECT DESCRIPTION (24 CFR 92.504)

- a) The CHDO shall secure and maintain competent staff required to successfully operate an affordable housing production program within the term of this agreement.
- b) The CHDO shall develop and maintain necessary policies and procedures to ensure proper utilization of HOME Program funds including but not limited to methods of applicant intake and qualification, financial controls and record keeping, construction project management, homebuyer underwriting and performance reporting.
- c) The aforementioned tasks will be performed in essentially the manner proposed in the CHDO's original funding application received by the PJ on December 17, 2018. The CHDO's proposal will be considered to be a part and portion of this agreement for reference.

8) ELIGIBLE PROJECT COSTS (24 CFR 92.206)

- a) The CHDO agrees to spend HOME funds only on eligible project costs as defined in 24 CFR 92.206
- b) The CHDO agrees to spend all HOME funds in accordance with the Budget attached as *Appendix A: CHDO Operating Expense Project Budget*. Changes to the budget must be approved by the PJ
- c) Project expenses shall be paid based on vouchers for actual expenses incurred or paid. Requests for payment must be submitted by the CHDO with adequate and proper

documentation of eligible costs incurred in compliance with 92.206 and necessary for HUD IDIS disbursement requirements. Time allocations sheets will be required for reimbursement of personnel costs covered by this agreement. All expenses shall be in conformance to the approved project budget. Budget revision and approval shall be required prior to payment of any expenses not conforming to the approved project budget.

- d) The PJ reserves the right to inspect records and project sites to determine that reimbursement and compensation requests are reasonable. The PJ also reserves the right to hold payment until adequate documentation has been provided and reviewed.
- e) The CHDO may submit a final invoice upon completion. Final payment shall be made after the PJ has determined that all services have been rendered, files and documentation delivered, and related project units have been placed in service in full compliance with HOME regulations, including submission of a completion report and documentation of eligible occupancy, property standards and long-term use restrictions.
- f) The PJ shall have the right to review and audit all records of the CHDO pertaining to any payment by the PJ. Said records shall be maintained for a period of five years after completion.

9) SCHEDULE OF PERFORMANCE BENCHMARKS

- a) CHDO shall be responsible for meeting the completion dates for the activities listed below. If CHDO does not meet a completion date, CHDO shall immediately submit a revised implementation schedule for approval by the PJ. Failure to achieve these deadlines may result in the loss or reduction of HOME funds.

<u>Activity</u>	<u>Completion Date</u>
1. Obtain project-specific CHDO Written Agreement from PJ	02/15/22
2. 50% draw down of CHDO operating funds	08/15/22
3. 90% draw down of CHDO operating funds	2/15/23
4. Completion of project-specific CHDO activity	8/15/23

and 100% draw down of CHDO operating funds

- b) If CHDO is delayed by any cause legitimately beyond its control, as determined by the PJ, it shall immediately give written notice to the PJ of the anticipated delay, the reasons therefore and request an extension of time for completion of project activities. Extensions may only be granted by the PJ.
- c) The PJ will from time to time evaluate the progress of the CHDO. At the time of this review, if the CHDO has not demonstrated significant progress toward completion and delays are determined by PJ to be within the control of the CHDO; the PJ may proceed to termination of this Agreement.

10) CONFLICT OF INTEREST POLICY (24 CFR 92.356(f))

The CHDO agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The CHDO further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the CHDO hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the CHDO, or of any designated public agencies or Sub-recipient receiving funds under the HOME Entitlement Program.

11) RECORDS AND REPORTS (24 CFR 92.508)

- a) Project records are to be maintained in accordance with 24 CFR Part 92.508 (a) (3). In addition, the CHDO will maintain records as required at 24 CFR Part 92.508 (a) (4).
- b) The CHDO will maintain records of each property acquired, rehabilitated or redeveloped and sold for a period of not less than five (5) years from the expiration of the Affordability Period
- c) The CHDO will provide to the PJ an up-to-date financial report each quarter, within fifteen (15) days of the completion of the quarter

- d) The CHDO will provide to the PJ an up-to-date narrative report each quarter, within fifteen (15) days of the completion of the quarter
 - i) The narrative report shall contain at a minimum the Performance Benchmarks (above) and the CHDO's progress against the Performance Benchmarks
- e) Within ninety (90) days of the CHDO's Fiscal Year, the CHDO shall deliver to the PJ an audit compliant with the HOME program requirements and the OMB standard that applies to the CHDO

12) CHDO PROVISIONS (24 CFR 92.208; 92.300 AND 92.301)

- a) The CHDO will maintain a Board of Directors in compliance with the HOME CHDO regulations. The CHDO agrees to notify the PJ within fifteen (15) days of any change to the composition of the CHDO Board of Directors
- b) The CHDO X will or will not (check one) receive an **Operating Expense** allocation under this agreement.

13) CHDO PROCEEDS AND REPAYMENTS

- a) The CHDO will be allowed to retain any loan repayments, interest, and other return on the investment of HOME funds as CHDO Proceeds. CHDO Proceeds may be used for non-HOME housing activities which benefit low to moderate income families. No more than 20% of retained CHDO Proceeds may be used for CHDO operating expenses during the first cycle. Subsequent cycles have no usage limitations. The CHDO will be responsible for maintaining this documentation and reporting annually to the PJ concerning the collection and use of CHDO Proceeds.
- b) In accordance with Section 6(c) above and 24 CFR 92.501, HOME funds invested by the CHDO in affordable housing are subject to recapture if the assisted unit ceases to qualify as affordable housing before the period of affordability expires and must be repaid to the City. Recaptured funds are not CHDO Proceeds. Repayment of HOME funds to the City on any project determined ineligible for HOME assistance due to non-compliance with the requirements of 24 CFR Part 92 shall be the responsibility of the CHDO.

14) LABOR, TRAINING, EMPLOYMENT OPPORTUNITY & BUSINESS OPPORTUNITY

The CHDO agrees to comply with applicable federal regulations governing labor, training, employment opportunity, business opportunity, and related requirements as detailed in the attached *Appendix C: Contract Provisions for CDBG & HOME-Assisted Construction/Rehabilitation Projects*

15) OTHER FEDERAL REQUIREMENTS (Subpart H: 24 CFR 92.350 through 92.357)

- a) **Age Discrimination:** The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR, Part 146, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR, Part 8; <http://www.hud.gov/offices/fheo/disabilities/sect504.cfm>
- b) **Aquifers:** The Safe Drinking Water Act of 1974, (42 U.S.C. Sec. 201, 300(f) et seq.), and (21 U.S.C. Sec. 349) as amended, particularly Section 1424 (e) (42 U.S.C. Sec. 300h-303(e); http://www.law.cornell.edu/uscode/42/usc_sup_01_42_10_6A_20_XII_30_C.html
- c) **Archeological:** The Reservoir Salvage Act of 1960 (16 U.S.C. Sec. 469 et seq.), particularly Section 3 (16 U.S.C. Sec. 469a-1), as amended by the Archeological and Historic Preservation Act of 1974; http://www.nps.gov/history/local-law/FHPL_ArchHistPres.pdf
- d) **Clean Air:** The Clean Air Act (41 U.S.C. Sec. 7401 et seq.) as amended, particularly Section 176(c) and (d) (42 U.S.C. Sec. 7506(c) and (d)); <http://www.gpo.gov/fdsys/pkg/USCODE-2008-title42/pdf/USCODE-2008-title42-chap85.pdf>
- e) **Coastal Zone Management:** The Coastal Zone Management Act of 1972, (16 U.S.C. Sec. 1451 et seq.) as amended, particularly Section 307(c) and (d) (16 U.S.C. Sec. 1456(c) and (d); http://www.nps.gov/history/local-law/fhpl_cstlzonemngmt.pdf
- f) **Endangered Species:** The Endangered Species Act of 1973, (16 U.S.C. Sec. 1531 et seq.) as amended, particularly Section 7 (16 U.S.C. Sec. 1536)); <http://www.nmfs.noaa.gov/pr/laws/esa/text.htm>
- g) **Environmental Review Procedures** for Title I Community Development Block Grant Programs, 24 CFR Part 58, as amended in 47 Fed. Reg. 15750 (April 12, 1982); http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr58_00.html

- h) **Equal Employment Opportunity:** The requirements of Executive Orders 1246 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR, Chapter 60. <http://www.fedglobe.org/issues/hudpolicy.htm>
- i) **Equal Opportunity in Housing:** Executive Order 11063, as amended by Executive Order 12259, and 24 CFR part 107, Nondiscrimination and Equal Opportunity in Housing under Executive order 11063 or 24 CFR, Part 107 shall be a proper basis for the imposition of sanctions specified in 24 CFR 107.60; http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr107_00.html
- j) **Fair Housing Act:** The Fair Housing Act (42U.S.C. 3601-20) and implementing regulations at 24 CFR part 10; Executive Order 11063, as amended by Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958-1963 Comp., 652 and 3CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing and implementing regulations at 24 CFR, Part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination on Federally Assisted Programs) and implementing regulations issued at 24 CFR, Part 1; <http://www.hud.gov/offices/fheo/FHlaws/index.cfm>
- k) **Farmlands:** Farmlands Protection and Policy Act of 1981, (7 U.S.C. Sec. 4201 et. seq.) 24 CFR Part 51, Environmental Criteria and Standards. <http://www.wbdg.org/pdfs/24cfr51.pdf>
- l) **Flood Plain:** Flood Disaster Protection Act of 1973, (42 U.S.C. Sec. 4001 et. seq.) as amended, particularly Sections 102(a) and 202(a) (42 U.S.C. Sec. 4012a (a) and Sec. 4106(a); and Executive Order 11988, Floodplain Management, May 24, 1977 (42 Fed. Reg. 26951), particularly Section 2. http://www.fema.gov/pdf/fhm/frm_acts.pdf www.archives.gov/federal.../executive-order/11988.html
- m) **Historic Preservation:** National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.) and 40 CFR Parts 1500-1508; Section 106 (16 U.S.C. Sec. 470f); and 36 CFR 800
- n) **Immigration Status:** Requirement that all members of a household must be either US citizens, resident aliens (have a green card), or one of several exempt classes to occupy a HOME assisted unit. http://74.125.47.132/search?q=cache:Y9-J6QPvSoJ:www.aoa.gov/prof/civil_rights/Non_citizens/v0qaniof.pdf+Fed+Register+Vol+62+No+221+page+61344&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a
- o) **Lead Based Paint:** Applies to all existing units built before 1978; Title IV of the Lead Based Paint Poisoning Prevention Act (42 U.S.C. Sec. 4831). <http://frwebgate2.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=aQikBT/0/1/0&WAIAction=retrieve>
- p) **Minority and Women's Business Enterprise:** The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Consistent with HUD's responsibilities under these Orders, each applicant must make efforts to encourage the use of minority and women's business enterprises in connection with HOME funded activities. Each Contractor must prescribe procedures acceptable to the State to

establish activities to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women. The Contractor/Subcontractor will be required to identify contracts which have been bid by minority owned, women owned, and/or small disadvantaged businesses

<http://www.hud.gov/offices/cpd/communitydevelopment/toolkit/files/MBE-WBEOutreach.pdf>

- q) **Noise Abatement and Control:** 24 CFR 51 B <http://www.wbdg.org/pdfs/24cfr51.pdf>
- r) **Protection and Enhancement of the Cultural Environment,** May 13, 1971 Executive Order 11593, (36 Fed. Reg. 8921), particularly Section 2(c); <http://www.archives.gov/federal-register/codification/executive-order/11593.html>
- s) **Environmental Justice:** [Executive Order 12898]
http://www.epa.gov/Region2/ej/exec_order_12898.pdf
- t) **Relocation:** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C., Sec. 4601 et. seq.), 49 CFR Part 24, and 24 CFR Section 570.49a (55 Fed. Reg. 29309 (July 18, 1990)). <http://www.hud.gov/offices/cpd/library/relocation/index.cfm>
- u) **Section 3: Employment Opportunities:** The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide job training, employment, and contract opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods <http://www.hud.gov/offices/fheo/section3/section3.cfm>
- v) **Siting of HUD-Assisted Projects near Hazardous Operations:** Establishes acceptable separation distance for the siting of residential buildings, mobile home parks or other HUD-assisted projects near stationary hazardous operations which store, handle or process chemicals or petrochemicals of an explosive or flammable nature. 24 CFR 51 C
<http://www.hud.gov/offices/cpd/environment/training/guidebooks/hazfacilities/>
- w) **Toxic or Hazardous Substances and Radioactive Materials:** Particular attention should be given to any site proposed for HUD assistance that is located on, or in the general proximity of, such areas as dumps, landfills, industrial sites or other locations that contain hazardous wastes. It is HUD policy that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.
- x) **Wetlands:** Prohibits the degradation or destruction of wetlands; Executive Order 11990 Protection of Wetlands, May 24, 1977 (42 Fed. Reg. 26961), particularly Section 2 and 5;
<http://www.epa.gov/OWOW/wetlands/regs/eo11990.html>
- y) **Wild & Scenic Rivers:** Applicable to projects within one mile of a designated wild and scenic river. The Wild and Scenic Rivers Act of 1968, (16 U.S.C. Sec. 1271 et seq.) as amended,

particularly Section 7(b) and (c) (16 U.S.C. Sec. 1278(b) and (c));
<http://www.nls.gov/offices/cpd/environment/review/rivers.cfm>

16) MISCELLANEOUS PROVISIONS

- a) **AMENDMENTS** – Any proposed change in this Agreement shall be submitted to the other party for prior approval. No modifications, additions, deletions, or the like, to this Agreement shall be effective unless and until such changes are executed in writing by the authorized officers of each party. CHDO acknowledges that HUD may from time to time issue updated guidance regarding the HOME program that may require amendment of this Agreement and agrees to cooperate with PJ in making such amendment.
- b) **SUBJECT TO FINANCIAL ASSISTANCE AGREEMENT** - This Agreement is made subject to financial assistance agreements between the PJ and the U.S. Department of Housing and Urban Development, with the rights and remedies of the parties hereto being in accordance with this Agreement.
- c) **ASSIGNMENT** - CHDO shall not assign this Agreement or any part thereof, nor shall CHDO transfer or assign any property or assets acquired using HOME funding or claims due or to become due hereunder, without the written approval of the PJ having first been obtained. The contracting or subcontracting of rehabilitation or construction work on the properties does not constitute an assignment.
- d) **ATTORNEY'S OPINION** - If requested, CHDO shall provide an opinion of its attorney, in a form reasonably satisfactory to the Independence City Counselor's Office, that all steps necessary to adopt this Agreement, in a manner binding upon CHDO, have been taken by CHDO.
- e) **SEVERABILITY** - In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

- f) AGREEMENT DURATION – Unless terminated by the PJ pursuant to the terms of this Agreement above, this Agreement will remain in effect for so long as CHDO has mortgage loans remaining outstanding on any property under this Agreement, for so long as any property under this Agreement is subject to a HOME required period of continued affordability as outlined in the regulations for the HOME investment Partnership Program Final Rule, 24 CFR Part 92, and for no less than fifteen (15) years.
- g) NO PARTNERSHIP – Nothing contained in this Agreement, any mortgage, note or any other document or instrument related to this project shall be deemed to create a joint venture, partnership relationship, or employer/employee relationship between the PJ and CHDO. CHDO shall at all times remain an “independent contractor” with respect to the services to be performed under this Agreement.

17) NOTICES

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

CITY OF INDEPENDENCE

City of Independence,
Com. Dev. Dept.
111 E. Maple Ave.
Independence, Missouri 64050
(816) 325-7398

Truman Heritage Habitat For Humanity

Christina Leakey, President and CEO
505 N. Dodgion
Independence, MO 64050
(816) 461-6551

Appendix A: CHDO Operating Expense Project Budget

**Truman Heritage Habitat For Humanity 2020-21
CHDO Operating Expense Written Agreement**

<u>HOME Eligible Operating Expense</u>	<u>Budgeted Amount</u>
Personnel Salary and Fringe Benefits (Executive Director and Housing Production Support Staff)	\$ 24,118.00
Total Budget	<hr/> \$ 24,118.00

In Witness Whereof, the parties have executed this CHDO Written Agreement as of the _____ day of _____, _____.

City of Independence

Truman Heritage Habitat For Humanity

(Signature)

Zachary Walker

(Printed Name)

City Manager

(Title)

(Date)

(Signature)

Christina Leakey

(Printed Name)

President and CEO

(Title)

(Date)

APPROVED AS TO FORM AND LEGALITY

Mitch Langford, Interim City Counselor