

**CITY CLERK
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**C-10698
03/01/2016**

Recorded by:
City Clerk's Office
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

CITY OF GLENDALE, ARIZONA

DOCUMENT TO BE RECORDED:

**Development Agreement for Infill Housing Development
Under the Home Investment Partnership Program
Habitat for Humanity
(Agreement C-10698)**

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)

WHEN RECORDED, RETURN TO:

City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

DEVELOPMENT AGREEMENT FOR INFILL
HOUSING DEVELOPMENT
UNDER THE HOME INVESTMENT PARTNERSHIP PROGRAM

This Development Agreement for Infill Housing Development under the Home Investment Partnership Program ("Agreement") is entered into this **1st day of March 2016**, by and between the City of Glendale, an Arizona municipal corporation ("City"), and Habitat for Humanity Central Arizona, an Arizona non-profit corporation ("Developer").

RECITALS

WHEREAS, the City has applied for and received federal funds pursuant to the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701, *et seq.* ("HOME Program") to assist low-income persons and families in obtaining decent and affordable homeownership opportunities;

WHEREAS, the Maricopa County HOME Consortium administers the HOME Program in Maricopa County, Arizona;

WHEREAS, the City has received an allocation of **\$469,146** from the Maricopa County HOME Consortium from a direct entitlement made by the U.S. Department of Housing and Urban Development ("HUD");

WHEREAS, Developer is a non-profit corporation that has applied for HOME Program funds from the City to be used to assist low-income persons and families in obtaining decent and affordable homeownership opportunities;

WHEREAS, the City believes that the activities of the Developer described in the Project comply with the requirements of the HOME Program regulations;

WHEREAS, it is necessary that the City and Developer to enter into an Agreement for the implementation of eligible activities; and

WHEREAS, the City desires to enter into this Agreement and provide Developer **\$255,000** in HOME Program funds to pay for the costs of implementing the Project.

The Parties enter into the following agreement:

AGREEMENT

- 1. HOME Program Activity.** Developer, in close coordination with the City, will perform all professional, technical and construction services necessary to purchase, rehabilitate or provide new construction of single family homes as detailed in **Exhibit A** ("Project").
- 2. Agreement Amount.** The City shall provide financial assistance in an amount not to exceed **\$255,000.00** subject to the terms of this Agreement and subject to the availability of federal funds. Providing this Agreement amount constitutes the City's entire participation and obligation in the performance and completion of all work to be performed under this Agreement.

3. **Commitment of Match.** Pursuant to 24 C.F.R. §§ 92.504 and 219, Developer agrees to make a match of at least 25% of the City's financial assistance. Developer therefore agrees to commit \$82,573.00, provided in the Match Letter attached as **Exhibit B** and the Memorandum of Agreement attached as **Exhibit C**.
4. **Duration of the Agreement.** This Agreement shall be effective for 18 months commencing on the date of this Agreement and expiring on September May 1, 2017, unless sooner terminated pursuant to the provisions contained herein.
5. **Project Budget.** The City will provide Developer, **\$255,000** as generally described in the Project Budget that is attached as **Exhibit D**.
6. **Eligibility of Homeowner.**
 - 6.1 In order to be eligible for HOME Program assistance, Homeowners must have a gross annual household income that does not exceed 80% percent of area median income ("AMI"), adjusted for household size. Verification of household income must be conducted by Developer in accordance with 24 C.F.R. § 92.203.
 - 6.2 Homeowners must produce documentation certifying to the Developer his or her lawful presence in the United States, as required by A.R.S. §§ 1-501 or 1-502, as applicable.
7. **Developer's Responsibilities.** Developer is responsible for performing those tasks defined in the Project for the purchase, rehabilitation or new construction of homes receiving HOME Program assistance and in the sale of homes in zip codes of 85301, 85302, and 85303, including, but not limited to, the following tasks:
 - 7.1 Enter into appropriate agreements with Homeowners.
 - a. These agreements with the Homeowners must require the recapture of all or a portion of the Home Program funds if the housing does not continue to be the "Principle Residence" of the family for the duration of affordability in accordance with 24 C.F.R. § 92.254(a)(5)(ii). For this requirement, "Principal Residence" is defined as the homeowner occupying the home no less than nine (9) months in a year; and
 - B. As required by 24 C.F.R. § 92.254, these agreements must be accompanied by loan documents necessary to recapture the Home Program funds are a Homeowner Deferred Loan Agreement for HOME Investment Partnership Funds ("Homeowner Deferred Loan Agreement") attached as **Exhibit E**, a Deed of Trust and Assignment of Rents ("Homeowner Deed of Trust") attached as **Exhibit F**, and a Promissory Note ("Homeowner Note") attached as **Exhibit G**.
 - 7.2 Enter into appropriate agreements with the City.
 - a. Agreements between the Developer and City must require the recapture of all or a portion of the Home Program funds if the housing does not continue to be the "Principle Residence" for families meeting the requirements for the duration of affordability in accordance with 24 C.F.R. § 92.254(a)(5)(ii); and
 - b. The HOME Program funds designated for the Project will be secured by a Deed of Trust and Assignment of Rents ("Developer Deed of Trust") attached as **Exhibit H** and a Promissory Note ("Developer Note") attached as **Exhibit I**, as required by 24 C.F.R. Part 92. These documents must be recorded with the County Recorder. Related documents, such as restrictive land covenants, must also be recorded, if applicable.
 - 7.3 Draft and enter into appropriate agreements with each entity being contracted to perform work. Oversee the performance of architects, engineers, attorneys, accountants, contractors

and subcontractors and others that are constructing the housing to assure compliance with this Agreement and with all applicable federal, state and local laws and regulations.

- 7.4 Assure that any payments made for professional and construction services to attorneys, consultants, developers, general contractors, subcontractors, architects, engineers and others are reasonable, competitive and necessary to carry out the Project in accordance with federal OMB Circular A-122 and 24 C.F.R. § 84, *et seq.*
- 7.5 Assure that all HOME Program funds provided under this Agreement are used only for eligible Project expenses and that there is no misuse and/or mismanagement of HOME Program funds.
- 7.6 Maintain an accurate accounting of any "Program Income," which is defined as the gross income received by Developer directly generated from the use of HOME Program funds or matching contributions ("Program Income").
- 7.7 Report Program Income to the City quarterly. Any Program Income may be retained by Developer, but must be used on HOME Program eligible projects within City municipal boundaries.
- 7.8 Monitor and document affordability requirements, affordability period and affirmatively market assisted housing to protected classes of citizens as required in 24 C.F.R. § 92.254.
- 7.9 Submit support documents which demonstrate continued compliance with affordability requirements annually by June 30.
- 7.10 Review appropriate documents to verify household income, family size, sources of income, current address, location and condition of home to be acquired, appraised home values, completeness and accuracy of information provided by household members and determine the type and amount of assistance to be provided in accordance with 24 C.F.R. § 92.203.
- 7.11 Assure that all Homes purchased, rehabilitated or constructed with HOME Program funds meet HUD Section 8 Housing Quality Standards ("HQS") and local building codes in accordance with 24 C.F.R. § 92.251 upon completion and during the period of affordability.
- 7.12 Assure the legal sufficiency of loan instruments, attend loan closings and facilitate the filing and recordation of liens and/or deed restrictions required by the HOME Program in accordance with 24 C.F.R. § 92.254(a)(5)(i).
- 7.13 Assure that Homeowners are protected against fraudulent and predatory lending practices and that prudent business practices including underwriting standards reviewed by a licensed mortgage underwriter are followed that assure affordability and sustainability of the mortgage throughout the HOME Program affordability period and the mortgage term.
- 7.14 Maintain a complete file for each approved application for assistance and such additional records as may be required by law and/or regulation, and in accordance with applicable sections of 24 C.F.R. § 92.508.
- 7.15 Complete the Project as expeditiously as possible and undertake every effort to ensure that the Project will proceed and will not be delayed. Failure to adhere to the Project 24-month expenditure deadline can result in cancellation of this Agreement and the revocation of HOME Program funds.
- 7.16 Assure that the amount of HOME Program funds invested in each Home is in compliance with the minimum and maximum subsidy requirements. Assure that a minimum of \$1,000 in assistance is invested per home in accordance with 24 C.F.R. § 92.205(c), and no more than the maximum per unit subsidy allowed in 24 C.F.R. § 92.250(a).

- 7.17 Collect and maintain Homeowner information pertaining to household size, income levels, racial characteristics, and the presence of Female Headed Households in order to determine low- and moderate income benefit in a cumulative and individual manner.
- 7.19 Execute and abide by Certifications mandated by federal grant requirements as listed in **Exhibit J**.
- 7.20 Carry out projects and perform services administered in compliance with all federal laws and regulations as further described in **Exhibit K**.

8. City Responsibilities.

- 8.1 City will provide Developer information regarding its requirements for the Project.
- 8.2 City will conduct progress inspections of work completed to ensure that the Project complies with federal regulations to protect its interests as lender.
- 8.3 City will provide information to the Developer regarding any progress inspections or monitoring to assist it in ensuring compliance.

9. Period of Affordability.

- 9.1 The Project is subject to ongoing compliance requirements of the HOME Program for the length of the affordability period identified in 24 C.F.R. § 92.254.
- 9.2 The affordability period begins once Maricopa County HOME Consortium records the close of the Project in the Integrated Disbursement Information System, a nationwide database providing HUD with current information regarding the Home Program activities underway across the nation, including funding data ("IDIS").
- 9.3 The affordability period is dependent upon expenditures provided in the table below:

HOME \$ Per Unit	Length of Affordability/Compliance
Less than \$15,000	5 Years
\$15,000 - \$40,000	10 Years
More than \$40,000	15 Years
New Construction of Rental Housing (regardless of the expenditure amount)	20 Years

10. Use of HOME Program Funds.

- 10.1 Developer will utilize the HOME Program funds awarded by this Agreement solely for activities eligible under the provisions of the HOME Investment Partnerships Act, the Project application, this Agreement, and applicable federal laws, federal regulations and Executive Orders as well as HUD notifications and guidance that currently exist and that may be issued in the future, and will use said funds for no other purpose.
- 10.2 The amount of HOME Program direct Project costs spent will not exceed any line item as shown in the Project Budget by more than 10% percent without the expressed written approval of the City. Additionally, in no event will Developer exceed the total amount of HOME Program funds provided under the Project Budget.

- 10.3 The City will review and provide prompt approval for reasonable and unforeseen cost increases provided such cost increases do not exceed the statutory per unit cost limits in 24 C.F.R. § 92.250 or the amount of funds provided in the Project Budget.

11. Reimbursement of Expenses & Developer Fees.

- 11.1 Project expenses (excluding developer fees) will be paid based on invoices for actual expenses incurred or paid. All such expenses will be in conformance to the approved Project Budget. Developer will be responsible for any cost overruns.
- 11.2 The City will pay Developer, as maximum compensation or fee for the Developer services for the amount identified in the Project Budget.
- 11.3 Developer covenants that all expenditures will comply with OMB circular A-122, and will be allowable, allocable and reasonable. The City reserves the right to inspect records and Project sites to determine that reimbursement and compensation requests meet the terms of OMB circular A-122. The City also reserves the right to hold payment until adequate documentation has been provided and reviewed.
- 11.4 Developer may submit a final invoice upon completion of the Project. Final payment will be made after the City has determined that all services have been rendered, files and documentation delivered, and Homes have been acquired, rehabilitated or constructed in full compliance with HOME Program regulations, including submission of a completion report and documentation of eligible occupancy, property standards and long-term use restrictions.
- 11.5 Developer will be monitored by the City for compliance with the regulations of 24 C.F.R. § 92.254(a) (4) for the affordability period specified above. Developer will provide reports and access to Project files as requested by the City during the construction of the Project and for six (6) years after completion and closeout of the Agreement or during the affordability period, whichever is longer.

12. Project Requirements.

- 12.1 Environmental Review. No HOME Program funds may be encumbered until the City has completed an Environment Review pursuant to the provisions of the National Environmental Policy Act of 1969 (“NEPA”) and the related authorities listed in HUD’s implementing regulations at 24 C.F.R. § 50.1, *et seq.* and 24 C.R.F. § 58.1, *et seq.* Until the Environment Review is complete, Developer will not undertake or commit any HOME Program funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to environmental clearance. The results of the Environmental Review may result in a decision to proceed with, modify or cancel the Project.
- 12.2 Non-Discrimination. In the selection of Homeowners, Developer will comply with all non-discrimination requirements of 24 C.F.R. § 92.350. Developer agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of Developer, will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, disability, sex, national origin, financial status, age, sexual orientation, gender identity, or marital status.
- 12.3 Relocation. No Project or activity that entails the relocation of occupants before, during or after the award of HOME Program funds under this Agreement will be conducted without the express written approval and coordination of the relocation activity with the City. The Project will not be approved where it is determined that any relocation of occupants has taken place prior to the submission of the Project Application.
- 12.5 Affordability Requirements.

- a. Developer will adhere to the repayment of investment requirements set forth in 24 C.F.R. § 92.503. Any HOME Program funds invested in the Project that do not meet the affordability requirements for the period specified in 24 C.F.R. §§ 92.252 or 92.254, as applicable, must be repaid in accordance with 24 C.F.R. § 92.503(b)(3).
- b. Housing assisted with HOME Program funds meet the affordability requirements of 24 C.F.R. §§ 92.252 or 92.254, as applicable. Repayment of the HOME Program funds will be required if the housing does not meet the affordability requirements for the specified time period. The affordability period must be enforced by means of liens on real property, deed restrictions or covenants running with the land. Homeownership projects must set forth resale or recapture requirements as part of the enforcement.
- c. All HOME Program funds recaptured because the housing no longer meets affordability requirements, will be forwarded to the City in accordance with 24 C.F.R. § 92.503.

13. Repayment of HOME Program Funds.

- 13.1 All HOME Program funds are subject to repayment in the event that Developer does not complete all professional, technical and construction services necessary to complete the Project.
- 13.2 Items that trigger full repayment prior to property transfer include, but are not limited to, the following:
 - a. The Home does meet Property standards as adopted by the City in the 2012 IBC Building Code; or
 - b. The Home is not sold to an income-eligible homebuyer; or
 - c. Developer does not comply with the HOME Program federal regulations.
- 13.3 Items that trigger repayment based on Net Proceeds occur subsequent to a Property transfer, and include, but are not limited to, the following:
 - a. The Home owner does not maintain compliance during affordability period; or
 - b. The Home owner does not maintain principal residency requirements.
- 13.4 Upon completion of the Project, any HOME Program funds reserved but not expended under this Agreement will revert to the City.
- 13.5 Any repayment of HOME Program funds will be made out of Net Proceeds from the sale of the HOME Program assisted unit. "Net Proceeds" are defined as: Sales Price minus non-HOME debt minus closing cost.

14. Procurement Standards.

- 14.1 Developer will comply with local procurement requirements as listed in the Additional Requirements as further described in **Exhibit L**.
- 14.2 Developer will establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring services to be provided under this Agreement, Developer will comply, at a minimum, with the nonprofit procurement standards at 24 C.F.R. §§ 84.40-48.
- 14.3 Any Developer that can be considered to be a religious organization will abide by all portions of 24 C.F.R. § 92.257.

15. **Maximum Home Value.** Developer must assure that the value as well as the purchase price of any home assisted with HOME Program funds does not exceed 95% of the home value limits in the Metropolitan Statistical Area as defined in Federal Housing Administration Section 203(b) and 24 C.F.R. § 92.250.
16. **Uniform Administrative Requirements.** To the extent applicable to a nongovernmental recipient of federal funds, Developer will comply with OMB Circulars A-87, A-102, A-110, A-122, A-133, as amended, the Davis-Bacon Act (40 U.S.C. 276a *et seq.*), as amended, and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, as amended), the Copeland Anti-Kickback Act (18 U.S.C. 874), as amended, and as supplemented by Department of Labor regulations (29 C.F.R. Part 3, as amended), the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*), as amended, and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, as amended); Executive Order 11246 (Equal Opportunity), as amended, and as supplemented by Department of Labor regulations (41 C.F.R., chapter 60, as amended); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*, as amended and Section 104(d) of the Act), and in accordance with 24 C.F.R. Part 42, as amended.
17. **Other Federal Requirements.**
 - 17.1 Affirmative Marketing. Developer must adopt affirmative marketing procedures and requirements for HOME Program-assisted housing containing three (3) or more housing units. "Affirmative marketing procedures" will consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing and will comply with the requirements and procedures of 24 C.F.R. § 92.351.
 - 17.2 Displacement, Relocation, and Acquisition.
 - a. Developer must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project.
 - b. Developer will consult the City prior to proceeding with any Project activity with HOME Program funds that may cause temporary or permanent displacement of the beneficiary of HOME Program investment. Such consultation shall assure compliance with appropriate relocation requirements of 24 C.F.R. § 92.353 in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA") (42 U.S.C. §§ 4201-4655) and implementing regulations at 49 C.F.R. Part 24, as amended and the Fair Housing Act (42 U.S.C. §§ 3601-19).
 - c. The Project is subject to the requirements of the Housing and Community Development Act of 1974, and implementing regulation at 24 C.F.R. § 570. This includes the section 104 (d) requirements to provide relocation assistance and replace low- and moderate-income housing as described at 24 C.F.R. § 570.606(c).
 - d. The acquisition of the Homes is subject to the URA and the requirements of 49 C.F.R. Part 24.1, *et seq.*
 - 17.3 Labor Requirements.
 - a. Federal regulation 24 C.F.R. § 92.354 requires that any contract for the construction (rehabilitation or new construction) of affordable housing with 12 or more units assisted with funds made available under the HOME Program must contain a provision requiring that the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-5), will be paid to all laborers and mechanics employed in the development of affordable

housing involved. Such agreements must also be subject to the overtime provisions, as applicable, to the Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332).

- b. Developer will comply with regulations issued under Federal Laws and Regulations pertaining to labor standards and HUD handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable.

17.4 Debarment and Suspension. As required by 24 C.F.R. Part 24.1, federal funds will not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor, subcontractor, developer, business, consultant or any entity during any period of debarment, suspension, or placement in ineligibility status, including the beneficiary of HOME Program investment.

18. Immigration Law Compliance.

18.1 Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

18.2 Any breach of warranty under subsection 18.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

18.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 18.1 above.

18.4 City may conduct random inspections, and upon request of City, Contractor will provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 18.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

18.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

18.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

18.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

19. Conditions of Religious Organizations.

19.1 Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME Program. Neither the federal government nor a state or local government receiving funds under the HOME Program will discriminate against an organization on the basis of the organization's religious character or affiliation.

19.2 Organizations that are directly funded under the HOME Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this section.

- 19.3 If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- 19.4 The completed Project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the Property.
- 19.5 An organization that participates in the HOME Program will not, in providing HOME Program assistance, discriminate against a Program beneficiary or prospective Program beneficiary on the basis of religion, religious belief or lack thereof.
- 19.6 The City will assure that any use of HOME Program funds by a religious organization, when commingled with funds of the religious organization, meet the requirements of 24 C.F.R. § 92.257.

20. Insurance.

- 20.1 Requirements. Developer must obtain, maintain and provide evidence of the following insurance ("Required Insurance") consistent with **Exhibit M**, Insurance Certificate:
 - a. Developer and Sub-contractors. Developer, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively "Contractor's Policies"), until each Parties' obligations under this Agreement are completed.
 - b. General Liability.
 - (1) Developer must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, products and completed operations, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
 - c. Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Developer and \$1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
 - d. Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits is required by Arizona law.
 - e. Equipment Insurance. Developer must secure, pay for, and maintain all-risk insurance as necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Developer or its Sub-contractors.
 - f. Notice of Changes. Developer's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Developer or Sub-contractor's Policies;

- (2) Reduction of the coverage limits of any of Developer or and Sub-contractor's Policies; and
 - (3) Any other material modification of Developer or Sub-contractor's Policies related to this Agreement.
- g. Certificates of Insurance.
- (1) Within 10 business days after the execution of the Agreement, Developer must deliver to City Representative certificates of insurance for each of Developer and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Developer and Sub-contractor's Policies in accordance with the provisions of this section.
 - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Developer and Sub-contractor's Policies, or to examine Developer and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
 - (3) Developer's failure to secure and maintain Developer Policies and to assure Sub-contractor Policies as required will constitute a material default under this Agreement.
- h. Other Contractors or Vendors.
- (1) Other contractors or vendors that may be contracted by Developer with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular agreement.
 - (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- i. Policies. Except with respect to workers' compensation and employer's liability coverages, the City must be named and properly endorsed as additional insureds on all liability policies required by this section.
- (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self-insurance policies or programs maintained by the additional insureds.
 - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and acceptable to all parties.

20.2 Sub-contractors.

- a. Developer must also cause its Sub-contractors to obtain and maintain the Required Insurance.
- b. City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.
- c. Developer and Sub-contractors must provide to the City proof of Required Insurance whenever requested.

21. **Bonds.** Upon execution of this Agreement, and if applicable, Developer must furnish payment and performance bonds as required under A.R.S. § 34-608 and 24 C.F.R. Part 85.36(h).

22. **Conflict.**

22.1 Developer acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

22.2 Developer agrees to abide by the provisions of 24 C.F.R. § 92.356 with respect to conflicts of interest, and covenants that no person who exercises or have exercised any functions or responsibilities with respect to activities assisted with HOME Program funds or who are in a position to participate in a decision making process or gain any inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or proceeds derived from the Project, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

22.3 Developer covenants that no person on its Board of Directors or any member of its staff has an identity of interest with any person or entities that might benefit directly or indirectly financially from this Agreement.

22.4 Developer further covenants that in the performance of this Agreement no person, having such a financial interest and/or influence with regard to the Project, will be employed or retained by Developer.

22.5 No owner, developer or sponsor of a project assisted with HOME Program funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or nonprofit (when acting as an owner, developer or sponsor) may occupy a HOME Program-assisted affordable housing unit in the Project. This provision does not apply to an individual who receives HOME Program funds to acquire or rehabilitate his or her principle residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the Project manager or maintenance worker.

22.6 If such conflict as outlined above does exist, Developer is bound to disclose officially in writing, on Developer's letterhead, the nature and extent of that conflict prior to execution of this Agreement, or if discovered subsequently, to disclose such conflict as soon as it occurs or is known.

22.7 Exceptions to above requirements are allowed under certain circumstances in accordance with 24 C.F.R. §§ 92.356(d), (e) and (f)(2). Requests for exceptions must be made to the City who, after determination as to whether an exception request is warranted, will render a decision and/or seek the approval of HUD to render a decision.

22.8 Developer will exercise due diligence and take all necessary steps to assure compliance with the requirements of this Section.

23. **Equal Employment Opportunity.**

23.1 Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, financial status, age, sexual orientation, gender identity, or marital status. Such action will include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City's Representative setting forth the provisions of this nondiscrimination clause.

- 23.2 Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, national origin, financial status, age, sexual orientation, gender identity, or marital status.
- 23.3 Developer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City's Representative, advising the labor union or worker's representative of Developer's commitments under Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
- 23.4 Developer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 23.5 Developer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.
- 23.6 In the event Developer is found to be in noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and Developer may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.
- 23.7 Developer will include the provisions of paragraphs this section of this Agreement in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

24. Labor, Training & Business Opportunity.

- 24.1 It is agreed that performance under this Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701u), as well as any and all applicable amendments thereto. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be provided to low and moderate income residents of the Project area, and that contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the Project area.
- 24.2 Developer will comply with the regulations issued pursuant thereto by HUD as set forth in Title 24 of the Code of Federal Regulations and all applicable rules and orders of HUD issued there under as well as any and all applicable amendments thereto prior to the execution of this Agreement as well as during the term of this Agreement. Developer certifies and agrees that it is under no contractual or other disability, which would prevent it from complying with these requirements as well as any and all applicable amendments thereto.
- 24.3 In construction contracts of \$100,000 or more, Developer will include a clause that in every subcontract performing work in connection with the Project and will, at the direction of the City, take appropriate action under 24 C.F.R. Part 135. Developer will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under Title 24 of the Code of Federal Regulations and will not enter

into any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with these requirements as well as with any and all applicable amendments thereto.

- 24.4 Compliance with the provisions of Section 3, the regulations set forth in Title 24 of the Code of Federal Regulations and all applicable rules and orders of HUD issued thereunder is a condition precedent to federal financial assistance being provided to and continuing to be provided to the Developer. Such compliance will be binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements will subject Developer or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by Title 24 of the Code of Federal Regulations, as amended, and may be cause to terminate this Agreement.
25. **Compliance with Federal, State & Local Laws.** Developer covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, and all amendments thereto, including, but not limited to; Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing Section 3 of the Housing and Urban Development Act of 1968; Housing and Community Development Act of 1974, and all requirements of the Home Program as set forth in 24 C.F.R. Part 92.
26. **Suspension & Termination.**
- 26.1 In accordance with 24 C.F.R. § 85.43, suspension or termination may occur if Developer materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 C.F.R. § 85.44.
- 26.2 If Developer is unable to meet the approved timelines as required by HOME Program regulations or complete the Project because of delays resulting from Acts of God, untimely review and approval by the City and other governmental authorities having jurisdiction over the Project, or other delays that are not caused solely by Developer, the City will grant a reasonable extension of time for completion of the Project. It will be the responsibility of Developer to notify the City promptly in writing whenever a delay is anticipated or experienced, and to inform the City of all facts and details related to the delay. Developer will also inform the City when it expects the delay to end and when it expects the Project to be complete.
- 26.3 If Developer fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the Agreement, or if Developer refuses or fails to proceed with the Project with such diligence as will ensure its completion within the time fixed by HOME Program regulations, Developer will be in default and notice in writing will be given to Developer's Representative of such default by the City or an agent of the City. If Developer fails to cure such default within such time as may be required by such notice, the City may at its option terminate and cancel the Agreement at the expiration of the cure period.
- 26.4 In the event of such termination, all HOME Program funds awarded to Developer pursuant to this Agreement will be immediately revoked and any approvals related to the Project will immediately be deemed revoked and canceled. In such event, Developer will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this Agreement, as the grant funds will no longer be available for this Project.
- 26.5 In the event of such termination, Developer will be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder prior to the date of said termination.
- 26.6 Notwithstanding the above, Developer will not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Developer. The City may withhold any payments to the Developer for the purpose of setoff against

such damages until such time as the exact amount of damages due the City from Developer is determined whether by court of competent jurisdiction or otherwise.

- 26.7 The waiver or failure to enforce a breach of any term, covenant or condition hereof will not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

27. Default-Loss of HOME Program Funds.

- 27.1 In the event of such termination, all HOME Program funds awarded to Developer pursuant to this Agreement will be immediately revoked and any approvals related to the Project will immediately be deemed revoked and canceled. In such event, Developer will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this Agreement, as the HOME Program funds will no longer be available for this Project.
- 27.2 Such termination will not affect or terminate any of the rights of the City as against Developer then existing, or which may thereafter accrue because of such default, and the foregoing provision will be in addition to all other rights and remedies available to the City under the law and the Note and Deed of Trust (if in effect), including but not limited to compelling Developer to complete the Project in accordance with the terms of this Agreement, in a court of equity.
- 27.3 The waiver of a breach of any term, covenant or condition hereof will not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

28. Inspection, Monitoring & Access to Records.

- 28.1 The City reserves the right to inspect, monitor, and observe work and services performed by Developer at any and all reasonable times.
- 28.2 The City reserves the right to audit the records of Developer any time during the performance of this Agreement and for a period of six (6) years after the period of affordability has been satisfied under this Agreement.
- 28.3 Developer will provide the City with a copy of their single audit and management letter pursuant to the requirements of OMB Circular A-133 annually, but no later than 30 days after completion of single audit.
- 28.4 Access will be immediately granted to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of Developer or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

- 29. Indemnification Agreement.** Developer will, during the term of this Agreement, indemnify, hold, protect, and save harmless the City and any and all of its officers, elected officials, agents, and employees from and against any all actions, audits, proceedings, claims and demands, loss, liens, costs, expenses and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, including property owned by the City brought, made, filed against, imposed upon or sustained by the City, its officers, agents, or employees in and arising from attributable to or caused directly or indirectly by the negligence, wrongful acts, omissions or from operations conducted by the Developer, its officers, agents or employees, or by any person acting on behalf of Developer and with Developer's knowledge and consent, expressed or implied.

- 30. Prohibited Lobbying Activities.** Developer, his/her agent or representative will not have any lobbying contact, as defined by the Lobbying Disclosure Act (2 U.S.C. 1602), orally or in any written form with any City elected official or any City employee other than the Planning and Community Development Department, City Manager, Deputy or Assistant City Manager or City Attorney's office (for legal issues only) regarding the contents of this Agreement.

31. **Prohibited Political Contribution.** Developer, during the term of this Agreement, will not make a contribution reportable under Title 16, Chapter 6, Article 1, Arizona Revised Statutes to a candidate or candidate committee for any City elective office during the term of this Agreement. The City reserves the right to terminate the Agreement without penalty for any violation of this provision.
32. **Contingent Fees.** Developer promises that it has not employed or retained any company or person, other than bona fide employees working solely for Developer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for Developer, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this promise, the City may cancel this Agreement without liability or, at its discretion, deduct the full amount of the fee, commission, percentage, brokerage fee, gift or contingent fee from the compensation due Developer.
33. **Successors and Assigns.** This Agreement is binding on the City and Developer, and its successors and assigns. Neither the City nor Developer will assign or transfer its interest in this Agreement without the written consent of the other.
34. **Enforcement of the Agreement.**
- 34.1 The City will enforce this Agreement in accordance with 24 C.F.R. § 85.43, by suspension or termination of the Agreement should Developer fail to comply with any term of the Agreement, or for convenience in accordance with 24 C.F.R. § 85.44.
- 34.2 Developer acknowledges and agrees that it will be subject to sanctions set forth in HOME Program Regulation 24 C.F.R. Part 92, if determined to be applicable by the City.
- 34.3 The parties hereto agree that this Agreement will be construed and enforced according to the laws of the State of Arizona and all applicable federal laws and regulations.
35. **Representatives.**
- 35.1 Developer. Developer's representative ("Developer's Representative") authorized to act on Developer's behalf with respect to the Project, and his or her address for Notice delivery is:

Attn: Lisa Weide, Grant Administrator
 Habitat for Humanity Central Arizona
 9133 NW Grand Ave Ste. 1
 Peoria, Arizona 85345

- 35.2 City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
 Attn: Gilbert Lopez
 Community Revitalization Division
 5850 West Glendale Avenue
 Glendale, Arizona 85301

With required copies to:

City of Glendale
 City Manager
 5850 West Glendale Avenue
 Glendale, Arizona 85301

City of Glendale
 City Attorney
 5850 West Glendale Avenue
 Glendale, Arizona 85301

- 35.3 Concurrent Notices.
- a. All notices to City's Representative must be given concurrently to City Manager and City Attorney.
 - b. A notice will not be considered to have been received by City's Representative until the time that it has also been received by the City Manager and City Attorney.
 - c. City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.
- 35.4 Changes. Developer or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

36. Other Provisions.

- 36.1 Developer is responsible for all applicable state and federal social security benefits and unemployment taxes and agrees to indemnify and protect the City against such liability.
 - 36.2 Developer will maintain a procurement Code of Conduct for its organization, and ensure compliance by all employees.
 - 36.3 Alternations to the Project and Budget must be mutually agreed upon by the City and Developer, and will be incorporated into this Agreement by written amendments signed by both parties.
 - 36.4 This Agreement represents the entire agreement between the parties and supersedes all prior representations, negotiations or agreements whether written or oral.
 - 36.5 Title and paragraph headings are for convenient reference and are not a part of this Agreement.
 - 36.6 In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement will rule.
 - 36.7 No waiver or breach of any provision of this Agreement will constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver will be effective unless made in writing.
 - 36.8 Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Arizona, such provisions, paragraphs, sentences, words or phrases will be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same will be deemed severable, and in either event, the remaining terms and provisions of this Agreement will remain unmodified and in full force and effect.
 - 36.9 Developer and its employees and agents will be deemed to be independent contractors, and not agents or employees of the City, and will not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded classified or unclassified employee; further they will not be deemed entitled to state compensation benefits as an employee of the City.
 - 36.10 Funding for this Agreement is contingent on the availability of funds and continued authorization for the Project and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.
37. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Match Letter
Exhibit C	Memorandum of Agreement
Exhibit D	Project Budget
Exhibit E	Homeowner Deferred Loan Agreement for HOME Program Funds
Exhibit F	Homeowner Deed of Trust and Assignment of Rents
Exhibit G	Homeowner Promissory Note
Exhibit H	Developer Deed of Trust and Assignment of Rents
Exhibit I	Developer Promissory Note
Exhibit J	Certifications
Exhibit K	Federal Laws and Regulations
Exhibit L	Additional Requirements
Exhibit M	Insurance

(Signatures Appear on the Next Page)

EXHIBIT A

PROJECT

1. The City has awarded Developer **\$255,000** in HOME Program funds to be for constructions cost associated with the building/renovation of up to five (5) homes to assist low-income persons and families in obtaining decent and affordable homeownership opportunities within the zip codes 85301, 85302, & 85303. The funds will be put into the following properties which Habitat Central Arizona hold title too an has site control:
 2. 6634 N 54th Drive Glendale AZ 85301
4424 W Mission Glendale AZ 85301
6525 N 53rd Ave Glendale AZ 85301
6121 W Frier Glendale AZ 85301
7138 W Pasadena Glendale AZ 85301
2. The total budget for the Project is \$519,450.
3. The developer will be allowed a maximum of \$10,000 of the Home grant award for Developer Fees associated with this project. The developer will provide each homebuyer with \$5,000 in HOME funding for down payment and closing cost assistance and \$220,000 in HOME funding will be used towards the building/renovation of up to 5 homes.
4. The remaining balance of \$264,450 will be paid directly from the Developer, from sponsor funds, and from volunteer labor.
5. The Developer will match the HOME Program funds provided in the amount of \$63,750 from home sponsors.
6. Any cost overruns will be handled using Developer's general donations, Developer's fund for mortgages or Developer's line of credit.



EXHIBIT B
MATCH LETTER

March 1, 2016

Gilbert Lopez
Community Revitalization Division
City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301

Dear Gilbert Lopez,

Habitat for Humanity Central Arizona ("Developer") is committed to making a match of \$63,750 which constitutes 25% of the Home Investment Partnerships Program ("HOME Program") funds contributed by the City of Glendale for the purchase, rehabilitation or construction of single family homes.

The non-federal match funds of amount of funded amount are committed for the Fiscal Year 2015-2016 Agreement. The source of the match funds in Federal Home Bank.

If you should have any additional questions, or need additional information, please contact me by phone at (623) 583-2417 or by email lisa@Habitatcaz.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Barlow", with a long horizontal line extending to the right.

Name of Developer: Habitat for Humanity Central Arizona

By: Jason Barlow

Its: President and CEO

Corporate Office

9133 NW Grand Ave., Suite 1, Peoria, AZ 85345

623-583-2417 habitatcaz.org



ROC# 251891



Reasonable accommodations will be made upon request.

We proudly work with Arizona Relay Service (TTD) 711 to provide access to the hearing impaired.

EXHIBIT C

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") is entered into this 14 day of March, 2016, by and between the City of Glendale, an Arizona municipal corporation ("City"), and Habitat for Humanity Central Arizona, an Arizona non-profit corporation ("Developer").

RECITALS

WHEREAS, Congress established a partnership between the federal government, states, local government and non-profit organizations pursuant to the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701, *et seq.* ("HOME Program") to assist low-income persons and families in obtaining decent and affordable homeownership opportunities

WHEREAS, in order to participate in the HOME Program Developer is required to make matching contributions in an amount that equals 25% of certain HOME Program expenditures;

WHEREAS, the Developer is a non-profit organization that builds affordable infill housing that meets HOME Program qualifications;

WHEREAS, the Developer desires to donate a portion of their HOME Program eligible match credit to the City; and

WHEREAS, the provisions of this MOA are intended to, and shall be construed to be, a binding agreement among the parties hereto.

AGREEMENT

- 1. Commitment of Match.** Developer will make a matching contribution of **\$63,750** which constitutes 25% of the HOME Program funds contributed by the City for the purchase, rehabilitation or construction of single family homes
- 2. Duration of the MOA.** This MOA shall be effective for eighteen (18) months commencing on March __, 2016 and expiring on September __, 2017, unless sooner terminated pursuant to the provisions contained herein.
- 3. Foregone Taxes, Fees and Charges.** The Developer may donate all of their HOME Program eligible match credit for development impact fee waivers, if any, to the City for the term of this MOA.
- 4. Future Match Donations.** The Developer may donate additional HOME Program eligible match credit to the City. Such additional donations will be at the Developer's discretion.
- 5. City's Ownership of Match Credit.** Once the Developer donates HOME Program eligible match credit to the City, the match credit belongs to the City. The City may use the match credit as needed to meet any HOME Program-mandated match obligations. The City may, at its discretion, return any unused match credit to the Developer.
- 6. Developer's Ownership of Match Credit.** The Developer's remaining HOME Program eligible match credit not otherwise donated to the City, shall belong to the Developer.

EXHIBIT D

PROGRAM BUDGET

REVENUE	TOTAL PROGRAM FUNDING FY 2015/2016
City HOME Program Funding	\$255,000
Other City of Glendale Funding	\$0
Other Federal Funding	\$0
State Funding	\$0
Municipal Funding (Other Cities and Maricopa County)	\$0
Non-Faith Based Charity	\$0
Foundation and Corporate Support/Grants	\$37,500
Volunteer In-Kind Contributions	\$48,000
Other Income	\$115,200
25% HOME Match	\$63,750
Total	\$519,450

EXPENSES	GLENDAL FUNDING	OTHER RESOURCES	VOLUNTEER / IN-KIND CONTRIBUTIONS	TOTAL PROGRAM BUDGET FY 2015/2016
Personnel Costs	\$	\$	\$	\$
Operational Expenses	\$	\$	\$	\$
Developer Fee	\$10,000	\$	\$	\$10,000
In-kind	\$	\$	\$48,000	\$48,000
Down Payment Assistance	\$25,000	\$	\$	\$25,000
	\$	\$	\$	\$
Building/Construction Expenses	\$220,000	\$37,500	\$	\$257,500
Other Expenses (specify Closing Costs)	\$	\$7950	\$	\$7950
Land/Infrastructure	\$	\$107,250	\$	\$107,250
25% HOME Match	\$	\$63,750	\$	\$63,750
	\$	\$	\$	\$
TOTAL	\$255,000	\$216,450	\$48,000	\$519,450

Exhibit E

WHEN RECORDED, RETURNED TO:

City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

HOMEOWNER DEFERRED LOAN AGREEMENT FOR
HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS

This Homeowner Deferred Loan Agreement for HOME Investment Partnership Program Funds ("Agreement") is entered into this _____ day of _____, 2016, by and between the City of Glendale, an Arizona municipal corporation ("City"), and _____, ("Homeowner").

RECITALS

WHEREAS, the City has applied for and received federal funds pursuant to the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act as amended, 42 U.S.C. 12701, *et seq.* ("HOME Program") to assist low-income persons and families in obtaining decent and affordable homeownership opportunities;

WHEREAS, the City is a "pass-through agency" for the distribution of the HOME Program funds and the City is required by the NSP Program to regulate and restrict the occupancy and ownership of the Property;

WHEREAS, the City believes that Homeowner is qualified to receive the HOME Program funds;

WHEREAS, the City and Homeowner are required by the HOME Program to enter into a Homeowner deferred loan agreement for the acquisition of property with HOME Program funds;

WHEREAS, the City and Homeowner desire to enter into the Agreement for the amount of **\$255,000** as a loan of HOME Program funds to acquire the Property described in the Deed of Trust and Assignment of Rents ("Property").

AGREEMENT

1. **Definitions.** The following terms have the meanings and content set forth herein where used in this Agreement or attached exhibits:
 - 1.1 **Area Median Income.** The median income for the Maricopa County Primary Metropolitan Statistical Area ("PMSA"), with adjustments for household size, as adjusted from time to time by HUD.
 - 1.2 **Deed of Trust.** The Deed of Trust and Assignment of Rents ("Homeowner Deed of Trust"), and any other security agreement placed on the Property or any part thereof as security for any loan and other obligations with Homeowner as trustor and the City as Beneficiary, as well as any amendments to, modification of, and restatement of the Homeowner Deed of Trust.
 - 1.3 **Affordability Period.** The period of affordability is based upon the direct HOME subsidy provided to the homebuyer that enabled the homebuyer to purchase the unit. The amount of time the affordability period is in place is defined in the chart in section 4.3 of this agreement.
 - 1.4 **HUD.** The U.S. Department of Housing and Urban Development.

- 1.5 **Homeowner Investment.** An initial down payment.
- 1.6 **House.** The residential dwelling unit that is located on the Property.
- 1.7 **Loan.** The deferred loan of HOME Program funds for the purchase of the Property.
- 1.8 **Loan Documents.** Collectively the Agreement, Deed of Trust, Promissory Note, Note Rider and any loan agreement, deed of trust, or promissory note entered into between the City and Homeowner with respect to any of the Property, as they may be amendments to these documents.
- 1.9 **Principal Residence.** The homeowner occupying the Property no less than nine (9) months in a year.
- 1.10 **Promissory Note.** The promissory note and note rider executed by Homeowner in favor of the City evidencing any part of a loan, which is secured by a Homeowner Deed of Trust, as well as any amendments to, modifications or, or restatements of said Homeowner Promissory Note. The Homeowner Promissory Note will be on file with the City.
- 1.11 **Homeowner.** The qualifying household that is the purchaser of the Property whose income is Eighty Percent (80%) or under of Area Median Income, as determined periodically by HUD, who is otherwise eligible to acquire the Property.
- 1.12 **HOME Program Funds.** The federal funds received pursuant to the HOME Program.
- 1.13 **Homeowner Investment.** The Homeowner's down payment on the Property.
- 1.14 **Qualifying Sales Price.** A price of the Property that does not exceed Ninety-Five Percent (95%) of the median purchase price for the area, as determined by HUD.
2. **Term of Agreement.** The Agreement shall remain in full force and effect during the Affordability Period regardless of any expiration of the term of any loan, any payment or prepayment of any loan, any assignment of a note, any reconveyance of a deed of trust, or any sale, assignment, transfer, or conveyance of the Property, unless terminated earlier by City in writing or extended by the mutual consent of the parties. However, failure to record this Agreement by City shall not relieve Homeowner of any of the obligations specified herein. The covenants in this Agreement will run with the land for the benefit of City and its heirs, assigns and successors and be binding on Homeowner and Homeowner's heirs, assigns and successor for the full term of this Agreement.
3. **Use of Funds.** HOME Program Funds will be used to acquire the Property. Funds will be utilized in a soft second assistance program, which will effectively allow the Qualifying Household to acquire the Property.
4. **Affordability.**
 - 4.1 The Property will qualify as affordable housing and will have:
 - a. An initial purchase price that is a Qualifying Sales Price; and
 - b. An estimated appraisal value at acquisition that does not exceed Qualifying Sales Price.
 - 4.2 The Property must be the Principal Residence of the Homeowner.
 - 4.3 Pursuant to 24 C.F.R. § 92.254, the Homeowner must comply with the Affordability Period requirements in order to use of NSP Program funds to purchase the Property. The Affordability Period is defined below:

HOME Program Funds	Affordability Period
< \$15,000	5 Years
\$15,000 - \$40,000	10 Years
>\$40,000	15 Years

5. Recapture of HOME Program Funds.

- 5.1 Pursuant to HOME Funds regulations 24 C.F.R. § 92.254(a) (iii), HOME Program funds will be recaptured if the Property does not continue to be the Principal Residence of Homeowner for the duration of the Affordability Period. If all or any part of the Property or any interest in it is sold, rented, refinanced, conveyed or transferred (or if a beneficial interest in Homeowner is sold, rented, refinanced, conveyed, or transferred and Homeowner is not a natural person). If the Property is sold, rented, refinanced, conveyed, or transferred within the first year of the term of the Deed of Trust and Promissory Note, the City will receive one hundred percent (100%) of the balance of the Agreement.
- 5.2 Utilizing the recapture provisions of the HOME Program, the fair return to the Homeowner will calculate based on the net proceeds from the sale and the amount of the original HOME Program funds invested in the Property. The HOME Program funds will be recoverable any time the Property is sold before the expiration of the Affordability Period. The method that will be used to calculate the fair return and the HOME Program funds to be recovered shall be detailed in the Deed of Trust.
- 5.3 If the Period of Affordability has been satisfied, Homeowner will be entitled to all net proceeds from the sale of the Property.
- 5.4 In the case of a foreclosure, the Affordability Period will be terminated. Upon receipt of the notice that a foreclosure is pending the City will take positive steps to assert rights to a share of the proceeds from the foreclosure sale. The City will, to the extent feasible, recapture the original HOME Program funds. If Homeowner has failed to make payment to the first mortgage holder, the City will not be obligated to correct any deficient payment. The amount recaptured shall be based on the amount of the net proceeds from the foreclosure sale. If no proceeds are generated, the HOME Program funds will not be recaptured.
- 5.5 The method that will be used to calculate the amount of the recapture funds will be detailed in the Deed of Trust and the Promissory Note. If the affordability period has been satisfied, the City will have no rights to the net proceeds resulting from the foreclosure sale.
- 5.6 If Homeowner ceases to occupy the Property as a Principal Residence, voluntarily or involuntarily, or upon the death of the Homeowner (or where ownership is joint upon the death of the sole survivor having remaining interest), the original HOME Program funds will become due and payable.
 - a. The method used to calculate the amount of the recaptured funds shall be detailed in the Deed of Trust and Promissory Note. If the Property is occupied as the Principal Residence by a valid and authorized descendant of a deceased Homeowner, and the descendant's income level qualifies, the descendant may receive HOME Program funds in the same manner in which the deceased Homeowner qualified, according to the most recent income limits.
 - b. The City, at its discretion, can elect to allow the occupant to live on the Property for the remainder of the Affordability Period. If the Affordability Period has been satisfied, the City will have no interest the Property.

- 5.7 If the Homeowner defaults on the Agreement, the City has the right to allow a non-profit partner to exercise a different but approved recapture/resale provision, if in the best interest of the HOME Program. Failure to resolve the default may result in the City exercising its right to foreclose in order to satisfy the Agreement and comply with the HOME Program.
- 5.8 If Homeowner does not occupy the Property as their Principal Residence during the entire loan term, the balance will be due and payable or other arrangements can be made that meet HUD regulations as are approved by the City. If the Property is sold, rented, refinance, conveyed, or transferred within the first year the term of the Promissory Note secured by this Deed of Trust, one hundred percent (100%) of the full loan balance as follows:
- a. Principal on the First Note and the Deed of Trust; and
 - b. Principal on this Second Note and Deed of Trust to the City of Glendale; and
 - c. All costs of sale, including costs of brokers' commissions, escrow fees, title costs and fees, recording costs, etc.; and
 - d. Current year taxes, including all pro-rata real estate taxes calculated to the date of sale; and
 - e. Borrower's down payment not including the loan from the City to Borrower; and
 - f. All Principal paid down on the First Note and Deed of Trust; and
 - g. Costs of any improvements to the Property provided such improvements were approved by the City prior to construction and provided that such improvements have been documented to the satisfaction of the City.
- 5.9 The HOME Program funds will still be due and payable. In the event that a negative Equity situation exists, and the full amount of the HOME funds are not available to be recaptured, the amount of HOME funds required to be repaid to the City will be as set forth in 24 CFR 92.254(a)(ii)(a)(93).
- a. To calculate the Net Proceeds to be returned to the city use the formula below:

$$\frac{\text{Direct HOME Subsidy}}{\text{Direct HOME Subsidy} + \text{Homebuyer Investment}} \times \text{Net Proceeds} = \text{HOME Funds Recaptured}$$
 - b. To calculate the Net Proceeds available to the homebuyer use the formula below:

$$\frac{\text{Homebuyer Investment}}{\text{Direct HOME Subsidy} + \text{Homebuyer Investment}} \times \text{Net Proceeds} = \text{Funds to Homebuyer}$$

6. Property Management.

- 6.1 During the Affordability Period, the Homeowner will at his or her own expense maintain the Property in good condition, in good repair, and in decent, safe, sanitary and habitable living conditions for the benefit of that Homeowner's household and any prospective occupants. Homeowner shall maintain the Property in conformance with all applicable state, federal and local laws, ordinances, codes and regulations.
- 6.2 If Homeowner fails to maintain the Property in accordance with these standards and after at least thirty (30) business days' notice to the Homeowner, the City or the City's contractor or agent may, but shall be under no obligation to, enter upon the Property, make such repairs or replacements as are deemed necessary in the City's discretion, and provide for payment thereof. Any amount advanced by the City to make such repairs, together with interest thereon from the date of such advance at the rate of seven (7) percent (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowable by applicable law), shall become an additional

obligation of the Homeowner to the City and shall be secured by any Deed of Trust, if not previously reconveyed.

7. **Repayment.** HOME Program funds that are loaned to the Homeowner are to be remitted (principal and interest, as warranted) to the City to be retained and used as HOME Program income for additional first-time homebuyers.
8. **HOME Program Requirements.** Homeowner will comply with the following:
 - 8.1 Maximum Per-Unit Subsidy Amount. The amount of HOME Program funds that a participating jurisdiction may invest on a per-unit basis in affordable housing will not exceed the per-unit dollar limits established by the HOME Program.
 - 8.2 Property Standards. Housing that is assisted with HOME Program funds must, at a minimum, the Housing Quality Standards defined in Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).
 - 8.3 Property Cost Limits. The value of acquisition of the Property must not exceed ninety-five percent (95%) of the median purchase price for the area, as determined by HUD and amended from time to time.
 - 8.4 Ownership Interest. The Homeowner must have fee simple title upon the sale of the Property purchased with the assistance of HOME Program funds.
 - 8.5 Refinance. The City will subordinate to the following refinance situations only, subject to City approval and additional documentation is required:
 - a. A Federal Housing Administration streamline refinance, with a reduction in total principal, interest, taxes & insurance ("PITI") and no cash out.
 - b. A U.S. Department of Veterans Affairs rate reduction refinance, with a reduction in total PITI and cash out.
 - c. A conventional rate and term refinance, with a reduction in total PITI and no cash out.
9. **Defaults and Remedies.** In the event of any breach or violation of any agreement or obligation under this Agreement, the City may proceed with any or all of the remedies as described in the Deed of Trust.
10. **Indemnity.** Notwithstanding the insurance covered required herein, Homeowner shall indemnify and hold the City and its officers, officials, directors, employees, agents and authorized representatives (each, an "Indemnified Party," and collectively, "Indemnified Parties") free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorney's fees) which any Indemnified Party may incur as a direct or indirect consequence of (1) Homeowner's failure to perform any obligations as and when required by this Agreement; (2) any failure of Homeowner's representatives or warranties to be true and complete; or (3) any act or omission by Homeowner or any contractor, subcontractor, management agent, or supplier with respect the Property, except where such losses are caused by the sole negligence or willful misconduct of Indemnified Parties. Homeowner shall pay immediately upon the City's demand any amounts owing under this indemnity. The duty of the Homeowner to indemnify includes the duty to defend Indemnified Parties in any court action, administrative action, or other proceeding brought by any third party arising from the Property. Homeowner's duty to indemnify Indemnified Parties shall survive the term of this Agreement.

11. **Subordination.** This Agreement shall be subordinated in priority only to the liens and encumbrances approved by the City in the Agreement or otherwise in writing by the City in its sole and absolute discretion.
12. **Governing Law.** This Agreement shall be interpreted under and be governed by the laws of the State of Arizona.

SAMPLE

EXHIBIT F

WHEN RECORDED, RETURN TO:

City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

DEED OF TRUST AND ASSIGNMENT OF RENTS

(Homeowner)

DATE: _____

TRUSTOR:
(ADDRESS): _____

BENEFICIARY: City of Glendale
(ADDRESS): 5850 West Glendale Avenue
Glendale, Arizona 85301

TRUSTEE: City of Glendale
(ADDRESS): 5850 West Glendale Ave.
Glendale, AZ 85301

SUBJECT REAL PROPERTY in Maricopa County, State of Arizona, described in the Legal Description attached as Exhibit A ("Property").

This Deed of Trust and Assignment of Rents ("Homeowner Deed of Trust") is made among the above-named Trustor, Trustee and Beneficiary.

1. **Conveyance.** Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, the Property, subject to covenants, conditions, restrictions, rights of way and easements of record, to be held as security for the payment by Trustor of the obligation secured and for the performance of other obligations of Trustor as set forth in this Homeowner Deed of Trust.
2. **Appurtenances.** Trustor grants, together with the Property, all buildings and improvements now or hereafter erected thereon, and all fixtures attached to or used in connection with the Property (including, without limiting the generality of the foregoing, all ventilating, heating, air conditioning, refrigeration, plumbing and lighting fixtures), together with all leases, rents, issues, profits or income therefrom (hereinafter "Property Income"), subject however, to the right, power and authority hereinafter given to Beneficiary to collect and apply such property income.
3. **Taxes and Assessments and Trust Expenses.** Trustor shall pay before delinquent taxes and assessments affecting the Property or any part thereof, which appear to be prior or superior hereto all cost, fees and expenses of this trust and all lawful charges, costs and expenses of any reinstatement of the Deed of Trust following default.
4. **Fire Insurance.** Trustor shall, at Trustor's expense, maintain in force fire and extended coverage insurance in any amount of not less than full replacement value of any buildings which may exist on the Property with loss payable to Beneficiary. Trustor shall provide fire insurance protection on his

furniture, fixtures and other personal property on the Property in an amount equal to the full insurable value thereof, and promises that any insurance coverage in this regard will contain a waiver of the insurer's right of the subrogation against Beneficiary.

5. **Liability Insurance.** Trustor shall, at Trustor's expense, maintain in force policies of liability insurance, with Beneficiary as an additional insured thereunder, insuring Trustor against any claims resulting from the injury to or the death of any person or the damage to or the destruction of any property belonging to any person by reason of Beneficiary's interest hereunder or the use and occupancy of the Property by Trustor.
6. **Processing of Insurance Policies.** Trustor shall promptly deliver to Beneficiary the originals or true and exact copies of all insurance policies required by this Homeowner Deed of Trust. Trustor shall not do or omit to do any act that will in any way impair or invalidate any insurance policy required by this Deed of Trust. All insurance policies shall contain a written obligation of the insurer to notify Beneficiary in writing at least 10 days prior to any cancellation thereof.
7. **Indemnification of Trustee and Beneficiary.** Trustor shall hold Trustee and Beneficiary harmless from and indemnify them for any and all claims raised by any third party against Trustee or Beneficiary resulting from their interests hereunder or the acts of Trustor. Such indemnification shall include reasonable attorneys' fees and costs, including cost of evidence of title.
8. **Right Beneficiary or Trustee to Pay Obligations of Trustor.** If Trustor fails or refuses to pay any sums due to be paid by it under the provisions of this Homeowner Deed of Trust, or fails or refuses to take any action as herein provided, then Beneficiary or Trustee shall have the right to pay any such sum due to be paid by Trustor and to perform any act necessary. The amount of such sums paid by Beneficiary or Trustee for the account of Trustor and the cost of any such action, together with interest thereon at the maximum legal contractual rate per annum, from the date of payment until the satisfaction, shall be added to the obligation secured. The payment of Beneficiary or Trustee of any such sums or the performance of any such action shall be prima facie evidence of the necessity therefore.
9. **Condemnation.** Any award of damages in connection with any condemnation or injury to any of the Property by reason of public use or for damages for private trespass or injury thereto, are assigned in full and shall be paid to Beneficiary, who shall apply them to payment of the principal of the obligation secured, the interest thereon, and any other charges or amounts secured hereby in such manner as Beneficiary may elect. Any remaining balance shall be paid to Trustor. Beneficiary may, at Beneficiary's option, appeal from any such award in the name of Trustor. Unless Trustor and Beneficiary otherwise agree in writing, any application of such proceeds to principal shall not extend or postpone the due dates of any installment payments of the obligation secured or change the amount of such payments.
10. **Care of Property.** Trustor shall take reasonable care of the Property and the buildings thereon and shall maintain them in good repair and condition as at the original date of this Homeowner Deed of Trust, ordinary depreciation excepted. Trustor shall commit or permit no waste and do no act which will unduly impair or depreciate the value of the Property as required, and then Beneficiary or Trustee, at their option, may make necessary repairs and add the cost thereof to the Obligation Secured. Trustor shall purchase and use on the Property the amount of water to which it is or shall be entitled and shall not abandon any water rights, power rights or any rights of whatever nature which are appurtenant to the Property.
11. **Right to Inspect the Property.** At all convenient and reasonable times, upon prior notice to Trustor, Beneficiary or Trustee shall have the right and license to go on and into the Property to inspect it in order to determine whether the provisions of the Homeowner Deed of Trust are being kept and performed.

12. **Acceleration.** In the event of default by Trustor, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to the Trustee of written notice setting forth the nature thereof and of election to cause the Property to be sold under this Homeowner Deed of Trust. Beneficiary shall also deposit with Trustee all documents evidencing the obligation secured and any expenditures secured hereby.
13. **Event of Default.** Each of the following shall be considered an event of default of the Homeowner Deed of Trust:
- 13.1 The failure of Trustor to make any payment due hereunder or under the Obligation Secured on or before the due date thereof;
 - 13.2 The failure of Trustor to perform any duty required by this Homeowner Deed of Trust;
 - 13.3 The failure of Trustor to occupy the Property as his/her primary residence;
 - 13.4 The sale or attempted sale of the Property by Trustor without the consent of Beneficiary;
 - 13.5 The removal or attempted removal by Trustor of any property included in the Property without the consent of Beneficiary; or
 - 13.6 Abandonment of the Property by Trustor;
 - 13.7 The filing, execution or occurrence of:
 - a. A petition in bankruptcy by or against Trustor;
 - b. A petition or answer seeking a reorganization, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act;
 - c. Adjudication of Trustor as a bankrupt or insolvent, or insolvency in the bankruptcy equity sense;
 - d. An assignment by Trustor for the benefit of creditors, whether by trust, mortgage or otherwise;
 - e. A petition or other proceedings by or against Trustor for the appointment of a trustee, receiver, guardian, conservator or liquidator of Trustor with respect to all or substantially all of the Property; or
 - f. Trustor's dissolution or liquidation, or the taking of possession of the Property by any governmental authority in connection with dissolution or liquidation.
 - 13.8 A determination by Beneficiary that the security of the Homeowner Deed of Trust is inadequate or in danger of being impaired or threatened from any cause whatsoever.
14. **Trustee's Sale.** Upon receipt of Beneficiary's notice of election to cause the Property to be sold, Trustee shall, in accordance with all provisions of law, give notice of Trustee's sale and, after the lapse of the required amount of time, sell the Property at public auction, at the time and place specified in the Notice of Trustee's Sale, to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Any persons, including Trustor, Trustee or Beneficiary may purchase at the Trustee's Sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for sale. Upon sale, Trustee shall deliver to the purchaser a Trustee's Deed conveying the Property, but without any covenant or warranty, expressed or implied.
15. **Net Proceeds of the Trustee's Sale.** After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of evidence of title in connection with the sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other

sums due under the terms hereof, with accrued interest, and the remainder, if any, to the persons legally entitled thereto or as provided by A.R.S. § 33-812.

16. **Defaults on Prior Encumbrances.** If there are mortgages upon the Property or other encumbrances which are prior in time or prior in right, then Trustor promises to comply with the terms of these prior mortgages or encumbrances. If Trustor fails to comply with such terms and defaults on these mortgages or obligations, such default shall also be considered a default of this Homeowner Deed of Trust, and Trustee or Beneficiary herein may advance the monies necessary to remedy such defaults, and, if it does, such monies shall be added to the obligation secured and shall bear the maximum contractual legal rate of interest from the date monies are tendered. Beneficiary may also proceed on this default by exercising the same remedies it has on this Homeowner Deed of Trust.
17. **Deficiency Judgment.** Unless prohibited by law, Beneficiary shall be entitled to a deficiency judgment against Trustor if the Trustee's Sale yields an amount insufficient to fully satisfy Trustor's obligation pursuant to A.R.S. § 33-814.
18. **Foreclosure and Revival of Applicable HUD Affordability Requirements.** If the primary mortgage on the Property is a Federal Housing Administration ("FHA") or a U.S. Department of Veterans ("VA") loan, and it is assigned to the U.S. Department of Housing and Urban Development ("HUD") or the VA, or if a person forecloses on Trustor's interest in the Property or takes a deed in lieu of foreclosure and such person's mortgage or security deed was prior in time to this Homeowner Deed of Trust, this Deed of Trust and promissory note shall terminate and no longer affect the Property. Notwithstanding the foregoing, if the foreclosed upon or deed in lieu of foreclosure loan is subject to HUD Affordability Period requirements, the covenants and restrictions set forth in this Homeowner Deed of Trust shall be revived and shall remain in full force for the remainder of any applicable affordability period when and if the owner of record or Trustor before such foreclosure or deed in lieu of foreclosure is given acquires or obtains any ownership interest in the Property at any time during such affordability period.
19. **Reinstatement After Default.** Notwithstanding Beneficiary's acceleration of sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued and to have this Homeowner Deed of Trust reinstated at any time before the day of the Trustee's Sale or before the filing of a foreclosure action. In order to have the Homeowner Deed of Trust reinstated after default, the Trustor must:
 - 19.1 Pay to beneficiary the entire amount due under this Homeowner Deed of Trust and the Obligation Secured, other than such portion of the principal as would not be due had no default occurred;
 - 19.2 Cure all defaults or any covenants or agreements of Trustor as contained in this Homeowner Deed of Trust;
 - 19.3 Pay costs and expenses incurred by Beneficiary and Trustee in enforcing the terms of this Deed of Trust and pursuing remedies;
 - 19.4 Pay reasonable attorneys' fees actually incurred by Beneficiary and Trustee, in an amount not to exceed \$250 or one-half of one percent of the entire unpaid principal sum secured, whichever is greater;
 - 19.5 Pay the recording fee for any cancellation of notice of sale;
 - 19.6 Pay the Trustee's fees, in an amount not to exceed \$250 or one-half of one percent of the entire unpaid principal sum secured, whichever is greater. Upon reinstatement, this Homeowner Deed of Trust and the obligation secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. Assignment of Property Income.

20.1 As additional security, Trustor hereby gives Beneficiary the right, power and authority during the continuance of this Trust, to collect the Property Income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such Property Income as it becomes due and payable.

20.2 Upon any such default, Beneficiary may at any time, without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof; in its own name sue for or otherwise collect such Property Income, including that past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby; and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such Property Income and the application thereof, shall not cure or waive any default or notice of Trustee's Sale hereunder or invalidate any act done pursuant to such notice.

21. Acts of Trustee Affecting the Property. At any time, without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Obligation Secured for endorsement, Trustee may, without liability, release and reconvey all or any part of the Property; consent to the making and recording, or either; of any map or plat of all or any part of the Property; join in granting any easement thereon; join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof. Any such action by Trustee may be taken without affecting the personal liability of any person for payment of the indebtedness secured hereby, without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof the Property affected by Trustee's action be credited on the indebtedness.

22. Satisfaction of the Obligation. If Trustee receives full payment of the obligation secured in the amount secured, at the request of Trustor, Trustee shall acknowledge satisfaction of the Homeowner Deed of Trust by recording and delivering to Trustor a Satisfaction or Release of Realty Homeowner Deed of Trust pursuant to A.R.S. § 33-712.

23. Notices. Copies of all notices and communication concerning this Homeowner Deed of Trust shall be mailed to the parties at the addresses specified in this Homeowner Deed of Trust, and any change of address shall be communicated to the other party in writing. Any documents which may adversely affect the rights of any party to this Homeowner Deed of Trust shall be dispatched by Certified Mail, Return Receipt Requested.

24. Applicable Law. This Homeowner Deed of Trust shall be subject to and governed by the laws of the State of Arizona, in particular the provisions of A.R.S. Title 33, Chapter 6.1, regardless of the fact that one or more parties is now or may become a resident of a different state.

25. Waiver. Any waiver by either party of a breach of any provision of this Homeowner Deed of Trust shall not operate or be constructed as a waiver of any subsequent breach hereof.

26. Succession of Benefits. The provisions of this Homeowner Deed of Trust shall inure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, conservators and permitted assigns.

27. Successor Trustee. Beneficiary may appoint a Successor Trustee in the manner prescribed by law. A Successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all predecessors' title, estate, rights, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

28. **Entire Agreement.** The terms of this Homeowner Deed of Trust constitutes the entire agreement among the parties, and the parties represent that there are no collateral or side agreements not otherwise provided for within the terms of this Homeowner Deed of Trust.
29. **Modification.** No modification of this Homeowner Deed of Trust shall be binding unless evidenced by an agreement in writing and signed by all parties.
30. **Partial Invalidity.** If any provision of this Homeowner Deed of Trust is held to be invalid or unenforceable, all the remaining provisions shall nevertheless continue in full force and effect.
31. **Sales Transaction.** In the event all or any part of the Property or any interest in it is sold, conveyed, or encumbered, all obligations secured by the Homeowner Deed of Trust shall become due and payable immediately upon notice to the Trustee by the Beneficiary.
32. **Warranty.** The Trustor indemnifies the Beneficiary and Trustee against any liability for the violation by the Trustor or its affiliates of any Federal or State Statute, law or regulation dealing with environment. The Trustor warrants that he will comply with those laws or regulations. The Trustor warrants the mortgaged Property does not contain any hazardous substance and indemnifies the Beneficiary and the Trustee as to any liability for hazardous waste disposal or cleanup. The warrant and indemnification shall survive any foreclosure of the Deed of Trust or the acceptance of a Deed in Lieu of Foreclosure. Trustor shall promptly notify the Beneficiary and the Trustee of any suspected or alleged environmental violations during the term of this loan.

(Signatures Appear on the Next Page)

SAMPLE

EXHIBIT G

WHEN RECORDED, RETURN TO:

City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

PROMISSORY NOTE

(Homeowner)

Loan Amount: \$ _____

Glendale, Arizona

Date: _____

FOR VALUE RECEIVED, the undersigned jointly and severally promise(s) to pay to the order of the City of Glendale, an Arizona municipal corporation (City), or its successors, the principal sum of _____ Dollars and 00/100 (\$ _____) payable as follows: City of Glendale.

This Homeowner Promissory Note ("Homeowner Note") is secured by a Homeowner Deed of Trust and Assignment of Rents ("Homeowner Deed of Trust") encumbering the Property identified in the Deed of Trust ("Property").

It is understood and agreed by the parties hereto that the undersigned shall occupy the Property as his/her primary residence and shall not assign or otherwise transfer any right, title or interest in or to the Property or this encumbrance for a period of five (5) years, six (6) months from the closing date for the Property.

So long as the undersigned is not in default of this Homeowner Note or the Homeowner Deed of Trust securing this Note, no interest shall be charged on the principal balance. In the event of such assignment of transfer without written consent, or in the event the Property is not occupied as the undersign's primary residence, the entire unpaid principal balance, accrued late penalties and all accrued interest shall, at the option of the City, become all due and payable. Default interest shall be computed on the principal of the Homeowner Note from the date of default until this Homeowner Note is paid in full and shall be computed at the highest rate of interest in effect under the laws of the State of Arizona, but not to exceed 10% per annum.

The undersigned and endorsers hereof waive presentment, demand, notice of dishonor and protest.

If suit be brought to recover on this Homeowner Note, the undersigned will pay such sum as the Court may fix as attorneys' fees.

Having reviewed, accepted, and approved this Note with all its terms and conditions; this Homeowner Note shall supersede any and all other agreements, and is hereby accepted in its final form.

(Signatures Appear on the Next Page)

Homeowner Signature: _____

Homeowner Print Name: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by
_____, who signed the above Note.

Notary Public

My Commission Expires:

Homeowner Signature: _____

Homeowner Print Name: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by
_____, who signed the above Note.

Notary Public

My Commission Expires:

EXHIBIT H

WHEN RECORDED, RETURN TO:

City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

DEED OF TRUST AND ASSIGNMENT OF RENTS

(Developer)

DATE: _____

TRUSTOR:
(ADDRESS): _____

BENEFICIARY:
(ADDRESS): City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

TRUSTEE:
(ADDRESS): City of Glendale.
5850 West Glendale Ave
Glendale, AZ 85301

SUBJECT REAL PROPERTY in Maricopa County, State of Arizona, described in the Legal Description attached as Exhibit A ("Property").

This Developer Deed of Trust and Assignment of Rents ("Developer Deed of Trust") is made between the Trustor, Trustee and Beneficiary above named.

WITNESSETH: That Trustor irrevocably grants and conveys to Trustee in Trust, with Power of Sale, the above described real property, together with: (1) all buildings, improvements and fixtures now or hereafter placed thereon; (2) all existing leases, and all future leases executed with respect to such property; (3) all rents, issues, profits and income thereof (all of which are hereinafter called "property income"); (4) all classes of property now, or at any time hereafter, attached to or used in any way in connection with the use, operation or occupancy of such property; (5) all property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to such property, which entitle Trustor or such property to receive water or electrical power for use thereon; all property granted, transferred and assigned to Trustee hereunder is hereafter referred to as the "Property," and Trustor warrants that it is well and truly seized of a good and marketable title in fee simple to the real property hereby conveyed; that the title to all property conveyed by this Developer Deed of Trust is clear, free and unencumbered, and Trustor will forever warrant and defend the same unto Beneficiary, its successors and assigns, against all claims whatsoever;

SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income;

AND SUBJECT TO, any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Property.

1. For the Purpose of Securing:

- 1.1 Performance of each agreement of Trustor herein contained.
- 1.2 Payment of the indebtedness evidenced by promissory note or notes of even date herewith, and any extension or renewal thereof, in the principal sum of _____ Dollars and 00/100 (\$_____) executed by Trustor in favor of Beneficiary or order.
- 1.3 Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes that are secured by this Deed of Trust.

2. To Protect the Security of this Deed of Trust, Trustor covenants and agrees:

- 2.1 To keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished thereon; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon said Property in violation of law; and to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.
- 2.2 To keep all improvements now or hereafter erected on said property continuously insured against loss by fire or other hazards specified by Beneficiary in an amount not less than the total obligation secured hereby. All policies will be held by Beneficiary and be in such companies as Beneficiary may approve and have loss payable first to Beneficiary, as his interest may appear and then to Trustor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured and in such order as Beneficiary may determine or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release will not cure or waive any default hereunder nor cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default.
- 2.3 To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary or Trustee, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary to enforce this Developer Deed of Trust.
- 2.4 To pay before delinquent, all taxes and assessments affecting said Property; when due, all encumbrances, charges and liens, on said Property or any part thereof, which appear to be prior or superior hereto; all costs, fees, and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.
- 2.5 The should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said Property for such

purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel, and pay his reasonable attorneys' fees. All amounts so paid, together with interest thereon at the same rate as is provided for in the note secured by this Developer Deed of Trust or at the highest legal rate, whichever is greater, will be part of the debt secured by this Developer Deed of Trust and a lien on the above Property.

2.6 To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as is provided for in the note secured by this Developer Deed of Trust or at the highest legal rate, whichever is greater. Any amounts so paid by Beneficiary or Trustee will become part of the debt secured by this Developer Deed of Trust and a lien on the Property and immediately due and payable at option of Beneficiary or Trustee.

3. Recapture Provision:

3.1 The HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.* ("HOME Program"), requires that housing provided through homeowner assistance must be secured for the use of low-income households for a period of affordability. The period of affordability period is determined based on the amount of the HOME Program subsidy.

HOME Funds Provided	Affordability Period
< \$15,000	5 Years
\$15,000 - \$40,000	10 Years
> \$40,000	15 Years

3.2 Under the HOME Program regulations, the City can recapture of all or a portion of the Home Program funds if the housing does not continue to be the "Principle Residence" of the family for the duration of affordability.

3.3 Utilizing the recapture provisions of the HOME Program regulation, the fair return to the seller will calculate based on the net proceeds from the sale and the amount of the original HOME Program fund investment in the Property. The HOME Program subsidy will be recoverable any time the house is sold before the expiration of the affordability period. The method that will be used to calculate the fair return and the HOME Program subsidy to be recovered will be detailed in the Developer Deed of Trust and Developer Note for the Property. If the affordability period has been satisfied, the seller will be entitled to all net proceeds from the sale of the Property.

3.4 In the case of a foreclosure or foreclosure sale, the period of affordability will be terminated. Upon receipt of the notice that a foreclosure is pending the City will take positive steps to assert rights to a share of the proceeds from the foreclosure sale. The City will, to the extent feasible, recapture the original HOME Program investment. If the homeowner has failed to make payment to the first mortgage holder, the City will not be obligated to correct any deficient payment. The amount recaptured will be based on the amount of the net proceeds from the foreclosure sale. If no proceeds are generated, the HOME Program investment will not be recaptured. The method that will be used to calculate the amount of the recapture funds will be detailed in the Developer Deed of Trust and the Developer Note. If the affordability period has been satisfied, the City will have no rights to the net proceeds resulting from the foreclosure sale.

- 3.5 If the original homeowner ceases to occupy the Property as the principal place of residence, voluntary or involuntarily, or upon the death of the owner (or where ownership is joint upon the death of the sole survivor having remaining interest), the original HOME Program investment will become due and payable. The method that will be used to calculate the amount of the recaptured funds will be detailed in the Developer Deed of Trust and Developer Note. If the Property is occupied as the principal residence by a valid and authorized descendant of a deceased owner, and the descendant's income level qualifies, the descendant may receive HOME Program assistance in the same manner in which the deceased owner qualified, according to the most recent income limits. The City, at its discretion, can elect to allow the occupant to live on the Property for the remainder of the affordability period. If the affordability period has been satisfied, the City will have no interest in the occupants of the Property.
- 3.6 If the homeowner is in default of the agreement, the City has the right to allow a non-profit partner to exercise a different but approved recapture/resale provision, if in the best interest of the HOME Program and the customer. Failure to take action may result in the City exercising its right to foreclose in order to satisfy the contract and comply with federal requirements.
- 3.7 If the Property owner does not occupy the home as their principal residence during the entire loan term, the balance will be due and payable or other arrearages can be made that meet HUD regulations that have been approved by the City.

4. It is Mutually Agreed:

- 4.1 That any award of damages in connection with any condemnation or any taking, or for injury to the Property by reason of public use, or for damages for private trespass or injury thereto, is assigned and will be paid to Beneficiary as further security for all obligations secured hereby (reserving unto Trustor, however, the right to sue therefore and the ownership thereof, subject to this Developer Deed of Trust), and upon receipt of such moneys Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- 4.2 That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay. Without affecting the obligation of Trustor to pay and perform as herein required; without affecting the personal liability of any person for payment of the indebtedness secured hereby; and without affecting the lien or priority of lien hereof on the Property, Beneficiary may, at its option, extend the time for payment of said indebtedness, or any part thereof, reduce the payment thereon, release any person liable on any of said indebtedness, accept a renewal note therefore, modify the terms of said indebtedness, take or release other or additional security, or join in any extension or subordination agreement. Any such action by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and will not affect the priority of this Developer Deed of Trust over any junior lien. Time is of the essence for this Deed of Trust.
- 4.3 That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Developer Deed of Trust and said note(s) for endorsement, and without liability therefore, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all Property remaining subject hereto,

and without the necessity that any sum representing the value or any portion thereof of the Property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or any part of said Property; (b) consent to the making and recording, or either, of any map or plat of the Property or any part thereof; (c) join in granting any easement thereon; (d) join in or consent to any extension agreement of any agreement subordinating the lien, encumbrance or charge hereof. Any Trustor signing this Trust as a surety or accommodation party or that has subjected the Property to this Trust to secure the debt of another, expressly waives the benefits of A.R.S. § 12-1641.

- 4.4 That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Developer Deed of Trust and said note(s) to Trustee for cancellation and retention, and upon payment of its fees, Trustee will release and reconvey, without covenant or warranty, express or implied, the property then held hereunder, the recitals in such reconveyance, of any matters or facts, will be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
- 4.5 That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default Beneficiary may at any time, without notice either by person, by agent, or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of the Trustor, enter upon and take possession of said Property or any part thereof, in his own name sue for or otherwise collect such Property income, including that past due and unpaid and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees of Beneficiary and Trustee, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said Property, the collection of such Property Income, and the application thereof as aforesaid, will not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice. Beneficiary will expressly have all rights provided for in A.R.S. §§ 33-702(B) and 33-807.
- 4.6 That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold the Property under this Developer Deed of Trust. Beneficiary also will deposit with Trustee this Developer Deed of Trust, said note(s), and all documents evidencing expenditures secured hereby.
- 4.7 Trustee will record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee will sell, in the manner required by law, said property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee at its discretion may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee will deliver to such purchaser its Developer Deed of Trust conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee or Beneficiary, may purchase at such sale. The purchaser at the Trustee's sale will be entitled to immediate possession of the Property as against the Trustee or other persons in possession and will have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and reasonable attorneys' fees.

- 4.8 After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees of Beneficiary and Trustee, Trustee will apply the proceeds of sale to payment of: all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. § 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder. In lieu of sale pursuant to the power of sale conferred hereby, this Developer Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary will also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies will be cumulative.
- 4.9 That Beneficiary may appoint a successor Trustee in the manner prescribed by law. Trustor and Beneficiary authorize Trustee, in the event any demand or notice is made or tendered to it concerning this Developer Deed of Trust or the Property, to hold any money and documents and to withhold action or performance until an action will be brought in a court of competent jurisdiction to determine the rights asserted or the property of the demand, notice or action requested and Trustee will be without liability or responsibility for awaiting such court action. A Successor Trustee herein will without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign at any time by mailing or delivering notice thereof to Beneficiary and Trustor and having so resigned will be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. "Trustee" herein will include all successor trustees. Trustee will not be liable for any action taken in its discretion and in good faith, or upon advice of counsel, or upon any information supplied or direction given by Beneficiary. Unless Trustee is adjudged grossly negligent or guilty of intentional wrongdoing or breach of contract, Trustor and Beneficiary will, upon demand, indemnify and hold harmless Trustee against all costs, damages, attorneys' fees, expenses and liabilities which it may incur or sustain in connection with this Developer Deed of Trust or any foreclosure or sale hereof or any court or other action or proceeding arising here from.
- 4.10 That this Developer Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" will mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Developer Deed of Trust, whenever the context so required, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
- 4.11 That Trustee accepts this Trust when this Developer Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee may but is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee will be a party, unless brought by Trustee.

The undersigned Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to him at his address set forth above.

(Signatures Appear on Next Page)

- 4.8 After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees of Beneficiary and Trustee, Trustee will apply the proceeds of sale to payment of: all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. § 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder. In lieu of sale pursuant to the power of sale conferred hereby, this Developer Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary will also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies will be cumulative.
- 4.9 That Beneficiary may appoint a successor Trustee in the manner prescribed by law. Trustor and Beneficiary authorize Trustee, in the event any demand or notice is made or tendered to it concerning this Developer Deed of Trust or the Property, to hold any money and documents and to withhold action or performance until an action will be brought in a court of competent jurisdiction to determine the rights asserted or the property of the demand, notice or action requested and Trustee will be without liability or responsibility for awaiting such court action. A Successor Trustee herein will without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign at any time by mailing or delivering notice thereof to Beneficiary and Trustor and having so resigned will be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. "Trustee" herein will include all successor trustees. Trustee will not be liable for any action taken in its discretion and in good faith, or upon advice of counsel, or upon any information supplied or direction given by Beneficiary. Unless Trustee is adjudged grossly negligent or guilty of intentional wrongdoing or breach of contract, Trustor and Beneficiary will, upon demand, indemnify and hold harmless Trustee against all costs, damages, attorneys' fees, expenses and liabilities which it may incur or sustain in connection with this Developer Deed of Trust or any foreclosure or sale hereof or any court or other action or proceeding arising here from.
- 4.10 That this Developer Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" will mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Developer Deed of Trust, whenever the contest so required, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
- 4.11 That Trustee accepts this Trust when this Developer Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee may but is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee will be a party, unless brought by Trustee.

The undersigned Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to him at his address set forth above.

(Signatures Appear on Next Page)

CITY OF GLENDALE, an Arizona
municipal corporation

Kevin R. Phelps
City Manager

ATTEST:

Pam Hanna
City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

an Arizona non-profit corporation

By: _____
Its: _____

STATE OF ARIZONA)
County of Maricopa) ss.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2016, by
_____, the Developer who signed the above document.

Notary Public

My Commission Expires:

Do not destroy this Deed of Trust OR the Note which it secures.

Both must be delivered to the Trustee for cancellation before release and conveyance will be made

EXHIBIT I

WHEN RECORDED, RETURN TO:

City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

PROMISSORY NOTE

(Developer)

Loan Amount: \$ _____

Glendale, Arizona

Date: _____

FOR VALUE RECEIVED, the undersigned jointly and severally promise(s) to pay to the order of the City of Glendale, an Arizona municipal corporation (City) or its successors, the principal sum of _____ Dollars and 00/100 (\$ _____). This Developer Promissory Note ("Developer Note") is made on a 40-year Deferred Payment, non-interest bearing basis on and is secured by a Developer Deed of Trust and Assignment of Rents ("Developer Deed of Trust") encumbering the property identified in the Developer Deed of Trust ("Property").

This Note shall become due and payable upon any transfer, voluntary, involuntary, or by operation of law, of the Property within ten years from the date of this Note, or at any time within ten years from the date of this Note undersigned ceases to occupy or use the Property to provide services to assist low-income persons and families in obtaining decent and affordable homeownership opportunities.

This Note is secured by a Developer Deed of Trust executed by the undersigned naming the City as Beneficiary; which Deed of Trust and this Note are security for the obligations of the undersigned contained in the Development Agreement for Infill Housing Development Under the Home Investment Partnership Program ("Agreement") executed by the parties on _____.

The amount due at such time shall be the amount of the current fair market value of the Property less any portion attributable to the improvements made to the Property as authorized by the HOME Investment Partnerships Act at title III of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701, *et seq.* ("HOME Program"). The current fair market value of the Property shall be established by independent appraisal. The portions of fair market value attributable to HOME Program funds will be established at completion of the rehabilitation improvements through a subsequent appraisal. Appraisals completed to determine such values shall be at the sole cost and expense of the City.

If at the end of the term of this Developer Note, the undersigned has continuously provided the services and complied with the provisions of the Agreement, the City shall consider the obligations of this Note to have been met and shall consider its security interest in the Property to be released to the undersigned.

Should default be made in the payment of any amount when due, or should the undersigned default on any obligation owed to the City under the terms of this Developer Note or the Developer Deed of Trust providing security, therefore, the whole sum of principal shall become immediately due and payable at the option of the City.

If suit or action is instituted by City to recover on this Developer Note, the undersigned will pay reasonable attorneys' fees and costs in addition to the amount due on the Developer Note.

Diligence, demand, protest and notice of demand and protest are hereby waived and the undersigned hereby waives, to the extent which otherwise would apply to the debt evidenced by this Developer Note. Consent is hereby given to the extension of time of payment of this Developer Note, without notice.

The undersigned reserves the right to repay at any time all of the principal amount of this Developer Note in a single payment without the penalties, discount or premiums.

IN WITNESS WHEREOF, this Developer Note and Developer Deed of Trust securing the Developer Note, have been duly executed by the undersigned, as of the date above written.

CITY OF GLENDALE, an Arizona
municipal corporation

Kevin R. Phelps
City Manager

ATTEST:

Pam Hanna,
City Clerk

(SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

an Arizona non-profit corporation

By: _____
Its: _____

STATE OF ARIZONA

County of Maricopa

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by _____, the Developer who signed the above document.

Notary Public

My Commission Expires:

EXHIBIT J
CERTIFICATIONS

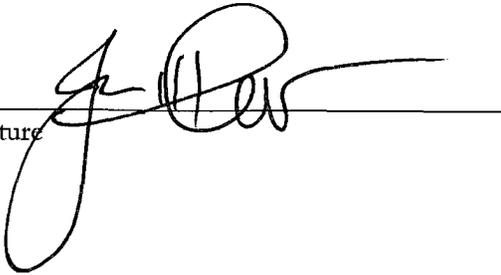
See attached Certifications:

1. Policy of Nondiscrimination on the Basis of Disability.
2. Section 319 of Public Law 101-121.
3. Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms.
4. Drug-Free Workplace.

###

**POLICY OF NONDISCRIMINATION ON THE
BASIS OF DISABILITY**

The undersigned representative agrees, on behalf of Client, to have or adopt a Policy of Nondiscrimination on the Basis of Disability. Such Policy will state that the Developer does not discriminate on the basis of disabled status in the admission or access to, or treatment or employment in, its federally assisted programs or activities.

Signature 

Date 2-25-16

EXHIBIT K

FEDERAL LAWS AND REGULATIONS

###

FEDERAL LAWS AND REGULATIONS

1. **Applicability of Uniform Administrative Requirements.** The parties should comply with all administrative requirements, cost principles, and audit requirements as provided in 2 CFR Part 200 in compliance with the Final Guidance issued by U.S. Department of Housing and Urban Development on Feb. 26, 2015 (Notice: SD-2015-01) (see attached).
2. **Equal Opportunity.**
 - 2.1 The Agency agrees to comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the HUD regulations under 24 CFR Part 1, which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance by way of grant, loan, or contract and will immediately take any measures necessary to effectuate this Contract. If any real property or structure thereof is provided or improved with the aid of Federal financial assistance extended to the Agency, this assurance will obligate the Agency, or in the case of any transfer of such property or structure is used for a purpose of which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
 - 2.2 The Agency agrees to comply with Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), as amended by the Fair Housing Amendments Act of 1988 (P.L. 100-430), and will administer all programs and activities relating to housing and community development in a manner to affirmatively further fair housing within Constitutional limitations throughout the United States.
 - 2.3 The Agency agrees to comply with Section 109 of the Housing and Community Development Act of 1974 and 1977, as amended, and in conformance with all requirements imposed pursuant to the regulations of the Department of HUD (24 CFR Part 570.602) issued pursuant to that Section; and in accordance with Equal Opportunity obligations of that Section, no person in the United States will, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, any program or activity funded in whole or in part with the Community Development funds. Section 109 of the Act further provides that any prohibition against discrimination on the basis of age, under the Age Discrimination Act of 1975 (24 CFR Part 146), or with respect to an otherwise qualified handicapped person, as provided in Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8), will also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.
 - 2.4 The Agency agrees to comply with Executive Order 11063 on equal opportunity in housing and related facilities owned or operated by the Federal Government or provided with Federal financial assistance.
 - 2.5 The Agency agrees to comply with Executive Order 11246, as amended, requiring nondiscrimination and affirmative action to ensure nondiscrimination in employment by government contractors and subcontractors and under federally assisted construction contractors.
 - 2.6 The Agency agrees to comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended, the HUD regulations issued pursuant thereto (24 CFR Part 135) as follows:

- a. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u); Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that are located in or owned in substantial part by persons residing in the area of the project.
 - b. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
 - c. The contractor will send to each labor organization or representative or workers, with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advertising the said labor organization or workers' representative of his commitments under this Section 3 clause and will post copies of the notice in conspicuous places available to employees and applicants for employment or training.
 - d. The contractor will include this Section 3 clause to every subcontract for work in connection with the project and will, at the direction of the applicant or Community of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
 - e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Contract, will be a condition of the Federal financial assistance provided to the project.
3. **Subcontracting.** All work or services covered by this Contract, which is subcontracted by the Agency, will be specified by written contract and subject to all provisions of this Contract. All subcontracts must be approved by the City prior to execution.
 4. **Interest of Certain Federal Officials.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit to arise from the same.
 5. **Interest of Members, Officers or Employees of the Agency, Members of Local Governing Body, or Other Public Officials.** No member, officer, or employee of the Agency or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for 1 year thereafter, will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Contract.

6. **Hatch Act.** The Agency agrees to comply with all provisions of the Hatch Act and that no part of the program will involve political activities, nor will personnel employed in the administration of the program be engaged in activities in contravention of Title V, Chapter 15, of the United States Code.
7. **Labor Standards Provisions.** The Agency agrees to comply with 24 CFR § 570.603, "Labor Standards" published by HUD for Community Development Block Grants.
8. **Compliance with Environmental Requirements.** The Agency agrees to comply with any conditions resulting from the City's compliance with the provisions of the National Environmental Policy Act of 1969 and the other provisions of law specified at 24 CFR § 58.5 insofar as the provisions of such Act apply to activities set forth in the Statement of Work.
9. **Compliance with Flood Disaster Protection Act.**
 - 9.1 This Contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). No portion of the assistance provided under this Contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in any area identified by the Secretary as having special flood hazards, which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this Contract for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program will be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.
 - 9.2 Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance required with respect to financial assistance for acquisition or construction purposes under Section 102(2) of Flood Disaster Protection Act of 1973. Such provisions will be required notwithstanding the fact that the construction of such land is not itself funded with assistance under this Contract.
10. **Compliance with Environmental Laws.**
 - 10.1 This Contract is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.; and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.
 - 10.2 In compliance with said regulations, the City will cause or require to be inserted in full in all contracts and subcontracts with respect to any nonexempt transaction thereunder funded with assistance provided under this Contract, the following requirements:
 - a. A stipulation by the contractor or subcontractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20.
 - b. Agreement by the contractor to comply with all the requirements of Section 114 of the Clear Air Act, as amended (42 U.S.C. 1857c-8), and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements

specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

- c. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the director, Office of Federal Activities EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA list of Violating Facilities.
- d. Agreement by the contractor that he will include or cause to be included the criteria and requirements in paragraphs (a) through (d) of this section in every nonexempt subcontract and requiring the contractor to take such action as the Government may direct as means of enforcing such provisions.
- e. In no event will any amount of the assistance provided under this Contract be utilized with respect to a facility that has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

10.3 The Resource Conservation and Recovery Act. Agency will comply with the Resource Conservation and Recovery Act (“RCRA”), including, but not limited to, 42 U.S.C. § 6962, which requires preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (“EPA”) (40 C.F.R. parts 247 through 254).

10.4 The Toxic Substances Control Act. The Agency will comply with the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 et seq.

10.5 The Federal Insecticide, Fungicide and Rodenticide Act. The Agency will comply with the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 et seq.

10.6 Agency will comply with all other applicable federal and state environmental laws and regulations.

- 11. **Historic Preservation.** This Contract is subject to the requirements of P.L. 89-665, the Archaeological and Historic Preservation Act of 1974 (P.L. 93-291), Executive Order 11593, and the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800. The City must take into account the effect of a project on any district, site, building, structure, or object listed in or found by the Secretary of the Interior, pursuant to 35 CFR Part 800, to be eligible for inclusion in the National Register of Historic Places, maintained by the National Park Service of the U. S. Department of the Interior, and must make every effort to eliminate or minimize any adverse effect on a historic property.
- 12. **Historic Barriers.** This Contract is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151) and its regulations. Every building or facility (other than a privately owned residential structure) designed, constructed, or altered with CDBG funds must comply with requirements of the "American Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped."
- 13. **Lead-Based Paint.** This Contract is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.), and Lead-Based Paint Regulations (24 CFR Part 35 and 24 CFR § 570.608 and/or 92.335), and related amendments thereto. The use of lead-based paint is prohibited whenever federal funds are used directly or indirectly for the construction, rehabilitation, or modernization of residential structures. All federally assisted residential structures and related property constructed prior to 1978, Homebuyer Programs, Tenant-Based Rental Assistance, and Special-Needs Housing (acquisition), will comply with existing and new Lead-Based Paint Hazard Reduction Requirements,

effective September 15, 2000. As the Grantor or Participating Jurisdiction, the City of Glendale shall be consulted regarding the Agency/Grantee's compliance status.

14. **Property Disposition.** Real or personal property purchased in whole or in part with CDBG funds shall not be disposed through sale, use, or location without the written permission of the City. The proceeds from the disposition of real property will be considered Program Income and subject to 24 CFR § 570.504(c).
15. **Lobbying.** Block Grant funds shall not be used for publicity or propaganda purposes designed to support or defeat legislation proposed by federal, state, or local governments.
16. **Acquisition/Relocation.** This Contract is subject to providing a certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR Part 24, and 24 CFR Part 511.14, which govern the acquisition of real property for the project and provision of relocation assistance to persons displaced as a direct result of acquisition, rehabilitation, or demolition for the project.
17. **Section 504.** The Agency agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against the handicapped in any federally assisted program.
18. **Federal Fire Prevention and Control Act of 1992.** The Fire Administration Authorization Act of 1992 added a new Section 31 to the Federal Fire Prevention and Control Act of 1974. This Section requires that approved smoke detectors be installed in all houses assisted under the Community Development Block Grant Program. To comply with this requirement and locally adopted codes Agency shall install smoke detectors in all sleeping areas and any hallway connecting these sleeping areas.

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE DEPUTY SECRETARY
WASHINGTON, DC 20410-0050

Special Attention of:

NOTICE: SD-2015-01

Issued:

FEB 26 2015

HUD Regional Directors
HUD Field Office Directors
HUD Offices of Community Planning and Development (CPD),
Fair Housing and Equal Opportunity (FHEO),
Housing,
Native American Programs (ONAP),
Lead Hazard Control and Healthy Homes (OLHCHH),
Public and Indian Housing (PIH),
Policy Development and Research (PD&R)
HUD Grant Administrators, Grant Officers, Government Technical Monitors (GTMs), and
Government Technical Representatives (GTRs) and Recipients of HUD Federal Financial
Assistance

This notice remains effective until amended,
superseded or rescinded

SUBJECT: Transition to 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance

TABLE OF CONTENTS

1. Background.....page 2
2. Effective Date and Applicability to HUD..... page 3
3. Purpose..... page 3
4. Subpart A – Acronyms and Definitions: Highlights..... page 4
5. Subpart B – General Provisions: Highlights..... page 4
6. Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards:
Highlights..... page 7
7. Subpart D – Post-Federal Award Requirements: Highlights..... page 9
8. Subpart E – Cost Principles: Highlights..... page 13
9. Subpart F – Audit Requirements: Highlights..... page 15
10. 2 CFR Part 200 Appendices: A Brief Description..... page 16
11. General Transition Rules.....page 17
12. Conforming Program Regulations and Guidance..... page 19
13. Additional Resource Material..... page 19

14. Upcoming Training and Additional Guidance	page 20
15. Contacts for Questions	page 20
16. Appendix A: 2 CFR part 200 Table of Contents.....	page 22

1. **BACKGROUND**

On December 26, 2013, the Office of Management and Budget (OMB) published (at 78 Federal Register 78590; <https://federalregister.gov/a/2013-30465>) final guidance on the above subject, which is codified at 2 CFR part 200. OMB and the Federal awardmaking agencies published a joint interim final rule implementing the final guidance as requirements for recipients of Federal financial assistance on December 19, 2014 (at 79 Federal Register 75871; <https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform>). OMB also made technical corrections to part 200.

The purpose of 2 CFR part 200 is to streamline the Federal government's guidance on administrative requirements, cost principles, and audit requirements to more effectively focus Federal resources on improving performance and outcomes, while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. The uniform guidance supersedes, consolidates, and streamlines requirements from eight OMB Circulars:

- A-21, *Cost Principles for Educational Institutions,*
- A-87, *Cost Principles for State, Local and Indian Tribal Governments,*
- A-89, *Catalog of Federal Domestic Assistance,*
- A-102, *Grants and Cooperative Agreements With State and Local Governments,*
- A-110, *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,*
- A-122, *Cost Principles for Non-Profit Organizations,*
- A-133, *Audits of States, Local Governments, and Non-Profit Organizations,* and
- The guidance in OMB Circular A-50, *Audit Followup,* on Single Audit Act follow-up.

HUD adopted this guidance at a new part, 2 CFR part 2400. The uniform guidance also removed: 2 CFR parts 215, 220, 225, and 230. HUD amended 24 CFR parts 84 and 85, which had codified OMB Circulars superseded by 2 CFR part 200, by removing all substantive provisions and including a saving provision that provides that Federal awards made prior to December 26, 2014, will continue to be governed by parts 84 or 85 as codified in the 2013 edition of the Code of Federal Regulations (CFR) or as provided under the terms of the Federal award.

3. PURPOSE

The purpose of this Notice is to identify and explain significant changes made in 2 CFR part 200, and provide transition guidance and links to additional resource materials for HUD and its grant program stakeholders and other recipients of Federal financial assistance from HUD. This Notice is broken out by the six subparts in 2 CFR part 200:

- Subpart A – *Acronyms and Definitions*;
- Subpart B – *General Provisions*;
- Subpart C – *Pre-Federal Award Requirements and Contents of Federal Awards*;
- Subpart D – *Post-Federal Award Requirements*;
- Subpart E – *Cost Principles*; and
- Subpart F – *Audit Requirements*.

Appendix A of this Notice provides the table of contents for 2 CFR part 200. HUD highly recommends that recipients familiarize themselves with 2 CFR part 200 in its entirety. This Notice is intended to highlight major changes and topical areas that may apply across all HUD programs or be of general interest.

4. SUBPART A – ACRONYMS AND DEFINITIONS: HIGHLIGHTS

Subpart A of 2 CFR part 200 lists definitions and acronyms for key terms found throughout the uniform guidance. Each definition is in its own section so that the reader can look at the table of contents to see defined terms. Since the uniform guidance originated in eight different Circulars, there are numerous conforming changes made to provide consistency for the terms used. In particular, part 200 uses “non-Federal entity” and “pass-through entity.” “Non-Federal entity” means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. “Pass-through entity” means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Policy decisions are reflected in some definitions, including: §200.18, *Cognizant agency for audit*, §200.23, *Contractor*, §200.33, *Equipment*, §200.73, *Oversight agency for audit*, and §200.94, *Supplies*. Section 13.b of this Notice provides a link to a crosswalk developed by OMB from the existing OMB Circulars to the final uniform guidance in 2 CFR part 200.

Definition of Indian Tribe: The definition of Indian tribe in §200.54 differs from the definition in the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4013, et seq.). The definition of Indian tribe in §200.54 has no effect on programs with statutory definitions of “Indian tribe.”

5. SUBPART B – GENERAL PROVISIONS: HIGHLIGHTS

Subpart B covers general provisions, including the basic purpose of 2 CFR part 200 and its applicability to different types of Federal awards to non-Federal entities, and states that

Major Reforms and Policy Changes

The policy reforms brought about by OMB's consideration of public comments and efforts to streamline federal grant-making processes are identified as the following:

- Eliminate duplicative/conflicting guidance;
- Focus on performance over compliance for accountability;
- Encourage efficient use of information technology (IT)/shared services;
- Provide for consistent treatment of costs;
- Limit allowable costs for the best use of Federal resources;
- Incorporate standard business processes using data definitions;
- Strengthen oversight; and
- Target audit requirements on risk of waste, fraud, and abuse.

In addition to the consolidation of the OMB Circulars, major audit changes include the following:

- The Single Audit threshold is raised from \$500,000 to \$750,000, which eliminates the need for more than 5,000 audits, with a cost savings estimated at \$250 million;
- The questioned cost limit in Single Audits is raised from \$10,000 to \$25,000;
- Assessment of government-wide audit quality is to be conducted every six years (beginning in 2018).

The uniform guidance, which provides a government-wide framework for grants management, is designed to reduce administrative burden for non-Federal entities receiving Federal awards.

2. EFFECTIVE DATE AND APPLICABILITY TO HUD

The uniform guidance was applicable for Federal agencies, including HUD, effective December 26, 2013. Federal agencies, including HUD, adopted 2 CFR part 200 as requirements for Federal financial assistance programs by the interim final rule published December 19, 2014. It was made applicable to non-Federal entities (recipients of Federal financial assistance) effective December 26, 2014, with one exception: §200.110(a) was revised to give a one-year grace period for implementation of the procurement standards. As will be detailed in the 2015 OMB Compliance Supplement, non-Federal entities choosing to delay implementation for the procurement standards will need to specify in their documented policies and procedures that they continue to comply with OMB Circulars A-87 or A-110 for one additional fiscal year which begins after December 26, 2014. For example, the first full fiscal year for a non-Federal entity with a June 30th year would be the year ending June 30, 2016. See also the General Transition Rules section of this Notice.

Federal agencies, including HUD, may apply subparts A-E to for-profit entities. Exceptions to the applicability of the rule are listed in 2 CFR 200.101(d) and (e) and 2 CFR 200.102. This subpart makes clear that part 200 does not supersede any existing or future authority under law or by executive order or the Federal Acquisition Regulation (FAR). As an example, for public housing, the disposition statute at Section 18 of the U.S. Housing Act of 1937 (42 U.S.C. 1437p) supersedes the disposition instructions in §200.311(c). Subpart B also covers Authorities, Effect on other issuances, Agency implementation, OMB responsibilities, Inquiries, Effective date, English language, Conflict of interest, and Mandatory disclosures. Highlights are discussed below.

Applicability: Section 200.101 includes a table that summarizes how the guidance applies to types of Federal awards. This table must be read along with the other provisions of section 200.101:

The following portions of Part 200:	Are applicable to the following types of Federal Awards (except as noted in paragraphs (d) and (e) of section 200.101):	Are NOT applicable to the following types of Federal Awards:
Subpart A—Acronyms and Definitions.	—All.	
Subpart B—General Provisions, except for §§200.111 English Language, 200.112 Conflict of Interest, 200.113. Mandatory disclosures	—All.	
§§ 200.111 English Language, 200.112 Conflict of Interest, and 200.113. Mandatory Disclosures	—Grant agreements and cooperative agreements.	<ul style="list-style-type: none"> —Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.
Subparts C–D, except for Subrecipient Monitoring and Management.	—Grant agreements and cooperative agreements	<ul style="list-style-type: none"> —Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.
Subpart D—Post Federal Award Requirements, Subrecipient Monitoring and Management.	—All.	
Subpart E—Cost Principles.	<ul style="list-style-type: none"> —Grant agreements and cooperative agreements, except those providing food commodities. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts in accordance with the FAR. —Fixed price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs. 	<ul style="list-style-type: none"> —Grant agreements and cooperative agreements providing food commodities. —Fixed amount awards. —Agreements for: loans, loan guarantees, interest subsidies, insurance. —Federal awards to hospitals (see Appendix IX to Part 200—Hospital Cost Principles).
Subpart F—Audit Requirements.	—All.	

Exceptions:

- Section 200.102(a) allows OMB to make exceptions to 2 CFR part 200 for certain classes of Federal awards or for certain non-Federal entities, but only in unusual circumstances and if such exceptions are not prohibited by law. Where the provisions of Federal statutes or regulations differ from the provisions of part 200, the provisions of the Federal statutes or regulations take precedence.
- Section 200.102(b) allows HUD to make certain exceptions on a case-by-case basis except where otherwise required by law or where OMB or other approval is expressly required by 2 CFR part 200. Under §200.102(c), HUD may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB or required by Federal statutes or regulations. HUD may also apply less restrictive requirements when making fixed amount awards as defined in Subpart A, §200.45.
- Exemptions from Subpart F, Audit Requirements, are not permitted under any circumstances.

English Language: Section 200.111 makes clear that all HUD financial assistance announcements, HUD award information (e.g., Notices of Funding Availability), and applications must be in the English language. Non-Federal entities may translate the Federal award and other documents into another language, however, in the event of any inconsistency, the English language meaning would control. Where a significant portion of the non-Federal entity's employees working on the award are not fluent in English, the non-Federal entity must provide the HUD award in English and the language(s) with which the employees are more familiar.

Conflict of Interest: Section 200.112 requires HUD to establish conflict of interest policies for Federal awards and requires non-Federal entities to disclose in writing any potential conflict of interest to HUD or the pass-through entity in accordance with HUD's policy. The general procurement standards in §200.318 require non-Federal entities to maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest. "Organizational conflicts of interest" means that, because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

6. SUBPART C – PRE-FEDERAL AWARD REQUIREMENTS AND CONTENTS OF FEDERAL AWARDS: HIGHLIGHTS

Subpart C prescribes the instructions and other pre-award information to be used in the funding announcement and application process.

Selecting the Instrument for Award: Section 200.201 requires the Federal awarding agency or pass-through entity to decide on the appropriate instrument for the Federal award (i.e., grant agreement, cooperative agreement, or Federal contract under the Federal Acquisition Regulation) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08). The program statute or pass-through entity may have another name for

the document (e.g., annual contributions contract), but the choice is limited to these three instruments, in accordance with the Federal Grant and Cooperative Agreement Act.

Fixed Amount Awards: Section 200.201(b) allows for “fixed amount” awards under which the amount is negotiated using the cost principles (or other pricing information) as a guide. Fixed amount awards generally may be used if the project scope is specific and if adequate cost, historical, or unit pricing data are available to establish a fixed amount award based on a reasonable estimate of actual cost. Accountability is based on performance. There is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Payments may be based on milestones, on a unit price basis, or in a single payment upon completion of the Federal award. The non-Federal entity is required to provide a certification regarding completion. Periodic reports may be required.

Funding Announcements and Award Agreements: Sections 200.202, 200.203, 200.210, and Appendix I require funding opportunities to be available for at least 60 days and impose standard requirements on HUD’s notices of funding opportunities, on application requirements, and Federal award requirements. HUD will include with each Federal award any program-specific or other terms and conditions, and will share both the general and the program-specific or other requirements on a public website and in Notices of Funding Availability (NOFAs).

Risk-Based Awards: Sections 200.204 and 200.205 require Federal agencies to design and execute a merit review process for competitive applications using a risk-based approach that relies, in part, on HUD review of OMB-designated repositories of government-wide eligibility qualification or financial integrity information (such as the Federal Awardee Performance and Integrity Information System (FAPIIS), “Do Not Pay” lists, etc.)¹. This assessment can include, for example:

- financial stability,
- the quality of management systems and ability to meet the management standards in 2 CFR part 200,
- history of performance,
- reports and findings from audits, and
- the applicant’s ability to effectively implement statutory, regulatory, or other requirements, and debarment and suspension guidelines.

HUD must also comply with the debarment and suspension guidelines in 2 CFR part 180.

¹ FAPIIS is a database that has been established to track contractor misconduct and performance. The database contains Federal contractor criminal, civil, and administrative proceedings in connection with federal awards; suspensions and debarments; administrative agreements issued in lieu of suspension or debarment; non-responsibility determinations; contracts terminated for fault; defective pricing determinations; and past performance evaluations (see: <https://www.fapiis.gov/fapiis/index.jsp>). The “Do Not Pay” Business Center was developed for programs administered and/or funded by the Federal government to help prevent, reduce and stop improper payments while protecting citizens’ privacy, and partner with agencies to identify potential fraud, waste, and abuse while protecting citizens’ privacy (see: <http://donotpay.treas.gov/index.htm>).

Section 200.207 authorizes Federal agencies and pass-through entities to impose additional specific award conditions on applicants or recipients who have a history of failure to comply with terms and conditions, or failure to meet performance goals, or are not otherwise responsible. The conditions include requiring reimbursements rather than advance payments, requiring additional, more detailed reports, additional monitoring, etc. If such additional requirements are imposed, HUD or the pass-through entity must notify the applicant or non-Federal entity as to the nature of, and reasons for, the requirements, actions needed, and timeframe, if applicable. Special conditions must be promptly removed once the causal conditions have been corrected.

7. **SUBPART D – POST-FEDERAL AWARD REQUIREMENTS: HIGHLIGHTS**

Subpart D describes the requirements standards for managing and administering HUD awards. It includes standards for financial and program management, property and procurement standards, performance and financial monitoring and reporting, subrecipient monitoring and management, record retention and access, remedies for noncompliance, the provisions of the Federal Funding and Accountability Transparency Act (FFATA)² and closeout. NOTE: There will be exceptions to the items listed below and they will be published by regulation. See also Section 5 of this Notice.

Performance Measurement: Section 200.301 requires, as appropriate and in accordance with OMB information collection requirements, recipients to relate financial data to performance accomplishments of the Federal award and provide cost information to demonstrate cost effective practices (e.g., through unit cost data). This is in line with the shift in 2 CFR part 200 from compliance to performance. It also requires Federal agencies to use only OMB-approved forms for performance reports. Non-Federal entities must comply with FFATA. A recipient's performance should be measured in a way that will help HUD and other non-Federal entities improve program outcomes, share lessons learned, and spread the adoption of promising practices.

Internal Controls and Protected Personally Identifiable Information: Section 200.303 sets forth requirements for internal controls. This section reflects requirements that were previously in the A-133 audit requirements. It also addresses the non-Federal entity's responsibilities to take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the Federal awarding agency or the pass-through entity, consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

Payment: Section 200.305 describes cash management requirements applicable to states and other non-Federal entities to minimize the time elapsed between agencies' advance

² FFATA, signed September 26, 2006, requires information on Federal awards (Federal financial assistance and expenditures) to be made available to the public via a single, searchable website, which is www.USASpending.gov. The intent is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. Amendments to FFATA have expanded its scope. See also <https://www.fhrs.gov/>.

payments of funds to the non-Federal entity and the entity's disbursement of funds for direct program or project costs.

Interest Earned on Federal Advances: Section 200.305(b)(8) requires non-Federal entities to maintain advance Federal payments in interest-bearing accounts (with some exceptions). Interest amounts up to \$500 per year may be retained by the non-Federal entity for administrative expenses. Under §200.303(b)(9), interest earned in excess of \$500 must be remitted annually to the Department of Health and Human Services' Payment Management System (either electronically through the system, or by check to the Department of Health and Human Services to the Treasury-approved lockbox: HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231).

Program Income: Section 200.307 generally encourages recipients to earn income to offset program costs. This section has several provisions that include, but are not limited to, the following:

- Proceeds from the sale of property or equipment are not program income; such proceeds will be handled in accordance with the requirements of §200.311, *Real property*, and §200.313, *Equipment*, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.
- If the Federal awarding agency does not specify in its regulations or the terms and conditions of its award, or give prior approval for how program income is to be used, then, ordinarily, program income must be deducted from total allowable costs to determine the net costs. Program income must be used for current costs unless HUD authorizes otherwise. Program income that the recipient did not anticipate at time of the Federal award must be used to reduce the award rather than to increase the funds committed to the project.

Revision of Budget and Program Plans: Section 200.308 requires, among other things, recipients to obtain Federal agency approvals for budget and program or project scope revisions.

Property Standards: Sections 200.310-200.316 set forth standards for real property, equipment, supplies, and intangible property. The regulations cover title, insurance, property trust relationships, and disposition. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from HUD that provides for: 1) retention of title after compensation to HUD, 2) sale of the property and compensation to HUD, or 3) transfer of title to HUD or a third party approved or designated by HUD.

Procurement: §§200.317- 200.326 cover procurement standards. The standards are generally consistent with the requirements in 24 CFR part 85 for all non-Federal entities. For governmental recipients, the regulations have not substantially changed.

- The regulations require non-Federal entities to maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest, and governing the performance of their employees engaged in the selection, award and administration of contracts. "Organizational conflicts of interest" means that,

because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization (§200.318(c)(2)).

- The non-Federal entity's procurement procedures must be designed to avoid acquisition of unnecessary or duplicative items and the non-Federal entity is encouraged to enter into intergovernmental or inter-entity agreements to procure or use common goods and services (§200.318(d) and (e)).
- Non-Federal entities, in conducting procurements, must conduct them in a manner providing full and open competition and are prohibited from using state or local geographical preferences in evaluating bids or proposals (except where applicable Federal statutes expressly mandate or encourage geographical preferences, such as HUD's Section 3 requirements in 24 CFR part 135) (§200.319).
- Methods of procurement now include a micro-purchase option, which is the acquisition of supplies or services that do not exceed \$3,000 (or \$2,000 for acquisitions for construction subject to the Davis-Bacon Act) (§200.320(a)).
- "Supplies" includes computing devices if the acquisition cost was less than the lesser of the capitalization level established by a non-Federal entity for financial statement purposes or \$5,000, regardless of the length of their useful life (§200.94).
- The Simplified Acquisition Threshold for small purchase procedures, which are those relatively simple and informal procurement methods for securing services, supplies or other property, is now \$150,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 and will be periodically adjusted for inflation (§200.88 and §200.320(b)).
- The non-Federal entity's contracts must contain certain provisions which are included in Appendix II of 2 CFR part 200 (§200.326).
- Non-Federal entities have one full fiscal year after the effective date to comply with the revised procurements standards (see *Implementation Dates* in the December 19, 2014, Federal Register at <https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform>).

Bonding Requirements: Section 200.325 permits the Federal agency to accept the recipient's bonding policy and requirements if the Federal agency has determined that the Federal interest is adequately protected, and if not, the minimum requirements (abbreviated) are as follows:

- A bid guarantee equal to five percent of the bid price.
- A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment

as required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

Performance and Financial Monitoring and Reporting: Sections 200.327-328 address the frequency, standards, and OMB approval requirements for agency collection of recipient performance and financial data and monitoring of recipient performance.

Real Property Reporting: Section 200.329 requires annual reporting on real property for which there is a Federal interest, but permits an option for various and less stringent multi-year reporting periods where the Federal interest extends beyond 15 years.

Subrecipient or Contractor: Section 200.330 provides guidance for determining whether an entity is a subrecipient or contractor, in order to apply the appropriate oversight of the Federal funds.

Requirements for Pass-Through Entities: Section 200.331 requires pass-through entities to comply with certain requirements in order to meet their own responsibility to the Federal awarding agency. Many of these requirements were in OMB Circular A-133. Pass-through entities are required to identify certain, clearly identified subaward information. This includes an indirect cost rate if the subrecipient has indirect costs. Pass-through entities must consider risks associated with subawards. The evaluation of a subrecipient's risk of noncompliance with Federal statutes and regulations is used to determine the appropriate level of subrecipient monitoring. Specific subrecipient monitoring tools are outlined, giving pass-through entities flexibility to adjust their oversight framework based on that consideration of risk.

Record Retention: Section 200.333 continues the existing record retention period of generally three years, with some exceptions and caveats. Federal agencies and non-Federal entities should, whenever practicable, collect, transmit and store Federal award-related information in machine-readable formats instead of closed formats or on paper.

Remedies for Noncompliance: Sections 200.338-200.342 cover remedies for noncompliance, including termination and notices of termination. Section 200.338 permits conditions to be imposed on the award if the non-Federal entity fails to comply with the requirements of the award. Previously, only pre-award conditions were authorized.

Closeout: Section 200.343 describes specific closeout actions that are required for all Federal awards at the end of the period of performance and should be completed no later than one year after receipt and acceptance of all required final reports. The non-Federal entity must submit all required final reports within 90 days after the end of the period of performance. The period of performance, defined at §200.77, means from the start to the end dates in the Federal award.

Post-closeout Adjustments and Continuing Responsibilities: Section 200.344 limits the period during which any post-closeout adjustments can be made. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify

the non-Federal entity within the record retention period. However, amounts due can be collected after this period.

8. SUBPART E – COST PRINCIPLES: HIGHLIGHTS

Subpart E covers the principles that must be used in determining the allowable costs of work performed by a non-Federal entity under a Federal award and in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate prices. It covers exemptions (§200.401(c)) and basic considerations (§§200.402-200.411). The application of the cost principles should require no significant changes in the internal accounting policies and practices of non-Federal entities. The Basic Considerations for costs are largely unchanged. Changes have been made to some select items of cost.

Profit: Section 200.400(g) states that non-Federal entities may not earn or keep any profit resulting from the Federal financial assistance (unless explicitly authorized by the terms and conditions of the Federal award). This is not new.

Prior Approval: In recognition of the difficulty in determining the reasonableness and allocability of certain items of cost, non-Federal entities may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of incurring unusual or special costs. Prior approval is specifically required for allowability under certain circumstances as described in §200.407.

Direct Costs: Direct costs are covered in §200.413. This section is largely unchanged from previous OMB cost principles.

- Direct costs are identified specifically with the Federal award or can be easily and accurately assigned to activities of the award. Typical direct costs include employee compensation, fringe benefits, materials and other items attributable to the award.
- If directly related to a specific award, certain costs that would otherwise be included with an indirect cost rate can be direct charged, such as extraordinary utility consumption, cost of materials supplied from stock or services from specialized facilities or other institutional service operations.

Indirect Costs: Indirect costs are addressed in §200.414. This section is largely unchanged from previous OMB cost principles.

- Negotiated indirect cost rates must be accepted by all Federal awarding agencies unless certain conditions are met. A Federal awarding agency must implement and make publicly available (e.g., via the Federal Register) the policies, procedures, and general decision-making criteria the programs would follow in seeking and justifying deviations from negotiated rates.
- Pass-through entities must accept a federally recognized indirect cost rate between a subrecipient and the Federal government or, if no such rate exists, either negotiate a rate between the entity and the subrecipient or establish a de minimis indirect cost rate (see also §200.331(a)(4)).

- If a non-Federal entity has never received a negotiated indirect cost rate, it may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) as defined in §200.68, which may be used indefinitely (§200.414(f)). (Exceptions for some non-Federal entities are listed in Appendix VII, paragraph (d)(1)(B).)
- Non-Federal entities that are able to allocate and charge 100% of their costs directly may continue to do so. Charging the Federal award for indirect costs is never mandatory; a non-Federal entity may conclude that the amount it would recover thereby would be immaterial and not worth the effort needed to obtain it.
- Non-Federal entities that have a federally negotiated indirect cost rate may apply for a one-time extension of the current rate for a period up to four years, subject to the review and approval of the cognizant agency for indirect costs. At the end of the four-year extension period, the non-Federal entity must negotiate a rate. This rate may be extended.

Certifications: Section 200.415 addresses certifications, which are required to be submitted with annual and final fiscal reports, vouchers for payment, and proposals to establish a cost allocation plan or indirect cost rate. Specific language is included acknowledging the statutory consequences of false certifications.

Special Considerations: Special considerations for states, local governments, and Indian tribes for identification and assignment of central service costs are included in §§200.416 and 200.417. Special considerations for institutions of higher education are covered in §§200.418 and 200.419.

General Provisions for Selected Items of Cost: General provisions for 56 selected items of cost are covered in §§200.420-200.475; this section uses language from three Circulars, A-21 (2 CFR part 220), A-87 (2 CFR part 225), and A-122 (2 CFR part 230). These principles apply whether a particular item is properly treated as either a direct or indirect cost. These selected items include two additions (§200.428, *Collections of Improper Payments*, and §200.440, *Exchange Rates*), some changed provisions (including the deletion of *Communications*, which OMB thought could be addressed through “Basic Considerations,” §§200.402 – 200.411), and some clarifications.

- **Audit Services:** Any costs when audits required by the Single Audit Act have not been conducted or costs of auditing grantees or recipients that are not required to have a single audit are not allowable (§200.425). This provision was in OMB Circular A-133.
- **Collections of Improper Payments:** Costs of recipients to recover improper payments may be charged as direct or indirect, and may be used in accordance with cash management standards described in §200.305 (§200.428).
- **Compensation – Personal Services:** §200.430 requires non-Federal entities to maintain a strong system of internal controls over their records to justify costs of salaries and wages and provides additional flexibility in the processes they use to meet these standards.
- **Conferences:** Allowable conference costs paid by non-Federal entities must be necessary and reasonable for successful performance under the award and may include facilities rentals, speakers’ fees, costs of meals and refreshments, local

transportation, and other incidental items, unless further restricted by the terms and conditions of the Federal award (§200.432).

- **Contingency Provisions:** Contingency definitions, allowances, and disallowances are set forth in §200.433.
- **Fines, Penalties, Damages, and Other Settlements:** Costs resulting from a recipient's violations of, alleged violations of, or failure to follow Federal, State, local, tribal, or foreign laws or regulations are unallowable (§200.441).
- **Lobbying:** The cost to influence activities associated with obtaining grants, contracts, cooperative agreements or loans is unallowable (§200.450).
- **Organization Costs:** Costs for items such as incorporation fees, attorneys, or accountants in connection with establishment or reorganization of an entity are unallowable except with prior approval of the Federal awarding agency (§200.455).
- **Pre-award Costs:** Are only allowable to the extent that they would have been approved if incurred after the date of the Federal award and only with prior approval of the Federal awarding agency (§200.458).

9. **SUBPART F – AUDIT REQUIREMENTS: HIGHLIGHTS**

Subpart F sets forth the standards for audits of non-Federal entities expending Federal awards.

Increased Audit Threshold: One of the significant changes is the raised threshold which requires a non-Federal entity to have a single or program-specific audit conducted for any year in which the non-Federal entity expends \$750,000 or more (up from \$500,000) (§200.501(a)).

Making Audits Publicly Available: Auditees must make copies of their audit available for public inspection, ensuring that protected personally identifiable information is not included. Audit reports must be submitted to the Federal Audit Clearinghouse (FAC) and all Federal agencies, pass-through entities, and others interested in an audit report must obtain it from the FAC. Indian tribes may opt out of authorizing the FAC to publish the reporting package on the Web, but are then responsible for providing the reporting package directly to any affected pass-through entities and also making it available for public inspection (§200.512(b)(2)).

Federal Agency Responsibilities: §200.513 requires Federal agencies, including HUD, to:

- Appoint a Single Audit Accountable Official (SAAO) and a Single Audit Liaison;
- Participate in a government-wide project to determine the quality of single audits;
- Use cooperative audit resolution mechanisms to improve Federal program outcomes through better audit resolution follow-up and corrective action; and
- Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow up on audit findings and the effectiveness of Single Audits in improving non-Federal agency accountability and their use in making award decisions.

Audits and GAGAS: Audits must be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) (§200.514(a)).

Higher Threshold for Known Questioned Costs: The threshold for known questioned costs has been increased to \$25,000 from \$10,000. As before, in evaluating the effect of questioned costs on its opinion on compliance, the auditor must consider the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The higher threshold amount is also used in several related aspects of auditing (§200.516(a)).

Major Program Determinations and Low-Risk Auditees: Changes have been made to the auditor's risk-based approach for determining which Federal programs are major programs (§200.518). Auditees that meet the criteria for a low-risk auditee are eligible for reduced audit coverage (§200.520).

Transition Guidance: To ensure the uniform application of the requirements of Subpart F for all Federal programs, the requirements will be effective for audits of fiscal years starting December 26, 2014, or later. These revised audit requirements are not applicable to fiscal years beginning before that date.

10. 2 CFR PART 200 APPENDICES: A BRIEF DESCRIPTION

2 CFR part 200 contains 11 Appendices, briefly described here:

- Appendix I: This Appendix provides the full text of the notice of funding opportunities as required by §200.203, along with application and submission information, application review information, Federal award administration information, and Federal awarding agency contact(s) requirements.
- Appendix II: This Appendix contains required contract provisions for all contracts made by a non-Federal entity under a Federal award. The description of each provision should be sufficient for a non-Federal entity to determine if the provision needs to be included in a specific contract.
- Appendix III: This Appendix provides criteria for identifying and computing indirect cost rates at institutions of higher education (IHEs).
- Appendix IV: This Appendix provides guidance for identifying and assigning indirect costs and making rate determinations for nonprofit organizations.
- Appendix V: This Appendix provides guidance on a process for state and local governments to identify and assign central service costs to benefitted activities on a reasonable and consistent basis.
- Appendix VI: This Appendix extends requirements by the Department of Health and Human Services (HHS) on developing, documenting, submitting, negotiating, and approving public assistance cost allocation plans to all Federal agencies whose

programs are administered by a state public assistance agency. (Most such programs are funded by HHS; few, if any, are funded by HUD.)

- Appendix VII: This Appendix provides guidance to state and local governments and Indian tribes on developing, submitting and documenting indirect cost rate proposals.
- Appendix VIII: This Appendix lists those nonprofit organizations that are exempted from the requirements of Subpart E, *Cost Principles*.
- Appendix IX: This Appendix makes clear that existing principles at 45 CFR Part 74 Appendix E, *Principles for Determining Cost Applicable to Research and Development under Grants and Contracts with Hospitals*, remains in effect until OMB implements revised guidance for hospitals.
- Appendix X: This Appendix states that the Data Collection Form SF-SAC for Single Audits is available on the Federal Audit Clearinghouse (FAC) website. The FAC website address <http://harvester.census.gov/sac/>, given in §200.36, *Federal Audit Clearinghouse (FAC)*, for accessing the FAC, was valid as of the issuance of this Notice.
- Appendix XI: This Appendix states that the audit compliance supplement for Single Audits cited by §200.21, *Compliance supplement*, is available on OMB's website, and provides an address (<http://www.whitehouse.gov/omb/circulars>) that was valid for accessing the supplement as of the issuance of this Notice.

11. GENERAL TRANSITION RULES

HUD's regulations adopting the requirements of 2 CFR part 200 for HUD programs were published in the Federal Register on December 19, 2014

(<https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform>).

Questions have been raised about the applicability of these requirements. The following applies:

- Federal awards made before December 26, 2014, will continue to be governed by the terms and conditions of the Federal award. The grant agreements for some HUD programs (e.g., Community Development Block Grant, HOME Investment Partnerships, Emergency Solutions Grants, Indian Housing Block Grants, Native Hawaiian Block Grants, Indian Community Development Block Grants) incorporate the regulations "as now in effect and as may be amended from time to time" and, therefore, 2 CFR part 200 will be applicable to these grants.
- New Federal awards made on or after December 26, 2014, are governed by 2 CFR part 200, including formula awards.

- For Federal agencies that consider incremental funding action on previously made awards to be opportunities to change award terms and conditions, 2 CFR part 200 applies to the first funding increment issued on or after December 26, 2014, and any subsequent funding increment. Awards made before then that have been modified on or after that date in ways that do not increase the funding amount (such as a no-cost extension, or more frequent reporting) will continue to be governed by the terms and conditions of the Federal award. As a result, 2 CFR part 200 will not apply to such awards unless there is another requirement that makes that part apply to them.
- For Federal agency incremental funding actions that are subject to 2 CFR part 200, non-Federal entities are not obligated to segregate or otherwise track old funds and new funds but may do so at their discretion. For example, a non-Federal entity may track the old funds and continue to apply the Federal award flexibilities to the funding awarded under the old rules (e.g., local ability to issue fixed price subawards, non-Federal entity determination of the need to incur administrative and clerical salaries based on major project classification).
- For Federal awards made with modified award terms and conditions at the time of incremental funding actions, Federal awarding agencies may apply 2 CFR part 200 to the entire Federal award that is uncommitted or unobligated as of the Federal award date of the first increment received on or after December 26, 2014.
- Existing negotiated indirect cost rates will remain in place until they are due to be re-negotiated. HUD and indirect cost negotiating agencies will use 2 CFR part 200, both in generating proposals and negotiating new rates (when the rate is due to be re-negotiated) for non-Federal entities' fiscal years that start on or after December 26, 2014.
- The effective date of 2 CFR part 200 for subawards is the same as the effective date of 2 CFR part 200 for the Federal award from which the subaward is made. The requirements for a subaward, no matter when made, flow from the requirements of the original Federal award from the Federal awarding agency.
- Subpart F, Audit requirements, applies to audits of non-Federal entity fiscal years beginning on or after December 26, 2014. The revised audit requirements are not applicable to fiscal years beginning before that date.

OMB provided additional guidance on the effective dates in its Frequently Asked Questions updated November 2014:

Q.110-13 (Previously Q II-2) Effective Dates and Federal Awards Made Previously

Will this apply only to awards made after the effective date, or does it apply to awards made earlier?

• Once the Uniform Guidance goes into effect for non-Federal entities, it will apply to Federal awards or funding increments after that date, in cases where the Federal agency considers funding increments to be an opportunity to modify the terms and conditions

of the Federal award. It will not retroactively change the terms and conditions for funds a non-Federal entity has already received.

•We would anticipate that for many of the changes, non-Federal entities with both old and new awards may make changes to their entity-wide policies (for example to payroll or procurement systems). Practically speaking, these changes would impact their existing/older awards. Non-Federal entities wishing to implement entity-wide system changes to comply with the Uniform Guidance after the effective date of December 26, 2014 will not be penalized for doing so.

12. CONFORMING PROGRAM REGULATIONS AND GUIDANCE

HUD will publish conforming rule changes for its programs and will provide notification of these changes when they are made. These changes will update the program regulations to revise the sections that refer to the OMB Circulars and HUD regulations in 24 CFR parts 84 and 85, as well as to reflect the provisions of 2 CFR part 200 that are not applicable because they are inconsistent with a program statute or because OMB has given an exception to specific requirements.

HUD recognizes that there may be uncertainty pending publication of the conforming program regulations. The provisions of 2 CFR part 200 apply, consistent with the exceptions given to the HUD program for requirements which are detailed in the 2013 edition of the Code of Federal Regulations in 2 CFR parts 215, 220, 225, and 230, 24 CFR parts 84 and 85, and OMB Circulars. HUD will notify recipients through program regulations, grants or cooperative agreements, or other guidance, which subparts are applicable to specific programs.³

13. ADDITIONAL RESOURCE MATERIALS

Grant recipients are strongly encouraged to review this information to obtain a better understanding of the uniform guidance and its implications for their Federal awards. The Council on Financial Assistance Reform (COFAR) has provided additional tools to assist in the transition including:

- a. Frequently Asked Questions for New Uniform Guidance at 2 CFR 200:
[The FAQ For 2 CFR 200 \(https://cfo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf\)](https://cfo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf).
- b. Uniform Guidance Crosswalk from Existing Guidance to Final Guidance:
<http://www.whitehouse.gov/sites/default/files/omb/fedreg/2013/uniform-guidance-crosswalk-from-predominate-source-in-existing-guidance.pdf>.

³ Separate guidance will be issued as necessary to identify and clarify whether all provisions of part 200 apply to the Section 8 project-based and tenant-based programs, particularly with respect to financial management concerns and alternative requirements. This guidance will be based, in part, on the treatment of this assistance in CMS Contract Management Services et al v. Massachusetts Housing Finance Agency v. United States for which the Solicitor General has sought certiorari from the Supreme Court (745 F.3d 1379 (Fed. Cir. 2014)).

- c. COFAR Webcast Trainings & Slides:
- i. Uniform Guidance 1-27-14 Training Webcast
COFAR Training Intro 1-27-14
<http://youtu.be/SOET4b-7my8>
 - ii. COFAR Training Administrative Requirements 1-27-14
<http://youtu.be/BP3I3PjI1JO>
Link to the Training Webcast Presentation Slides
COFAR Training Administrative Requirements 1-27-14 Slides
<https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Administrative-Requirements-Public.pptx>
 - iii. COFAR Training Cost Principles 1-27-14
<http://youtu.be/q0rWXdy2ICM>
Link to the Training Webcast Presentation Slides
COFAR Training Cost Principles 1-27-14 Slides
<https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Cost-Principles-Public.pptx>
 - iv. COFAR Training Audit Requirements 1-27-14
<http://youtu.be/g-U8HGbbC-Y>
Link to the Training Webcast Presentation Slides
COFAR Training Audit Requirements 1-27-14 Slides
<https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Audit-Requirements-Public.pptx>
 - v. Uniform Guidance Implementation: A Conversation Presented by the Council on Financial Assistance Reform; October 2, 2014
<https://www.youtube.com/channel/UCL7wVVxWl4pRHL6cHgi0vVO/videos>

14. UPCOMING TRAINING AND ADDITIONAL GUIDANCE

Additional upcoming training and/or guidance by COFAR will be publicized on its website; recipients of Federal financial assistance, and their subrecipients and contractors, are encouraged to periodically check <https://cfo.gov/cofar/>. HUD is also planning program-specific guidance and additional training, including an on-line financial management curriculum that integrates and highlights the requirements of 2 CFR part 200, and will provide notification of such when developed. In addition, we have established an internal Frequently Asked Questions (FAQ) Outlook mailbox in the Grants Management and Oversight Division of the Office of Strategic Planning and Management to which HUD employees may address implementation questions. Questions can be sent to the email address: [2 CFR 200 Administrative Requirements@hud.gov](mailto:2CFR200AdministrativeRequirements@hud.gov).

15. CONTACTS FOR QUESTIONS

Questions from grant recipients, subrecipients and contractors should be directed to their HUD Headquarters or Field Office contacts, Government Technical Representatives (GTRs) or Government Technical Monitors (GTMs).

For HUD Headquarters and field office staff, operational questions should be directed to the Office of Strategic Planning and Management's Grants Management and Oversight Division at (202) 402-3964 (this is not a toll-free number), or Loyd.LaMois@hud.gov, and policy questions should be directed to the Office of the Chief Financial Officer's Financial Policy & Procedures Division at (202) 402-2277 or Scott.Moore@hud.gov. Persons with hearing or speech impairments may access the number above through TTY by calling the toll-free Federal Relay Services at (800) 877-8339.

Appendix A: 2 CFR part 200 Table of Contents

Subpart A—Acronyms and Definitions	
Acronyms	
Sec.	
200.0 Acronyms.	200.46 Foreign public entity.
200.1 Definitions.	200.47 Foreign organization.
200.2 Acquisition cost.	200.48 General purpose equipment.
200.3 Advance payment.	200.49 Generally Accepted Accounting Principles (GAAP).
200.4 Allocation.	200.50 Generally Accepted Government Auditing Standards (GAGAS).
200.5 Audit finding.	200.51 Grant agreement.
200.6 Auditee.	200.52 Hospital.
200.7 Auditor.	200.53 Improper payment.
200.8 Budget.	200.54 Indian tribe (or “federally recognized Indian tribe”).
200.9 Central service cost allocation plan.	200.55 Institutions of Higher Education (IHEs).
200.10 Catalog of Federal Domestic Assistance number.	200.56 Indirect (facilities & administrative) costs.
200.11 CFDA program title.	200.57 Indirect cost rate proposal.
200.12 Capital assets.	200.58 Information technology systems.
200.13 Capital expenditures.	200.60 Intermediate cost objective.
200.14 Claim.	200.61 Internal controls.
200.15 Class of Federal awards.	200.62 Internal control over compliance requirements for Federal awards.
200.16 Closeout.	200.63 Loan.
200.17 Cluster of programs.	200.64 Local government.
200.18 Cognizant agency for audit.	200.65 Major program.
200.19 Cognizant agency for indirect costs.	200.66 Management decision.
200.20 Computing devices.	200.67 Micro-purchase.
200.21 Compliance supplement.	200.68 Modified Total Direct Cost (MTDC).
200.22 Contract.	200.69 Non-Federal entity.
200.23 Contractor.	200.70 Nonprofit organization.
200.24 Cooperative agreement.	200.71 Obligations.
200.25 Cooperative audit resolution.	200.72 Office of Management and Budget (OMB).
200.26 Corrective action.	200.73 Oversight agency for audit.
200.27 Cost allocation plan.	200.74 Pass-through entity.
200.28 Cost objective.	200.75 Participant support costs.
200.29 Cost sharing or matching.	200.76 Performance goal.
200.30 Cross-cutting audit finding.	200.77 Period of performance.
200.31 Disallowed costs.	200.78 Personal property.
200.32 [Reserved]	200.79 Personally Identifiable Information (PII).
200.33 Equipment.	200.80 Program income.
200.34 Expenditures.	200.81 Property.
200.35 Federal agency.	200.82 Protected Personally Identifiable Information (Protected PII).
200.36 Federal Audit Clearinghouse (FAC).	200.83 Project cost.
200.37 Federal awarding agency.	200.84 Questioned cost.
200.38 Federal award.	200.85 Real property.
200.39 Federal award date.	200.86 Recipient.
200.40 Federal financial assistance.	200.87 Research and Development (R&D).
200.41 Federal interest.	200.88 Simplified acquisition threshold.
200.42 Federal program.	200.89 Special purpose equipment.
200.43 Federal share.	200.90 State.
200.44 Final cost objective.	200.91 Student Financial Aid (SFA).
200.45 Fixed amount awards.	200.92 Subaward.

- 200.93 Subrecipient.
- 200.94 Supplies.
- 200.95 Termination.
- 200.96 Third-party in-kind contributions.
- 200.97 Unliquidated obligations.
- 200.98 Unobligated balance.
- 200.99 Voluntary committed cost sharing.

Subpart B—General Provisions

- 200.100 Purpose.
- 200.101 Applicability.
- 200.102 Exceptions.
- 200.103 Authorities.
- 200.104 Supersession.
- 200.105 Effect on other issuances.
- 200.106 Agency implementation.
- 200.107 OMB responsibilities.
- 200.108 Inquiries.
- 200.109 Review date.
- 200.110 Effective date.
- 200.111 English language.
- 200.112 Conflict of interest.
- 200.113 Mandatory disclosures.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

- 200.200 Purpose.
- 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.
- 200.202 Requirement to provide public notice of Federal financial assistance programs.
- 200.203 Notices of funding opportunities.
- 200.204 Federal awarding agency review of merit of proposals.
- 200.205 Federal awarding agency review of risk posed by applicants.
- 200.206 Standard application requirements.
- 200.207 Specific conditions.
- 200.208 Certifications and representations.
- 200.209 Pre-award costs.
- 200.210 Information contained in a Federal award.
- 200.211 Public access to Federal award information.

Subpart D—Post Federal Award Requirements

- Standards for Financial and Program Management**
- 200.300 Statutory and national policy requirements.
 - 200.301 Performance measurement.
 - 200.302 Financial management.
 - 200.303 Internal controls.
 - 200.304 Bonds.
 - 200.305 Payment.
 - 200.306 Cost sharing or matching.

- 200.307 Program income.
- 200.308 Revision of budget and program plans.
- 200.309 Period of performance.

Property Standards

- 200.310 Insurance coverage.
- 200.311 Real property.
- 200.312 Federally-owned and exempt property.
- 200.313 Equipment.
- 200.314 Supplies.
- 200.315 Intangible property.
- 200.316 Property trust relationship.

Procurement Standards

- 200.317 Procurements by states.
- 200.318 General procurement standards.
- 200.319 Competition.
- 200.320 Methods of procurement to be followed.
- 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- 200.322 Procurement of recovered materials.
- 200.323 Contract cost and price.
- 200.324 Federal awarding agency or passthrough entity review.
- 200.325 Bonding requirements.
- 200.326 Contract provisions.

Performance and Financial Monitoring and Reporting

- 200.327 Financial reporting.
- 200.328 Monitoring and reporting program performance.
- 200.329 Reporting on real property.

Subrecipient Monitoring and Management

- 200.330 Subrecipient and contractor determinations.
- 200.331 Requirements for pass-through entities.
- 200.332 Fixed amount subawards.

Record Retention and Access

- 200.333 Retention Requirements for Records.
- 200.334 Requests for transfer of records.
- 200.335 Methods for collection, transmission and storage of information.
- 200.336 Access to records.
- 200.337 Restrictions on public access to records.

Remedies for Noncompliance

- 200.338 Remedies for noncompliance.
- 200.339 Termination.
- 200.340 Notification of termination requirement.
- 200.341 Opportunities to object, hearings and appeals.
- 200.342 Effects of suspension and termination.

Closeout

200.343 Closeout.

Post-Closeout Adjustments and Continuing Responsibilities

200.344 Post-closeout adjustments and continuing responsibilities.

Collection of Amounts Due

200.345 Collection of amounts due.

Subpart E—Cost Principles

General Provisions

200.400 Policy guide.

200.401 Application.

Basic Considerations

200.402 Composition of costs.

200.403 Factors affecting allowability of costs.

200.404 Reasonable costs.

200.405 Allocable costs.

200.406 Applicable credits.

200.407 Prior written approval (prior approval).

200.408 Limitation on allowance of costs.

200.409 Special considerations.

200.410 Collection of unallowable costs.

200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

Direct and Indirect (F&A) Costs

200.412 Classification of costs.

200.413 Direct costs.

200.414 Indirect (F&A) costs.

200.415 Required certifications.

Special Considerations for States, Local Governments and Indian Tribes

200.416 Cost allocation plans and indirect cost proposals.

200.417 Interagency service.

Special Considerations for Institutions of Higher Education

200.418 Costs incurred by states and local governments.

200.419 Cost accounting standards and disclosure statement.

General Provisions for Selected Items of Cost

200.420 Considerations for selected items of cost.

200.421 Advertising and public relations.

200.422 Advisory councils.

200.423 Alcoholic beverages.

200.424 Alumni/ae activities.

200.425 Audit services.

200.426 Bad debts.

200.427 Bonding costs.

200.428 Collections of improper payments.

200.429 Commencement and convocation costs.

200.430 Compensation—personal services.

200.431 Compensation—fringe benefits.

200.432 Conferences.

200.433 Contingency provisions.

200.434 Contributions and donations.

200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

200.436 Depreciation.

200.437 Employee health and welfare costs.

200.438 Entertainment costs.

200.439 Equipment and other capital expenditures.

200.440 Exchange rates.

200.441 Fines, penalties, damages and other settlements.

200.442 Fund raising and investment management costs.

200.443 Gains and losses on disposition of depreciable assets.

200.444 General costs of government.

200.445 Goods or services for personal use.

200.446 Idle facilities and idle capacity.

200.447 Insurance and indemnification.

200.448 Intellectual property.

200.449 Interest.

200.450 Lobbying.

200.451 Losses on other awards or contracts.

200.452 Maintenance and repair costs.

200.453 Materials and supplies costs, including costs of computing devices.

200.454 Memberships, subscriptions, and professional activity costs.

200.455 Organization costs.

200.456 Participant support costs.

200.457 Plant and security costs.

200.458 Pre-award costs.

200.459 Professional service costs.

200.460 Proposal costs.

200.461 Publication and printing costs.

200.462 Rearrangement and reconversion costs.

200.463 Recruiting costs.

200.464 Relocation costs of employees.

200.465 Rental costs of real property and equipment.

200.466 Scholarships and student aid costs.

200.467 Selling and marketing costs.

200.468 Specialized service facilities.

200.469 Student activity costs.

200.470 Taxes (including Value Added Tax).

200.471 Termination costs.

200.472 Training and education costs.

200.473 Transportation costs.

<p>200.474 Travel costs. 200.475 Trustees.</p> <p>Subpart F—Audit Requirements</p> <p>General 200.500 Purpose.</p> <p>Audits 200.501 Audit requirements. 200.502 Basis for determining Federal awards expended. 200.503 Relation to other audit requirements. 200.504 Frequency of audits. 200.505 Sanctions. 200.506 Audit costs. 200.507 Program-specific audits.</p> <p>Auditees 200.508 Auditee responsibilities. 200.509 Auditor selection. 200.510 Financial statements. 200.511 Audit findings follow-up. 200.512 Report submission.</p> <p>Federal Agencies 200.513 Responsibilities.</p> <p>Auditors 200.514 Scope of audit. 200.515 Audit reporting. 200.516 Audit findings. 200.517 Audit documentation. 200.518 Major program determination. 200.519 Criteria for Federal program risk. 200.520 Criteria for a low-risk auditee.</p> <p>Management Decisions 200.521 Management decision.</p> <p>Appendix I to Part 200—Full Text of Notice of Funding Opportunity Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for nonprofit Organizations</p>	<p>Appendix V to Part 200—State/Local Government Central Service Cost Allocation Plans Appendix VI to Part 200—Public Assistance Cost Allocation Plans Appendix VII to Part 220—States and Local Government and Indian Tribe Indirect Cost Proposals Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of Part 200 Appendix IX to Part 200—Hospital Cost Principles Appendix X to Part 200—Data Collection Form (Form SF-SAC) Appendix XI to Part 200—Compliance Supplement</p>
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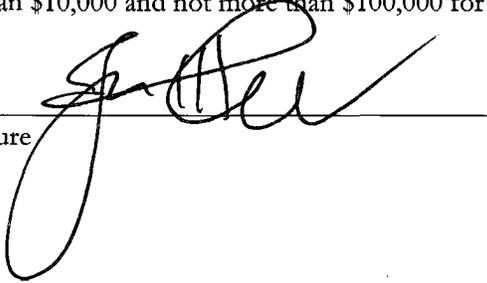
SECTION 319 OF PUBLIC LAW 101-121

The Undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned will require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all agencies will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

A handwritten signature in black ink, appearing to be "J. H. [unclear]", written over a horizontal line.

Date

2-26-15

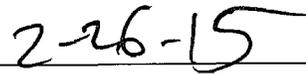
**CONTRACTING WITH SMALL AND MINORITY FIRMS,
WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS**

1. It is a national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction, and services. Affirmative steps will include the following:
 - 1.1 Qualified small and minority businesses on solicitation lists.
 - 1.2 Assuring that small and minority businesses are solicited whenever they are potential sources, and to the greatest extent possible that these businesses are located within the metropolitan area.
 - 1.3 When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
 - 1.4 Where the requirement permits, establish delivery schedules which will encourage participation by small minority businesses.
 - 1.5 Using the services and assistance of the Small Business Administration, and the Office of Minority Business Enterprises of the Department of Commerce and the Community Services Administration as required.
 - 1.6 If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in §§ 1.1 through 1.5. Grantees will take similar appropriate action in support of women's enterprises.
 - 1.7 To the greatest extent feasible, opportunities for training and employment will be given to low and moderate income persons residing within the metropolitan area.
2. The above-described equal opportunity requirements are obligations of the City because federal funds are being utilized to finance the Project to which this Project pertains.
3. In executing any contract, the Developer agrees to comply with the requirements and to provide appropriate documentation at the request of the City.

Signature

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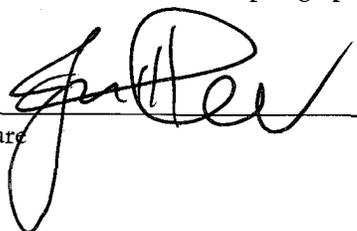
Date

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DRUG-FREE WORKPLACE

The Developer certifies that it will maintain a drug-free workplace in accordance with the requirements of 24 C.F.R. Part 24, Subpart F by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
 - 2.1 The dangers of drug abuse in the workplace;
 - 2.2 The Developer's policy of maintaining a drug-free workplace;
 - 2.3 Any available drug counseling, rehabilitation and employee assistance programs; and
 - 2.4 The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will:
 - 4.1 Abide by the terms of the statement; and
 - 4.2 Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the City in writing, within ten calendar days after receiving notice under paragraph 4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice will include the identification number(s) of each affected grant.
6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph 4.2, with respect to any employee who is so convicted:
 - 6.1 Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 6.2 Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, local health requirements, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of the above-described paragraphs.

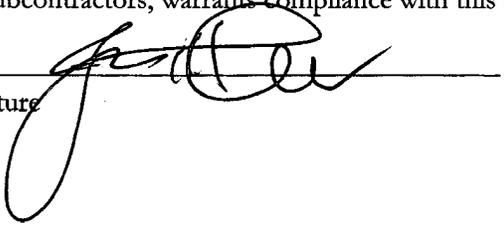
Signature 

Date 2-26-16

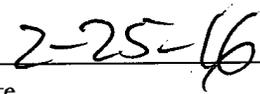
POLICY OF NONDISCRIMINATION

Consultant must not discriminate against any employee or applicant for employment on the basis race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

Signature

A handwritten signature in black ink, appearing to be "J. A. [unclear]", written over a horizontal line.

Date

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