

Order 301-07/08

Passage: 6/16/08 9-0

EDWARD J. SUSLOVIC (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
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**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JAMES I. COHEN (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**ORDER AUTHORIZING CITY MANAGER TO EXECUTE  
THE CUMBERLAND COUNTY HOME CONSORTIUM  
MUTUAL COOPERATION AGREEMENT**

**ORDERED**, that the City Manager is authorized to enter into the Cumberland County HOME Consortium Mutual Cooperation Agreement, substantially in the form attached.

**CUMBERLAND COUNTY HOME CONSORTIUM  
MUTUAL COOPERATION AGREEMENT  
TO FORM A CONSORTIUM UNDER THE  
HOME INVESTMENT PARTNERSHIPS PROGRAM**

**THIS MUTUAL COOPERATION AGREEMENT** made this \_\_\_\_\_ day of June, 2008, by and between Cumberland County (COUNTY), the City of PORTLAND (PORTLAND), the City of WESTBROOK (WESTBROOK) and the Town of BRUNSWICK (BRUNSWICK). Cumberland COUNTY is acting as an Urban COUNTY representing the 23 member municipalities of the existing Community Development Entitlement Jurisdiction. The Consortium will be known as the **CUMBERLAND COUNTY HOME CONSORTIUM (CCHC)**.

**WHEREAS**, the Congress of the United States of America has enacted the Cranston-Gonzalez National Affordable Housing Act, HOME Investment Partnerships Program; and

**WHEREAS**, the U.S. Department of Housing and Urban Development (hereinafter, "HUD") has promulgated regulations, notices, and requirements as now or hereafter in effect, allowing units of general local government to enter into mutual cooperation agreements to form a consortium or continue an existing consortium for the purpose of obtaining funding as a participating jurisdiction under the HOME Investment Partnerships Program (hereinafter, "HOME Program"), and

**WHEREAS**, the signatory units of general local government intend hereby to establish a consortium to cooperate in undertaking or assisting in pursuing housing assistance activities through the HOME Investment Partnerships Program, as it may be amended, and

**WHEREAS**, COUNTY, PORTLAND, WESTBROOK and BRUNSWICK agree that it is desirable and in the interests of their citizens to secure approval from U.S. Department of Housing and Urban Development (HUD) as a consortium under the federal HOME Program authorized under the HOME Investment Partnership Act, Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended;

**WHEREAS**, the signatories to this agreement agree to comply with all requirements of HUD regulations and requirements as now or hereafter in effect for eligibility to participate to the maximum extent possible in the HOME Program to create or improve affordable housing for their low and moderate income residents.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, the COUNTY, PORTLAND, WESTBROOK and BRUNSWICK agree as follows:

**SECTION 1 - DEFINITIONS**

The definitions contained in 24 CFR Part 92, Subpart A, paragraph 92.2 are incorporated herein by reference and made a part hereof, and the terms defined in this section have the following meanings given them:

1. **"Act"** means Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. 12701 et. seq.).
2. **"Consolidated Plan"** means the Consolidated Plan for Housing and Community Development Programs prepared and adopted by the COUNTY, PORTLAND, WESTBROOK and BRUNSWICK, as amended from time to time. The Plan describes the needs, resources, priorities and proposed activities to be undertaken with respect to HUD Programs, including the HOME Program.

3. **"Federal HOME Program"** means a procedure established for the use of funds made available from HUD through the Act to carry out multi-year housing strategies through assistance to first-time homebuyers and existing homeowners, property acquisition, rehabilitation and new construction of housing, site improvements, tenant-based rental assistance, demolition, relocation expenses and other reasonable and necessary expenses related to the development of affordable housing.
4. **"Regulations"** means 24 CFR Part 92 HOME Investment Partnerships Program Implementing Regulations as issued by HUD.
5. **"Federal HUD Consortium"** means a consortium of units of general local governments bound by the terms of a HOME Investment Partnership Act Consortium Agreement participating in the Federal HOME Program and receiving funds as authorized in the Federal Program Regulations.
6. **"Federal Program Requirements"** means documents issued by the U.S. Department of Housing and Urban Development describing the regulations and requirements of the HOME Program
7. **"Member"** means a unit of local government that is a signatory to this Agreement and therefore a member of the Consortium for the purpose of carrying out eligible activities under HUD regulations and requirements as now or hereafter in effect.
8. **"Lead Entity"** means a unit of local government designated hereafter as the one member to act in a representative capacity for all members for the purposes of this Agreement, as defined in HUD regulations and requirements as now or hereafter in effect.
9. **"Subrecipient"** is a public agency or non-profit selected by the member to administer all or a portion of the member's HOME Program.
10. **"Consolidated Strategy and Plan"** means a Consolidated Plan, as defined in HOME Program Regulation 92.2 and required by HUD regulations and requirements as now or hereafter in effect.
11. **"CHDO"** means a Community Housing Development Organization, as defined in HUD regulations and requirements as now or hereafter in effect.
12. **"HUD Regulations and Requirements"** means those HUD regulations and requirements which are applicable to the HOME Investment Partnerships Program.
13. **"Commitment"** means the member has executed a legally binding agreement with a recipient or a subrecipient to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance; or has executed a written agreement reserving a specific amount of funds to a community housing development organization; or has met the requirements in the regulations to commit to a specific local project.
14. **"Program Income"** means gross income received by the member or subrecipient directly generated from the use of HOME funds or matching contributions. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used.
15. **"Hold Harmless"** means the total amount of annual HOME funds PORTLAND would be expected to receive if the CCHC were not in place. In FFY '08 that amount was \$654,808. For calculation of that amount refer to Appendix A.
16. **"Set-aside"** means the portion of the annual CCHC allocation that will be allocated to PORTLAND in addition to the hold harmless amount, and in exchange for PORTLAND's consent to participate

and assume the responsibilities of the Lead Entity in the CCHC. For calculation of that amount refer to Section 5 B.

## **SECTION 2 - AGREEMENT**

- A. The term of this Agreement begins with the effective date of July 1, 2009 and ends June 30, 2012. The COUNTY, PORTLAND, WESTBROOK and BRUNSWICK agree that the terms of this Agreement cover the period necessary to carry out all activities that will be funded from funds awarded during three federal fiscal years (2009, 2010, 2011) and that all members of CCHC will remain in the CCHC for the entire period. This Agreement remains in effect until the HOME funds from each of the Federal fiscal years of the qualification period are closed out pursuant to 24 CFR 92.507.
- B. The City of PORTLAND, as a long established HOME Program Jurisdiction, will continue to independently operate its own HOME program. Decisions concerning the allocation of funds, program design and project selection will not be altered by PORTLAND'S participation in the CCHC.
- C. The Cumberland County Community Development Municipal Oversight Committee (MOC) will provide policy oversight for planning, operations, project selection and evaluation for the CCHC excepting activities conducted by the City of PORTLAND.
- D. The MOC will include members of the Cumberland County Entitlement Jurisdiction expanded to include BRUNSWICK and WESTBROOK for HOME Program activities. The MOC will review the proposed HOME program design each year and the CCHC program application to HUD. Each year's program design shall be subject to the approval of the Cumberland County Commissioners, and the elected boards of PORTLAND, WESTBROOK and BRUNSWICK. The proposed HOME program design will define a strategy in sufficient detail to accommodate the collective and individual needs and priorities of the COUNTY, WESTBROOK and BRUNSWICK.

The MOC will review the Consolidated Plan Update each year and approve any amendments needed. Proposed changes and amendments will be presented to consortium member's elected boards for approval and submission to HUD.

All consortium members must approve the HOME program design and any Consolidated Plan amendments prior to their submission to HUD.

- F. The COUNTY, PORTLAND, WESTBROOK and BRUNSWICK mutually agree that the City of PORTLAND shall act as the Lead Entity in a representative capacity for all members of CCHC for the purposes of the Act and as further defined in the Federal Program Requirements. The City of PORTLAND, in its capacity as lead entity, is authorized to enter into an agreement with HUD. The City Manager of the City of PORTLAND, acting on behalf of CCHC, is authorized to submit an application for funding under the federal HOME Program, consistent with the approved HOME program design for each year.
- G. The COUNTY, PORTLAND, WESTBROOK and BRUNSWICK agree that the City of PORTLAND as Lead Entity shall assume overall responsibility for ensuring that the CCHC HOME program meets the requirements concerning the Consolidated Plan in accordance with HUD regulations in 24 CFR Parts 92 and 91 and the requirements of 24 CFR 92.350(a)(5); and further, ensuring that the CCHC HOME program is carried out in compliance with the requirements of the Act, the Regulations and Federal Program Requirements. The COUNTY, WESTBROOK and BRUNSWICK agree to assist PORTLAND in maintaining compliance with the Act, the Regulations and Federal Program Requirements for the full compliance period, extending to and continuing beyond the expiration of this Agreement.

- H. If any new entities join CCHC, PORTLAND as Lead Entity agrees to notify HUD in writing and to provide a copy of the authorizing resolution from the new members' governing body and an amendment to this Agreement signed by the chief executive officer of the new member. PORTLAND, as Lead Entity, is authorized to amend this Agreement on behalf of the entire consortium to add new members to the CCHC.
- I. The CCHC HOME program will provide fair and ample opportunity for all members to access program funds, and members will be provided opportunity to comment on and approve the distribution of all funding made available through the MOC consistent with the adopted Consolidated Plan.
- J. PORTLAND as Lead Entity will be provided additional administrative funds to cover the costs of administering the HOME Program for CCHC. PORTLAND shall establish the HOME Investment Trust Fund as specified in 24 CFR Part 92.500, and will participate in the Integrated Disbursement and Information System (IDIS) and other accounting and compliance procedures as required by HUD. The COUNTY, WESTBROOK and BRUNSWICK agree to provide all required IDIS data to PORTLAND in a timely manner.
- K. Matching funds are required by HUD. CCHC members agree that the matching funds shall be provided as follows:
- PORTLAND will provide matching funds for projects and activities within PORTLAND
  - COUNTY, BRUNSWICK and WESTBROOK will provide match collectively for region-wide activities
  - BRUNSWICK, WESTBROOK or individual COUNTY communities will provide match for projects within their individual communities
  - The match credit balance held by the City of PORTLAND is available to match all CCHC activities on a "last resort" basis.
- L. HOME funds invested in affordable housing shall be repaid in compliance with Section 8. of this Agreement if the housing does not meet the affordability requirements of Section 92.252 and Section 92.254 of the Regulations or if the housing ceases to qualify as affordable housing before the period of affordability expires.
- M. This Agreement shall be executed by the Cumberland County Commissioners and officials of PORTLAND, WESTBROOK and BRUNSWICK pursuant to authority granted them by their governing bodies.
- N. The COUNTY, PORTLAND, WESTBROOK and BRUNSWICK certify that they will adhere to all federal regulations pertaining to the disposition of real property, if any real property is acquired with funds authorized under the Federal HOME Program Requirements.
- O. This Agreement shall be construed in accordance with and governed by federal law and by the laws of the State of Maine.
- P. This Agreement shall be amended only by mutual agreement of all parties in writing.
- Q. The CCHC is bound by the terms of this Agreement for the purpose of participating in the Federal HOME Program and agree to cooperate to undertake or to assist in undertaking housing assistance activities for the Federal HOME Program, and agree to receive funds as authorized in the Federal Program Regulations.
- R. The COUNTY, PORTLAND, BRUNSWICK and WESTBROOK agree to cooperate in the implementation of the HOME Program and to cooperate in the preparation of the Consolidated Plan in accordance

with HUD regulations in 24 CFR Parts 92 and 91, respectively, and the requirements of 24 CFR 92.350 (a)(5). The COUNTY, BRUNSWICK, and WESTBROOK shall execute and submit the required certifications, and shall prepare and submit its plan for monitoring compliance with the Consolidated Plan.

- S. In accordance with the Act and the Regulations, each member of the CCHC certifies that it will direct its activities to the alleviation of housing problems within Cumberland County, that it will affirmatively market HOME-assisted housing as defined in Section 92.351 of the Regulations and will affirmatively further fair housing in accordance with applicable federal and State laws.

### **SECTION 3 - DESIGNATION OF LEAD ENTITY; POWERS AND DUTIES OF LEAD ENTITY**

- A. The City of PORTLAND, acting through its Director of the Division of Housing and Neighborhood Services, hereinafter Consortium Administrator, will be designated as and agrees to assume overall responsibility as the Lead Entity for this consortium for the purposes of the HOME Program, in compliance with HUD HOME Program statutes, regulations, and instructions, now or hereafter in effect, for the duration of this Agreement.
- B. The Lead Entity shall have access to all Member records related to the use of HOME program funds for the purpose of ensuring compliance with HUD regulations.
- C. The Lead Entity shall establish and maintain the local HOME Investment Trust Fund required by HUD regulations and requirements as now or hereafter in effect.
- D. The Lead Entity shall establish, with the prior consent of the Member units, such administrative procedures as may be necessary to facilitate the application for and distribution of HOME program funds.
- E. The Lead Entity will provide technical assistance to the Members upon request. Said assistance shall not relieve each Member from compliance with all relevant HOME regulations, nor unduly burden the Lead Entity.

### **SECTION 4 - DUTIES OF MEMBER UNITS OF LOCAL GOVERNMENT**

- A. Each Member agrees to cooperate in undertaking or assisting in the pursuit of housing assistance activities for the HOME Investment Partnerships Program.
- B. The Consortium collectively acting through its Lead Entity and each of its Members, acting through an individual designated by each Member's chief executive officer, agrees to carry out eligible activities in accordance with the requirements of HUD regulations and requirements as now or hereafter in effect.
- C. Each Member shall be responsible for obtaining the necessary local approvals for acceptance and allocation of HOME program funds.
- D. Each Member shall be responsible for submitting to the Lead Entity all information necessary for participation in the consortium as defined in HUD regulations, requirements, and schedules as now or hereafter in effect. This includes, but is not limited to, information necessary for the Consolidated Strategy and Plan, Annual Action Plan, description of the use of HOME funds, the HOME Program Description including tasks to be performed, a schedule for completing the tasks, budget, and certifications, written agreements executed with subrecipients, and performance reports.

E. Project Management

- (1) Each Member, in conjunction with CCHC Program staff, shall be responsible for project management and shall perform all procedures and tasks necessary to develop, design, implement and monitor each specific project and shall fully comply with uniform administrative requirements as stated in HOME Program regulation 92.505. The Member, with assistance from CCHC Program staff, shall describe how each proposed project and site satisfy all applicable HOME Program regulations and the requirements of this Agreement and shall record these determinations in each project/site file together with an official approval memorandum signed by Member's responsible HOME Program staff.
- (2) Prior to implementation of projects, each Member shall enter into a HOME Project Funding Agreement with the Consortium for one or more projects. Existing HOME Project Funding Agreements predating this Mutual Cooperation Agreements may be extended as needed subject to mutual agreement of the Member and Consortium. A Member may also designate another duly qualified entity acceptable to the Consortium to enter into funding agreements with the Consortium and execute projects on behalf of said Member.

**SECTION 5 – FUNDING**

- A. The Lead Entity shall be entitled to 100% of the cap allowance (10%) of HOME Program funds available for administration of the Consortium. Specific administrative duties and procedures will be more fully defined in a "CCHC Program Administration Guidelines" document approved by all Members.
- B. After the administrative fee as defined in Section 5. A., and the Lead Entity's hold harmless amount, the Lead Entity shall receive an annual allocation set-aside of Consortium funds in the amount of       % of the balance of the annual allocation for eligible housing activities. COUNTY, WESTBROOK, and BRUNSWICK will then share in the final balance of HOME Program funds allocated to the Consortium each year. At the election of the members, PORTLAND may receive funds for eligible and approved activities above its standard hold harmless and set-aside allocations. A Member may voluntarily relinquish a portion or all of its approved HOME allocation, in writing, to another Member of the Consortium. See Appendix A for calculation of Portland's hold harmless funds.
- C. HOME funds will be deposited into and disbursed from the Consortium HOME Investment Trust account established by the Lead Entity consistent with HOME Program regulation 92.500 the HOME Investment Trust Fund and 92.502 Program disbursement and information system. All loan repayments, interest, or other returns on investments shall be deposited into this account each month.
- D. Reservation of HOME Funds
  - (1) Project Set-Up in IDIS. Each Member may request that the Lead Entity "set up" in the federal Integrated Disbursement and Information System (IDIS) or any successor system, i.e. establish an activity and reserve funds for each particular site or eligible activity, after meeting all the requirements of the Mutual Cooperation Agreement, the applicable HOME Project Funding Agreement, and all other related preliminary agreements.
  - (2) Each Member, with assistance from CCHC Program staff shall forward a Set-Up Request in writing to the Lead Entity, enclosing a HUD Project Set-Up Report together with the CCHC Project Compliance Checklist, completed through the project initiation stage. This shall include the applicable information indicating whether acquisition/relocation procedures are triggered, whether any acquisition/relocation procedures have been initiated, and if so

which procedures. If not previously submitted, the Member shall also transmit the CCHC Environmental Clearance Form. However, the Lead Entity will not establish a site or activity in the IDIS System if one or more of the following conditions occur: HUD Set-Up Report is incomplete; the data on the HUD Set-Up Report or other site data are inconsistent with HOME Program requirements; environmental clearance is not complete per Section 10, paragraph b. Environmental Review, or if the required acquisition/relocation procedures are incomplete or inadequate.

- (3) Each Member, in conjunction with CCHC Program staff shall request site Set-up consistent with the following:
  - (a) For a closing involving a cash transaction, submit request at least seven days prior to closing and scheduled to coordinate with the Lead Entity's cash drawdown cycle.
  - (b) For a closing that does not involve a cash transaction, submit request at least three business days prior to the closing.

#### E. Written Agreements

- (1) Prior to disbursing HOME Program funds each Member shall enter into a written agreement with the recipient including all provisions described in HOME Program regulation 92.504, or its successor.
- (2) The Member shall include in each such written agreement additional provisions as may be required by HUD and such reasonable requirements as may be requested by the Lead Entity consistent with HOME Program regulations and this Agreement.

F. Review of Project Funding Instruments Members shall transmit any proposed funding instruments and agreements to the Lead Entity for review consistent with the applicable Consortium administrative guidelines, as they may be amended from time to time. Once guidelines and funding instruments have been approved by the Lead Entity, the Member may execute such funding instruments without further review by the Lead Entity. Each Member must keep originals or certified copies of all case-specific funding instruments and related documents in project files.

G. Expenditures The Member shall meet the principles and standards of cost allowability stated in the current OMB Circular A-87, "Cost Principles for State and Local Governments."

H. Reversion of Assets Upon expiration of this Agreement, each Member shall transfer to the Consortium HOME Investment Trust any HOME funds on hand at the time of expiration and accounts receivable attributable to the use of HOME funds per HOME Program regulations 92.503 and 92.504(c) and HUD Notice CPD 97-09. In the event the Consortium is dissolved, HOME funds and receivables shall remain in the custody of the Member, unless otherwise provided by HUD.

### **SECTION 6 - SETASIDE FOR COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS**

The CCHC as a whole is responsible for reserving not less than 15 percent of its HOME funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations (CHDOs), in accordance with the Consortium's Program Administration Guidelines and HOME Program regulations 92.300 - 92.303, as they may be amended from time to time.

### **SECTION 7 - TERM OF AGREEMENT AND RENEWAL**

A. This Agreement shall commence on July 1, 2009 and remain in effect during the period necessary to complete all activities funded by Federal Fiscal Year (FFY) 2009, 2010, and 2011 HOME Program grants or until the Consortium's status as a participating jurisdiction in the HOME Program is revoked by HUD,

whichever occurs first. Members of the Consortium agree to a program year of July 1 to June 30 for the purposes of HOME.

- B. Nothing in this Agreement obligates a Member to become a signatory to a future agreement to continue the Consortium for HOME Program grants subsequent to FFY2012. Each Member shall notify the Lead Entity at least 60 days before the effective date of such future agreement if it intends not to become a signatory. Notwithstanding the foregoing, if the following FFY grant information is not available 60 days before the effective date, a Member shall use best efforts to notify the Lead Entity as soon as possible after it receives the grant information.

## **SECTION 8 - REPAYMENT OF FUNDS AND PENALTIES**

### **A. Repayment of HOME Funds to HUD**

(1) In the event that HUD requires the Lead Entity to repay HOME funds disbursed to the Consortium for failure to meet affordability requirements as set forth in applicable HUD regulations, or for any other reason, each Member shall reimburse the Lead Entity for the amount of funds required to be repaid on account of that Member's use of HOME funds. Consistent with the foregoing, the Lead Entity, when acting as a Member shall remain solely liable to HUD for repayment of HOME funds originally awarded to the Lead Entity, if required on account of the Lead Entity's use of such HOME funds.

(2) In the event that HUD requires repayment of HOME funds by the Lead Entity which cannot be attributed to a single Member's use of such funds, each Member shall be liable to repay to the Lead Entity, a proportional percentage of such repayment amount equal to the Member's portion of the total Consortium HOME Program funding allocation, or such other sum as the Consortium Members agree to in writing.

- B. Cancellation Each Member agrees to repay the Consortium HOME Investment Trust all HOME funds released to the Member attributable to a project in the event such project is cancelled for any reason. Such repayment shall be made within the time period specified by HUD or other reasonable time period agreed to by the Lead Entity.

- C. Violations Each Member who continues to violate any HOME Program regulation, provision of this Agreement, or provision of a HOME Project Funding Agreement, after having an opportunity to cure, shall repay to the Consortium HOME Investment Trust Account any HOME funds disbursed directly to recipients or subrecipients, with respect to the site or sites where the violation has occurred, or such amount as HUD determines.

### **D. Penalties**

(1) Member. Each Member shall reimburse the Lead Entity the full amount of any penalties assessed against the Lead Entity by HUD as a result of that Member's use of HOME funds pursuant to this Agreement. Each Member shall reimburse the Lead Entity the Member's proportionate share of any penalties assessed by HUD against the Lead Entity which penalties cannot be attributed to specific Members' use of HOME funds.

(2) Lead Entity The Lead Entity shall reimburse the Consortium the full amount of any penalties assessed against the Consortium by HUD as a result of the Lead Entity's failure to comply with HUD regulations.

- E. Restriction on Future Funds The Lead Entity may withhold and restrict a Member's access to HOME funds if the Member fails to cure a violation, fails to repay HOME funds or fails to pay the penalties

provided for above. Funds withheld in the amounts necessary to repay HOME funds or penalties should be charged against the Member's HOME funds in the following order:

- (1) First against the funds for the project or projects in which the violation occurred or which are the subject of dispute between the Lead Entity and Member;
- (2) Second against any other HOME funds allocated to the Member in the same fiscal year;
- (3) Finally against HOME funds allocated to such Member in future fiscal years.

If HUD subsequently determines that no violation has occurred, the Lead Entity shall make the withheld funds available to the Member for HOME projects. Otherwise such funds are retained for the benefit of the Consortium or in the case of penalties to reimburse the Lead Entity or Consortium as the case may be.

## **SECTION 9 - OPPORTUNITY TO CURE OR DISPUTE VIOLATIONS, LEGAL RECOURSE AND INDEMNIFICATION**

- A. Opportunity to Cure The Lead Entity shall provide a written notice to a Member of the violation of any provisions of this Agreement, a HOME Project Funding Agreement, or applicable HUD regulations. The notice shall set forth a description of the violation, the steps which must be taken to cure the violation and a reasonable time period established by mutual consent of the parties within which to effect the cure. However, if the parties are unable to agree to a deadline for full compliance, the Lead Entity shall establish said deadline. The Lead Entity may extend the time for cure if the Member proves its failure to cure was for circumstances beyond its control.
- B. Disputing a Violation If the Member and Lead Entity disagree as to whether a violation has occurred, either may request HUD's determination of whether a violation exists. The Member disputing the Lead Entity's finding of a violation may expend the subject funds, subject to repayment, unless the Lead Entity chooses to withhold the funds.
- C. Legal Recourse In the event that any Member, including the Lead Entity acting in its representative capacity, fails to comply with this Agreement, a HOME Project Funding Agreement, or a HOME Program or other HUD regulation or finding or fails to cooperate with any other Member, the Lead Entity or the Consortium in complying with a HUD finding, the Lead Entity or any other Member may take any steps necessary to fulfill its obligations to HUD and under this Agreement, including but not limited to legal action.
- D. Indemnification for Violations Each Member shall hold harmless and defend the Lead Entity, the Consortium and the other Members from and against all claims for repayment of HOME project funds attributable to such Member's failure to comply with applicable HUD regulations, this Agreement, or any HOME Project Funding Agreement, and from penalties, costs and attorneys' fees related to such failure.

## **SECTION 10 - FAIR HOUSING**

- A. Each Member agrees to affirmatively further fair housing in accordance with applicable Federal Law, Consolidated Strategy and Plan and with 24 CFR 570.904(c).
- B. Affirmative Marketing Each Member shall adopt and implement an Affirmative Marketing Plan including affirmative marketing procedures for HOME assisted housing containing 5 or more housing units consistent with the requirements of HOME Program regulations 92.351. Each Member shall summarize

these procedures in an affirmative marketing plan for each project. Documentation of action taken to carry out said site-specific plans shall also be placed in said files.

## **SECTION 11 – HOME/GENERAL PROVISIONS**

- A. Federal Regulations The provisions of 24 CFR Part 92, HOME Investment Partnerships Program, Final Rule, 24 CFR Part 92 dated September 16, 2003 (hereinafter "HOME Program regulations") and all future amendments and revisions to the same are hereby incorporated into and made a part of this Agreement. The Lead Entity and Members shall at all times comply with said HOME Program regulations, and shall comply with other related Federal and state statutes and regulations, Executive Orders, OMB Circulars, and all future revisions and amendments to the same. The Members shall become thoroughly familiar with all of the foregoing requirements as applicable and shall ensure that all projects comply in all respects.
- B. Environmental Review The release of funds for all HOME assisted projects and activities is subject to environmental review as set forth in HOME Program regulation 92.352 and 24 CFR 58. Each Member shall prepare and provide to the Lead Entity all information necessary to obtain Release of Funds from HUD and documentation to establish specific site clearance consistent with Consortium procedures.
- C. Equal Opportunity Each Member shall comply with all applicable Federal and State laws governing discrimination and equal opportunity. In particular, each Member shall ensure compliance with HOME Program regulations 92.350 and the following statutes and executive orders pertaining to Equal Opportunity: Fair Housing Act; Executive Order 11063 (Equal Opportunity in Housing); Civil Rights Act of 1964, Title VI (Nondiscrimination in Federally Assisted Programs); Age Discrimination Act of 1975; Rehabilitation Act of 1973, Section 504; Executive Order 11246 (Equal Employment Opportunity); Housing and Urban Development Act of 1968, Section 3; Executive Orders 11625 and 121432 (Minority Business Enterprise); Executive Order 12138 (Women's Business Enterprise).
- D. Labor Standards Each Member shall comply with and/or ensure compliance with all applicable state and federal labor laws, including but not limited to the Davis/Bacon Act, 40 U.S.C. 276a-5 et. seq., as applicable pursuant to HOME Program regulations 92.354. In particular, each Member shall comply with and/or ensure compliance with all applicable federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), and all future amendments and revisions thereto. Each Member shall require certification as to compliance with the provisions of this paragraph as required by HOME Program regulation 92.354.
- E. Records Each Member shall maintain all applicable records for its project(s) consistent with HOME Program regulations 92.508 Record-keeping. In addition each Member shall make available copies of all such records as may be requested by the Lead Entity for administration of the Consortium.
- F. Reports The Lead Entity shall, on behalf of the Consortium submit such reports (with full and complete copies to the Member) as may be required pursuant to HOME Program regulations 92.509 Performance Reports. Each Member shall cooperate with the Lead Entity in providing all data and information specific to each community and projects in such formats and time frame as required by HUD and the Lead Entity. In addition, each Member shall prepare and submit to the Lead Entity the project completion reports required by HOME Program regulation 92.502(d) Submission of project completion reports. This report shall be submitted to the Lead Entity within 45 days of the final requisition for HOME funds together with a fully completed AL Consortium Project Compliance Checklist. Following review of the above for completeness, the Lead Entity shall transmit the Project Completion Report on behalf of the Consortium to HUD as required by 92.502(d).
- G. Religious Organizations Each Member shall ensure that HOME funds are not disbursed to a primarily religious organization as prohibited by HOME Program regulations 92.257. In addition, each Member

shall comply with the provisions of the above regulation with respect to assisting wholly secular organizations established by religious organizations which may be eligible to participate in HOME funded projects.

H. Conflict of Interest

(1) In accordance with HOME Program regulation 92.356, the procurement of property and services by the Consortium, its Members and subrecipients is governed by the conflict of interest provisions stated in 24 CFR 85.36 and 24 CFR 84.42. Each Member shall comply with all applicable federal and state conflict of interest rules and shall endeavor to ensure the compliance with the same by all subrecipients as defined in HOME Program regulations 92.2 or other persons designated to receive HOME funds pursuant to this Agreement. At a minimum, each Member shall make a copy of all applicable conflict of interest provisions available to all recipients of HOME Program funds.

(2) The conflict of interest provisions of part (i) of this section shall apply to the following persons: any person who is an employee, agent, consultant, officer, elected or appointed official of the Lead Entity, or of the Members designated herein, or any state recipient, or subrecipient of HOME funds. None of the foregoing who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefits from a HOME assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. Any exceptions to the conflict of interest provisions stated or cited herein must be approved by HUD in accordance with HOME Program regulation 92.356(d). Each Member shall advise the Lead Entity in writing as to any such exceptions granted by HUD.

I. HOME Project Requirements Each Member shall perform and carry out the projects as described in the HOME Program Descriptions approved by HUD during the period covered by this Agreement and funded pursuant to Consortium-Member HOME Project Funding Agreements (Master Agreements and/or single project agreements), consistent with specific Project Descriptions and in compliance with the requirements of HOME Program regulations Subpart F, Project Requirements, as applicable, depending upon the type of project assisted. Each Member shall comply with requirements contained in Subparts E and F specifically in HOME Program regulations 92.205 to 92.215 concerning eligible and prohibited activities, income targeting requirements in regulations 92.216 and 92.217, unit subsidy limits, and all other applicable requirements stated in regulations 92.250 through 92.258. Written agreements executed with a subrecipient or other entity shall contain provisions requiring compliance with the regulations cited herein.

J. Ownership, Use, and Disposition of Property Each Member shall comply with the affordability provisions referenced in HOME Program regulations 92.252 - 92.256, as applicable, which include income targeting, use requirements, initial and subsequent sale restrictions. For rental projects assisted with HOME funds, each Member shall require that the affordability requirements of HOME Program regulation section 92.252 be enforced by deed restriction or by restrictive covenants running with the land in accordance with HOME Program regulation 92.252(e). If a Member fails to comply with any of the requirements of this provision, the Member shall be required to repay HOME funds disbursed pursuant to this Agreement, consistent with HOME Program regulation 92.503(b). Each Member shall describe in the Project Descriptions the specific restrictions to be utilized for each project.

K. Post-Completion Requirements Upon completion of a project, each Member shall enforce all applicable short and long-term special requirements. Such requirements include, but are not limited to: compliance with housing affordability requirements (see HOME Program regulations 92.252 – 92.255 and 92.504(c)), and compliance with the Housing Quality Standards (see regulation 92.251 and 92.504(c) & (d)). Each Member shall require owners of HOME assisted housing to comply with the

requirements stated above and all applicable requirements for the duration of the applicable period of affordability and shall incorporate such time period into the duration of agreements executed with recipients of HOME funds. Prior to the anticipated completion date for each site, each Member shall prepare a plan for each post-completion enforcement responsibility by site and shall include such plans in each site file. Each Member shall notify the Lead Entity of compliance with this requirement by completing the Post-completion Plan item on the Consortium Project Compliance Checklist for each site.

- L. Other Federal Regulations and Provisions Each Member shall comply with Federal regulations incorporated in HOME Program regulation Subpart G, sections 92.300 through 92.303, Subpart H, sections 92.350 through 92.357, and all other applicable HOME regulations as well as all project requirements per this Agreement, provided that a Member's responsibilities with respect to environmental review contained in Subpart H shall be as stated in SECTION 10 – HOME GENERAL PROVISIONS, paragraph b., Environmental Review above.
- M. Lead-Based Paint Each Member shall remain solely responsible for ensuring that all projects at all times comply with applicable requirements of the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4821, et, seq.; Lead-Based Paint Regulations 24 CFR Part 35 and all future revisions and amendments to the same. Each Member shall also ensure that all projects comply with such Lead-Based Paint regulations as may be adopted pursuant to HOME Program regulation 92.355, and with the applicable requirements of the Maine Lead Paint Statute, and all future revisions and amendments to the same.
- N. Audit and Monitoring
- (1) General. Consortium and Member records shall be audited consistent with 24 CFR 44 (OMB A-128; Government entities) and non-profit subrecipient records shall be audited consistent with OMB A-133. Each Member shall be responsible for the cost of all audits performed on its records and operations pursuant to this section and may use designated HOME administrative funds. Other entities shall be responsible for the cost of their audits, respectively, and shall not use HOME funds for any portion of the cost of such audits unless expressly approved by a Member and included as an authorized cost in the Project Budget. Each Member and/or its subrecipient shall make available all such records and documents as requested by the Lead Entity, HUD, and/or the Comptroller General of the United States. Such parties may examine and make copies, excerpts or transcripts from such records and may audit all contracts, procurement records, invoices, materials, payrolls, personnel records, conditions of employment, and all documents relating to all matters covered by this Agreement.
  - (2) HUD Performance Reviews and Monitoring HUD may conduct performance reviews and monitoring of the Consortium and of the Members as provided in HOME Program regulations 92.550 - 92.552. Each Member agrees to cooperate with HUD and the Lead Entity to undertake such remedial action as may be required pursuant to HOME Program regulation 92.551, Corrective and remedial actions.
  - (3) Monitoring by the Lead Entity The Lead Entity shall perform periodic monitoring of projects on behalf of the Consortium. Such monitoring will include, but shall not be limited to, an annual review of the activities of owners of housing assisted with HOME funds, as applicable in accordance with HOME Program regulation 92.504(d), and an annual review of the performance of each contractor and recipient of HOME Program funds. Each Member shall cooperate with the Lead Entity throughout these monitoring procedures and shall implement such corrective action as requested by the Lead Entity consistent with HOME Program regulations.
  - (4) Monitoring by Member Each Member, in conjunction with CCHC Program staff shall monitor its recipients at least annually to ensure full compliance with all applicable requirements. All monitoring shall be performed in accordance with applicable HUD monitoring guidelines and on

forms agreed to by the Lead Entity and Members. Each Member shall be responsible to follow through to resolve and clear any monitoring findings with respect to their own projects.

O. Indemnification

(1) Disclaimer Each Member shall hold harmless and defend the Lead Entity, the Consortium, and the other Members from and against all claims arising from any latent, or patent defects in any work performed or services provided with respect to each Member's projects pursuant to this Agreement and any duly executed Consortium-Member HOME Project Funding Agreement.

(2) Indemnification Each Member shall indemnify, hold harmless and defend the Lead Entity, the Consortium, and its agents, from and against all claims, damages, losses, and expenses including, but not limited to, attorneys' fees arising out of or resulting from the use of HOME funds disbursed pursuant to this Agreement with respect to each Member's projects, provided that any such claim, damage, loss or expense is (1) attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and (2) is caused in whole or in part by any negligent act or omission of a Member, anyone directly or indirectly employed by a Member, or anyone for whose acts the a Member may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

This section shall not be interpreted to waive the monetary limits or substantive areas of immunity under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq., or any other immunities or defenses under the Act or other applicable law.

P. Insurance Each Member shall require that all owners, contractors and subrecipients of HOME assisted projects shall at all times maintain certain types of insurance coverage consistent with the character of the project and shall ensure compliance with the following as applicable.

(1) Certificate of Insurance At time of closing of a grant or loan providing assistance, each Member shall obtain a certificate of insurance covering the assisted premises. Said certificate shall provide coverage of the types and amounts stated in subparagraphs (A) and (B) herein. The insurance provided shall be maintained for the duration of the note, mortgage or the affordability period, whichever is longer.

(a) The certificate of insurance shall provide, at a minimum, comprehensive general liability insurance and property insurance with an arrangement of coverage specifying the premises. The certificate shall name the Member as loss payee. Any changes from the standard required coverage and amounts as stated below must be mutually agreed to in advance and in writing by the Member and Lead Entity.

(b) Minimum Requirements Typically, the following coverage will be required at the minimum amounts indicated:

Property Insurance: Minimum Amount = 80% of market replacement value or amount of HOME funds invested and all senior indebtedness, whichever is greater.

Liability Insurance: Minimum Amount = HOME funds and all senior indebtedness

(2) Flood insurance All HOME - assisted projects are subject to the Federal Flood Disaster Protection Act and associated regulations. Each Member shall ensure compliance with the applicable requirements, including ensuring the provision of flood insurance protection coverage. At time of closing for providing assistance, each Member shall obtain a certificate of insurance covering the assisted premises. Said certificate shall provide the following minimum coverage:  
Minimum Amount = HOME funds and all senior indebtedness.

(3) Construction Insurance Prior to the commencement of work on any HOME-assisted site, each Member shall obtain a certificate of insurance covering the work to be performed. Said certificate shall provide coverage for premises, operations, contractual liability, completed operations, automobile liability, employers liability, workers' compensation and professional liability (where applicable) and shall name the Member as additional insured. Minimum amounts are stated in subparagraphs (A) and (B) below. The insurance shall be maintained for the duration of the work to be performed.

(a) Minimum Requirements Typically, the following coverages will be required at the minimum amounts indicated:

Workmens' Compensation:	Statutory coverage.
Employer's Liability:	\$100,000 Coverage B
Comprehensive General Liability:	\$300,000 each occurrence
Bodily Injury:	\$500,000 each occurrence
Property Damage	\$100,000 each occurrence \$300,000 aggregate

(b) Automobile Liability (case by case basis, subject to determination by Member and Lead Entity) for owned and non-owned vehicles:

Property Damage:	\$100,000 each occurrence \$100,000 aggregate
Bodily injury	\$250,000 each occurrence \$500,000 aggregate

Q. Displacement and Relocation

(1) General Each Member shall take all reasonable steps to minimize displacement of persons consistent with the requirements of HOME Program regulation 92.353. In the event that displacement cannot be avoided, each Member shall ensure compliance with HOME Program regulation 92.353, including the provision of relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, hereinafter "URA", as amended. In addition, the Member shall ensure compliance with the most current edition of HUD Handbook 1378 "Tenant Assistance, Relocation and Real Property Acquisition".

(2) Use of Community Development Block Grant funds (CDBG) If CDBG funds are utilized in a HOME assisted project for optional relocation costs (not administrative or planning costs) and/or for any project based costs, including staff project delivery costs, each Member shall ensure compliance with all applicable provisions of the Housing and Community Development Act of 1974, and applicable implementing regulations set forth in 24 CFR 570.

(3) Responsibility of Member Each Member shall prepare and maintain all necessary displacement and relocation plans and documentation, including, but not limited to site-by-site relocation plans, determinations of comparable housing, amounts and types of relocation assistance proposed, etc. as required by the URA. Each Member shall record compliance with all applicable relocation requirements on the Consortium Project Compliance Checklist.

R. Acquisition The acquisition of real property for a HOME project is subject to HOME Program regulation 92.353, the URA and the requirements of 49 CFR 24, Subpart B. Each Member shall ensure compliance

with all of the foregoing, and shall prepare and maintain all necessary acquisition documentation, including, but not limited to: appraisals, offer letters, required notices, checklists, and any related materials.

- S. Procurement Each Member agrees to fully comply with applicable requirements as referenced in 24 CFR 85.36 and related HUD Notices and will ensure compliance with 24 CFR 84.40 to 84.48 for nonprofit subrecipient organizations. Procurement steps must satisfy all applicable advertisement, competitive pricing, minority outreach, award, documentation and related requirements. Note that 24 CFR 24 prohibits the use of debarred firms and requires certain certifications for transactions consistent with 24 CFR 24, Appendix B.
- T. Loan Servicing In the event a loan or loans are issued with HOME funds, the Lead Entity and each Member shall work out appropriate arrangements for the financial servicing of said loan(s) satisfactory to the parties. Each Member shall establish and maintain accounting records and procedures consistent with 24 CFR 85.20, HOME Program regulations 92.505 and 92.508(a)(6), including but not limited to individual loan case files, loan account histories, posting of payments and/or deferrals, account maintenance and updates, recording of loan discharge documents, preparation of IRS reports as applicable, loan portfolio reports, loan receivables control, loan repayment and interest reports, and related loan management documents. Loan payments, repayments and recaptures shall be handled in accordance with 92.503.
- U. Assignability Neither any Member nor the Lead Entity shall assign any interest in this Agreement and shall not transfer any interest in the same whether by assignment or novation.
- V. Liens
  - (1) General Each Member shall ensure that any property benefiting through a HOME-assisted activity is free from any attachments, tax liens, mechanics' liens or any other encumbrances except as provided in paragraph (ii) below.
  - (2) A property assisted with HOME funds may have multiple mortgages subject to the discretion of each Member, and subject to loan underwriting analysis confirming sufficient equity is available to secure such HOME loan as may be secured by said property.

## **SECTION 12 - CHANGES**

In the event that changes in this Agreement become necessary, a Member initiating such changes shall notify the Lead Entity in writing describing the subject changes. Upon mutual consent regarding the requested changes, the Lead Entity shall prepare an amendment to this Agreement incorporating said changes which shall become effective following execution of the respective authorized signatories of the Members.

## **SECTION 13 - APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine and all applicable HUD regulations. HUD HOME Program regulations (primarily at 24 CFR Part 92) and requirements, as now or hereafter in effect, are incorporated by reference and shall take precedence for determining any issues that may arise concerning the Consortium.

## **SECTION 14 - SEVERABILITY**

- A. The provisions of this Agreement are severable. In the event that any provision herein is declared void or unenforceable, all other provisions shall remain in full force and effect.
- B. This Agreement is executed in two (2) counterparts, each of which shall be deemed to be an original and constituting together one and the same instrument, this being one of the said counterparts.

**SIGNATORIES**

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement in two counterparts, as of the date first written above.

Lead Entity; City of Portland

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Joseph E. Gray, Jr.  
City Manager

Member; Cumberland County

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Esther B. Clenott  
Chairman

Member; City of Westbrook

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Bruce L. Chuluda  
Mayor

Member; Town of Brunswick

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Donald H. Gerrish  
Town Manager

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APPENDIX "A"

City of Portland, "Hold Harmless" Calculation

Introduction

A central premise in the creation of the Cumberland County HOME Consortium is that the City of Portland, as an existing HOME Program Participating Jurisdiction, will continue to receive funding equal to its allocation prior to the formation of the Consortium. Portland will be "held harmless". Its base funding, prior to any added allocation owing to participation in the Consortium, as outlined in other sections of the Agreement, will remain neutral.

Orders:\

### The Standard

Portland's base, "hold-harmless" allocation under the Cumberland County HOME Consortium for 2009-2011 will be 118% of the HOME allocation for the Lewiston/Auburn HOME Consortium.

It is possible, though highly unlikely, the funding allocation for Lewiston/Auburn may vary from its historic established patterns. This could be due to penalties imposed by HUD, demographic shifts or other events unrelated to the federal HOME budget or HUD's general distribution of funds to participating jurisdictions. If this occurs, Consortium members will examine all available data to establish a hold harmless allocation for Portland in the fairest manner possible.