

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FINANCIAL ASSISTANCE****CalHome Program**

1800 Third Street, Suite 390-2
P. O. Box 952054
Sacramento, CA 94252-2054
(916) 327-3646
FAX (916) 322-6660



JUN 15 2012

Mr. Paul Malone, City Manager
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

Dear Mr. Malone:

Congratulations on your CalHome General Program Award. Attached is an electronic copy of the Standard Agreement number **11-CALHOME-8213**, which includes the following:

A. Standard Agreement (STD. 213) and Exhibits A thru D

STD. 213 - Cover page

Exhibit A, Authority, Purpose and Scope of Work

Exhibit B, Budget Detail and Payment Provisions

Exhibit C, State of California General Terms and Conditions – GTC 610

Exhibit C is now incorporated by reference, please see the Std. 213 for additional information.

Exhibit D, CALHOME General Terms and Conditions

B. For expeditious handling of the contract, please complete the following:

1. Print **five (5)** copies of the Std. 213 (Cover page only—Do not print Exhibits for HCD).
2. The person authorized by the Resolution must provide an **original signature, printed name, title and date** in the lower left-hand section entitled, "Contractor", on each copy of the Std. 213. If the Resolution did not authorize a designated official to sign the Std. 213 and any amendments thereto, your governing body must adopt a Resolution authorizing a designated official(s) to sign the Std. 213 and any subsequent amendments.

3. Return the 5 signed copies of the Std. 213 to the following address:

**Department of Housing and Community Development
Business & Contracts Services Branch
Contracts Office
1800 3rd Street, Room 350
Sacramento, CA 95811**

4. Maintain a complete electronic version of the Std. 213 and Exhibits A through D for your pending file. **(Note: The contract is not effective until it is signed by the Grantee's designated official and the Department.)**

Please note that this Agreement is not effective until it is signed by the Department.

Please accept my best wishes for a successful program or project. Please contact the CalHome Program at (916) 327-8255 if you have any questions regarding this Agreement or the provisions therein.

Sincerely,

A handwritten signature in dark ink, appearing to read "Raymond Victor", is written over a light gray circular stamp.

Raymond Victor, Program Manager
CalHome Program

STANDARD AGREEMENT CONTRACTOR'S COPY

STD 213 (Rev 06/03)

AGREEMENT NUMBER

11-CALHOME-8213

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME

City of San Marcos

2. The term of this Agreement is:

Upon HCD Approval through 04/05/2015

3. The maximum amount of this Agreement is:

\$652,200.00

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A - Authority, Purpose and Scope of Work	2
Exhibit B - Budget Detail and Payment Provisions	1
Exhibit C - State of California General Terms and Conditions*	GTC - 610
Exhibit D - CALHOME Terms and Conditions	5
Exhibit E - Special Terms and Conditions	0
Exhibit F - Additional Provisions	0

TOTAL NUMBER OF PAGES ATTACHED:

3 pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.documents.dgs.ca.gov/ols/GTC-610.doc>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**CONTRACTOR**

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc)

City of San Marcos

BY (Authorized Signature)

DATE SIGNED (Do not type)

8/13/12

PRINTED NAME AND TITLE OF PERSON SIGNING

Jack Griffin, City Manager

ADDRESS

1 Civic Center Drive, San Marcos, California 92069

STATE OF CALIFORNIA

AGENCY NAME

Department of Housing and Community Development

BY (Authorized Signature)

DATE SIGNED (Do not type)

8/16/12

PRINTED NAME AND TITLE OF PERSON SIGNING

Stacy Q. Hernandez, Contracts Manager, Business & Contract Services Branch

ADDRESS

1800 Third Street, Room 350, Sacramento, CA 95811

**California Department of
General Service
Use Only**

AUG 16 2012

☒ Exempt per: SCM 4.04.3 (DGS Memo dated 6/12/81)

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK

1. Authority & Purpose

This Standard Agreement (hereinafter "Agreement") will provide official notification of a Grant award under the General CalHome Program ("Program") administered by the State Department of Housing and Community Development ("Department") as authorized by and pursuant to Chapter 6 of Part 2 of Division 31 of the Health and Safety Code, commencing with Section 50650 (the "CalHome Statutes") and regulations found in Title 25 of the California Code of Regulation, Division 1, Chapter 7, Subchapter 9 commencing with Section 7715 ("CalHome Regulations"), all as amended and in effect from time to time.

- A. In accepting this Grant award, the Contractor agrees to comply with the following:
 - 1) CalHome Statutes;
 - 2) CalHome Regulations;
 - 3) Terms and conditions of the CalHome General Program Notice of Funding ("NOFA") dated October 7, 2011, which is incorporated herein by reference;
 - 4) Representations contained in the Contractor's application made in response to the NOFA ("Application"); and
 - 5) Terms and conditions of this Agreement.
- B. All funds provided through this Agreement are general obligation bond funds, pursuant to the Housing and Emergency Shelter Trust Fund Act of 2006. As such, pursuant to Government Code Section 16727, Contractor shall ensure that expenditures of the proceeds of the Program grant or loan are limited to those costs associated with the acquisition, rehabilitation or construction of capital assets.

2. Scope of Work

- A. Contractor shall perform the Scope of Work ("Work") as described in the Application, which is on file at the Department of Housing and Community Development, Division of Financial Assistance, 1800 Third Street, Room 390, Sacramento, California and which is incorporated herein by reference. All written materials or alterations submitted as addenda to the original Application and which are approved in writing by the CalHome Program Manager or higher Departmental official, as appropriate, are hereby incorporated as part of the Application. In the event of a conflict between the description of the Work in the Application and as described in this Exhibit, the description in this Exhibit shall prevail. The Department reserves the right to require the Contractor to modify any or all parts of the Application in order to comply with the CalHome Statutes or Regulations. The Department reserves the right to review and approve all Work to be performed by the Contractor in relation to this Agreement. Any proposed amendment to the Work must be submitted in writing for review and approval by the Department. Any approval shall not be presumed unless such approval is made by the Department in writing.

EXHIBIT A

- B. The Work shall generally consist of providing Mortgage Assistance loans to low and very low income homeowners.

3. Amount of Agreement

The amount of this Agreement for the Work described herein shall not exceed \$652,200.00.

4. Completion Dates

This Agreement shall expire on April 5, 2015. All funds remaining unexpended upon termination shall be disencumbered from this Agreement.

5. Department Contract Coordinator

The coordinator of this Agreement for the Department is the CalHome Program Manager, or their designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class mail to the following address:

Department of Housing and Community Development
Division of Financial Assistance
CalHome Program Manager
P. O. Box 952054, MS 390-2
Sacramento, California 94252-2054
Phone: (916) 327-8255

6. Contractor Contract Coordinator

The coordinator of this Agreement for the Contractor is listed below. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class mail to the contact at the following address:

City of San Marcos
Beth Nielsen, Housing Programs Specialist
1 Civic Center Drive
San Marcos, CA 92069
(760) 744-1050 extension 3178
bnielsen@san-marcos.net

7. Special Conditions

The Work shall be performed entirely within a designated redevelopment area under the jurisdiction of a local Redevelopment Agency or its Successor Agency.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Disbursement Process

- A. Payments to Contractor for Mortgage Assistances shall be on an advance or reimbursement basis. Upon the effective date of this Agreement, and upon submission of the required draw request form(s) and submission of any documentation required by the Department, as identified in Paragraph 1.C of this Exhibit, Contractor may obtain an advance, in an amount not to exceed 25 percent (25%) of the total amount provided under this Agreement. As these funds are used for eligible expenditures, the Contractor shall forward all required documentation to the Contract manager. When two-thirds (2/3) of the initial disbursement of CalHome Program funds on hand have been expended, the Contractor may request the next advance of 25% of the total amount provided under this Agreement. This procedure of advances shall continue until the total amount provided under this Agreement is expended and is subject to the requirements of Exhibit A, Paragraph 4, of this Agreement.
- B. The Department reserves the right to request copies of any documentation at any time prior to, or after the processing of any draw request.
- C. As a condition of the first draw of funds for Mortgage Assistance, Contractor shall submit the following for the Department's review and approval:
 - 1) Program guidelines describing the Contractor's Mortgage Assistance Program per Regulations Section 7730(a);
 - 2) Written procedures for long-term loan servicing;
 - 3) Written procedures for Homebuyer Education;
 - 4) A copy of Contractor's Reuse Account plan;
 - 5) An executed twenty (20) year Monitoring Agreement on a form to be provided by the Department ("20-year Monitoring Agreement"); and
 - 6) Copies of Promissory Note and Deed of Trust that will be used by the Contractor.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

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

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

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D

CALHOME TERMS AND CONDITIONS

1. Effective Date and Commencement of Work

This Agreement is effective upon approval by the Department which is the date stamped in the lower right hand corner of page one of this Agreement. The Contractor agrees that Work shall not commence, nor any costs to be paid with CalHome funds be incurred or obligated by any party prior to execution of this Agreement by the Department, completion of all required environmental clearances, and compliance with the applicable conditions of this Agreement. The Contractor agrees that the Work shall be completed in accordance with the dates specified in Exhibit A, Paragraph 4. This Agreement shall terminate on the date set forth in Exhibit A, Paragraph 4.

2. Amount and Form of Funding

- A. For the purposes of performing the Work, the Department agrees to provide to the Contractor the amount specified in Exhibit A, Paragraph 3. In no instance shall the Department be liable for any costs for the Work in excess of this amount, nor for any unauthorized or ineligible costs.
- B. The Department shall provide funds to the Contractor to be used for the following eligible activities as further described in the NOFA, and specified in Exhibit A, Paragraph, 2.B:
 - 1) Grants for Mortgage Assistance low or very low income first time homebuyers, including Mortgage Assistance for Acquisition with Rehabilitation;
 - 2) Grants for Owner-Occupied Rehabilitation for low or very low income homeowners; and/or
 - 3) Homeownership Project Development Loans which may convert to Grants pursuant to the loan terms defined in Section 7746 of the Regulations.

3. Permitted Uses of Funds

The Contractor shall use funds provided pursuant to this Agreement only for performance of the Work, and consistent with the requirements of the NOFA and the Regulations.

4. Termination and Breach

- A. In the event of the Contractor's failure to satisfy or comply with any term or condition in this Agreement or with respect to the 20-year Monitoring Agreement as specified in Exhibit B, Paragraph 1.C. 5, within the time and in the manner specified, after written notice to the Contractor by the Department specifying:
 - 1) the breach;
 - 2) the action required to cure such breach; and
 - 3) a date, not less than fifteen (15) days from the date of receipt of such notice by the Contractor, by which such breach must be cured.

EXHIBIT D

- B. In the event of such breach the Department may also take such action or seek such remedies as provided in the 20-year Monitoring Agreement.
- C. Unless otherwise approved by the Department, upon termination of this Agreement, the Contractor shall complete all the Work in progress and terminate any other activities that were to be paid for with CalHome Program funds. Any unexpended funds received by the Contractor shall be returned to the Department within fifteen (15) days of the notice of termination.

5. Insurance

- A. Prior to the disbursement of funds under this Agreement and thereafter during the term hereof, the Contractor shall obtain, carry, and maintain in force, comprehensive general liability insurance in the amount not less than one million dollars (\$1,000,000) for injury to or death of one person, one million dollars (\$1,000,000) for injury to or death of more than one person in one accident, and adequate property damage insurance. All insurance carriers must meet the requirements of the State of California Department of Insurance.
- B. Upon demonstration of cause satisfactory to the Department, the requirements in Paragraph 5.A above may be satisfied by the Contractor providing evidence of an alternative to conventional insurance sufficient to provide equivalent protection.

6. Inspections

- A. The Contractor shall inspect any Work performed hereunder to ensure the Work is being and has been performed in accordance with the applicable federal, state and/or local requirements, any applicable construction contract, and this Agreement. The Contractor agrees to require that all Work found by such inspections not conformed to the applicable requirements be corrected, and to withhold payment to the construction contractor or subcontractor until it is so corrected.
- B. The Department reserves the right to inspect any site upon which the Work is being performed. The Contractor shall include a provision permitting the Department or its agents or any subcontractor for performance of the work.

7. Signs

- A. Contractor shall place a sign on the Property during construction that shall include the Department as one of the entities providing financing to the development.
- B. During the construction period the Department may place one or more signs on the Property stating that it is providing financing for the development.

8. Reporting Requirements

- A. During the term of this Agreement, and no later than thirty (30) days after the end of each calendar quarter, the Contractor shall submit to the Department a performance report on a form provided by the Department.

EXHIBIT D

- B. During the term of this Agreement, and no later than thirty (30) days after June 30th of each year, the Contractor shall submit, upon request of the Department, an annual performance report on a form provided by the Department.
- C. During the term of this Agreement, the Department reserves the right to request other forms or reports as necessary or required.

9. Audit/Retention and Inspection of Records

- A. Contractor shall retain all books and records pertaining to performance of this Agreement for a minimum of three years after the expiration of this Agreement and any and all amendments hereto, or for three years after the conclusion or resolution of any and all audits or litigation relevant to this Agreement, whichever is later.
- B. Contractor shall adequately document each transaction to permit the determination, through an audit if requested by the Department, of the accuracy of the records and the allowability of the expenditures paid in whole or in part, with CalHome funds. If the allowability of an expenditure cannot be determined because records or documentation are inadequate, the questionable expenditure will be disallowed. The Contractor shall reimburse the Department for the amount of any disallowed expenditures of the Contractor or its agents or subcontractors. Determination by the Department of allowability of any expenditure shall be final.
- C. The Department does not require a routine audit of the Contractor's books; provided, however, the Contractor shall comply with any reasonable demand by the Department for an audit of the Contractor's activities related to this Agreement. If the Department provides the auditor, the Department will pay for the cost of the audit; otherwise, the Contractor shall pay the cost of the audit.
- D. Contractor agrees that the Department or its delegatee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. Contractor agrees to provide the Department or its delegatee with any relevant information requested and shall permit the Department or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Government Code section 8546.7. Contractor further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

10. Monitoring Agreement

Upon the Department's approval of Recipient's Loan Servicing Plan and CalHome Program Reuse Account Plan, the Recipient shall enter into the 20-year Monitoring Agreement. The 20-year Monitoring Agreement allows the Department to obtain necessary reporting information; review and approve changes to Loan Servicing Procedures or CalHome Program Reuse Account Plans; and, to perform monitoring of CalHome Program operations and accounts.

EXHIBIT D

11. Compliance with Laws and Guidelines

Contractor agrees at all times to act with respect to the CalHome Program, CalHome activities, and use of funds committed herein shall be in conformity with all laws applicable to the CalHome Program including those of the State of California, all federal laws, all local rules or ordinances, all requirements of the CalHome Program including the CalHome Statutes and Regulations.

12. Disencumbering Funds

Funds authorized by this Agreement shall be disencumbered in whole or in part if funds are not expended within the time frames specified in Exhibit A, Paragraph 4.

13. Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. Any remedy afforded in this Agreement shall be taken and construed as cumulative, and in addition to, any other remedy provided therein or by law. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Contractor of such provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

14. Litigation

- A. If any provision of this Agreement, or underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Contractor shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

15. Prevailing Wage

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, Contractor shall ensure that the requirements of Chapter 1 (commencing with section 1720) of part 7 of the Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- B. For the purposes of this requirement "construction work" includes, but not limited to the rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. (Note: For the purposes of this requirement "in support of construction work" includes, but not limited to the work performed during the design and preconstruction phases of construction (i.e. development,) including, but not limited to, inspection and land surveying work under

EXHIBIT D

contract and paid for, in whole or in part, through this Agreement. Development related work "in support of construction work" such as involving employment of trades/crafts like a field soil tester, laborer, electrical utility lineman, tree trimmer, driver(on/off-hauling to/from construction site shall be paid prevailing wages pursuant to California Labor Code, part 7, Chapter 1.) All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Contractor and a licensed building contractor, Contractor shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.