

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and the **HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER, COLORADO**, a public body corporate and politic (“DHA”) with its principal place of business located at 777 Grant Street, Denver, Colorado 80203, jointly “the Parties”. Capitalized terms shall have the meanings ascribed herein or in the glossary attached hereto as Exhibit B.

RECITALS

A. Denver is currently experiencing housing market conditions in which the supply of affordable housing within the city has not kept pace with the growth of demand, particularly for households with low and moderate incomes.

B. The City has long treated the provision of affordable housing for persons of low and moderate incomes as important and essential public services, and as part of the City’s fundamental mission to promote public health, safety and general welfare.

C. To help address the affordable housing shortage, the City has allocated a portion of the City’s lawful property tax revenue capacity for affordable housing programs.

D. The City recognizes that the needs in the City and County of Denver for affordable housing continue to be immediate.

E. In 2016, the City Council approved the Affordable Housing Fund to support affordable housing in the City through property tax revenue and one-time fees on new development.

F. In 2018, the City Council adopted the Housing Plan that outlines assistance and stabilization programs for low-income renters, homeowners and the Homeless, and calls for initiatives to encourage a greater supply of apartments and other housing that is affordable to people of low and moderate incomes.

G. To facilitate implementation of the Housing Plan, the City now desires to engage a partner to accelerate the development, rehabilitation and preservation of affordable housing in the City for qualified households earning eighty percent (80%) or less of AMI and for the development of Permanent Supportive Housing and housing for Very Low-Income Populations;

H. The City recognizes that DHA is uniquely positioned in its expertise in affordable housing matters, its mission to provide decent, safe, affordable housing for the people of Denver, and its ability to assist the City by rapidly producing affordable housing.

I. The City and DHA share a common interest in the production, preservation and renovation of affordable housing in Denver, are parties to that certain Supplemental Cooperation Agreement dated September 11, 2007, as amended from time to time, and desire to work collaboratively toward achievement of the goals of the Housing Plan and the D3 Program (as defined below).

J. The City has requested DHA's assistance and partnership in accelerating the development, rehabilitation and preservation of affordable housing in the City for low income households and in acquiring buildings, land, and/or existing subsidized rental housing in the City that can be developed and operated by Development Partners as affordable housing and Permanent Supportive Housing, as described in more detail in Exhibit A.

K. DHA is ready, willing and able to undertake such services and intends to undertake and implement these services through a newly established program to be known as the DHA Delivers for Denver Program ("D3 Program").

L. The City intends to compensate DHA for the provision of these services by providing to DHA, subject to annual appropriation, the mill levy tax revenues that have been dedicated to the Affordable Housing Fund pursuant to Article V, Chapter 27 of the Code, as set forth in Section 4 herein.

M. The Parties acknowledge that this Agreement is a fee for services agreement that is not subject to the City's procurement policies.

N. The Parties acknowledge that funds received from the City under this Agreement may be used, and are not prohibited from being used, to repay funds borrowed by DHA, so long as the proceeds of such debt are used in furtherance of the D3 Program and in accordance with the terms and provisions set forth in this Agreement.

NOW THEREFORE, it is mutually agreed by the City and DHA as follows:

1. COORDINATION AND LIAISON: The DHA ED, or the DHA Designee, shall fully coordinate all services and activities under this Agreement with the City ED or the City Designee.

2. PARTIES' RESPONSIBILITIES:

a. DHA shall diligently undertake, perform, and produce all the deliverables set forth in the Scope of Work attached hereto and incorporated herein by reference as Exhibit A, to the City's reasonable satisfaction.

b. During the term of this Agreement DHA shall actively pursue other sources of funding to further leverage dollars for the above-described purposes.

3. TERM: This Agreement will commence on January 1, 2019, and terminate on December 31, 2038 (the "Term"), provided however, that nothing in this Agreement shall be construed as creating any multiple-fiscal-year direct or indirect debt or other financial obligation for the City.

4. PAYMENT:

a. Amount: The City shall make distributions of the AH Property Tax Allocation to DHA in the amount appropriated each year by the City Council for the purposes of this Agreement and paid into the Treasury of the City. Such levies that are paid into the Treasury of the City shall be paid to DHA pursuant to Section 4(b) below and as further described in Section II.C. of the Scope of Work.

b. Payment of Funds: The City will make payment to DHA of appropriated amounts in one installment on January 31 of each year, or the first business day thereafter, beginning on January 31, 2019 and continuing annually, as appropriated, until the last day of the Term, unless this Agreement is earlier terminated pursuant to Section 6 hereof, in which case, the City's obligation to make payments to DHA hereunder shall immediately cease as of the date of such termination.

c. Appropriation: DHA acknowledges that funding for this Agreement is derived entirely and exclusively from the AH Property Tax Allocation, and that the payment obligation of the City under this Agreement shall extend only to those funds appropriated by the City Council for the purpose of this Agreement, encumbered for this Agreement, and paid into the Treasury of the City. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal-year direct or indirect debt or financial obligation of the City. Any payments made by the City from the AH Property Tax Allocation shall be considered

payments for services rendered by DHA in connection with the production of affordable housing, and accordingly, shall not be treated as grants, contributions or loans to DHA.

The City ED, the City Designee, or other officer of the City at any time charged with the responsibility of formulating budget proposals for the AHF is hereby requested to include in the annual budget proposals submitted to the City Council, for any fiscal year in which this Agreement shall be in effect, the AH Property Tax Allocation in each fiscal year in which this Agreement is in effect. In the event that the City Council does not appropriate the AH Property Tax Allocation in a particular fiscal year and DHA has not exercised its option to terminate this Agreement pursuant to Section 6.a. hereof, the City ED, the City Designee, or other officer of the City is hereby requested to include in the annual budget proposal for the succeeding fiscal year the AH Property Tax Allocation amount for the prior fiscal year in addition to the AH Property Tax Allocation for the succeeding fiscal year. Notwithstanding this request regarding the formulation of budget proposals, it is the intention of the City that any decision to effect an appropriation shall be made solely by the City Council and the actions of the officials of the City.

In the event the AH Property Tax Allocation is not appropriated for any fiscal year, the City's Department of Finance will notify DHA of such occurrence in writing no later than November 20 of the immediately preceding fiscal year.

5. USE OF FUNDS:

a. Proceeds provided by the City to DHA hereunder will be used by DHA to invest in, and finance costs associated with, development of affordable housing, by (1) directing DHA-led development of Development Projects resulting in preserved and new affordable housing units, and (2) purchasing Developable Property to be then either sold, granted or long-term leased to community, not-for-profit, or for-profit affordable housing development firms for the development of very affordable (0-30% of AMI), affordable (31-80% of AMI) or Permanent Supportive Housing, in accordance with Exhibit A. At the end of the Term of this Agreement, DHA shall return to the City any and all Net Proceeds and Property Sale Proceeds not otherwise applied, invested, or reinvested in accordance with this Agreement and, if and as requested by the City, deed to the City all or a portion of any vacant property acquired with funds provided under this Agreement and then held by DHA.

b. DHA shall grant the City a deed of trust containing terms and conditions, including affordability restrictions, satisfactory to the City on each piece of Developable Property

acquired pursuant to this Subsection 5.a. and the additional requirements set forth in Exhibit A. The City acknowledges that such Deed of Trust may be subjected to a subordination agreement with a lender or investor, providing priority status of any borrowing. Any such subordination agreement shall be promptly released upon DHA's sale or transfer of such Developable Property to a Development Partner. Upon the sale or lease of such property to a Development Partner, and upon request by such Development Partner, the City ED may release such Deed of Trust, provided that DHA records a replacement permanent use restriction upon the Developable Property, as described in Exhibit A, in a form that is satisfactory to the City.

c. Upon mutual agreement by the DHA ED and the City ED, the City ED shall have the authority on behalf of the City to modify or waive terms, provisions or requirements set forth in the Scope of Work attached hereto as Exhibit A or the Glossary attached hereto as Exhibit B, provided that there is no reduction to (1) the overall number of units to be produced by DHA (minimum of 1,294 units) or (2) the unit development projections or capacity of the Developable Property to be acquired by DHA and sold, leased or transferred to and developed by a Development Partner (minimum of 1,200 units). The Parties shall memorialize in writing any and all modifications to Exhibit A or Exhibit B by revising and restating said Exhibit, including the date upon which the modified Exhibit will take effect. Any modification to Exhibit A or Exhibit B shall not take effect unless and until it is approved in writing by both Parties following all applicable internal approval processes. Within sixty (60) days after any such modification, the City ED and the DHA ED shall provide a summary report of the modification and the reasons therefor to the City Council and the Housing Advisory Committee.

6. TERMINATION:

a. Provided that DHA is not in breach under this Agreement, if the City fails to appropriate AH Property Tax Allocation for deposit into the AHF for any fiscal year by December 15th of the immediately preceding fiscal year (a "Non-Appropriation Year), then DHA may terminate this Agreement. If DHA does not terminate this Agreement, the City may notify DHA that it intends to request an appropriation of the AH Property Tax Allocation for the fiscal year following a Non-Appropriation Year. Such appropriation request may include a request for an appropriation of the current AH Property Tax Allocation plus the AH Property Tax Allocation for the Non-Appropriation Year. Upon the occurrence of three (3) Non-Appropriation Events in successive fiscal years, this Agreement shall terminate. Such termination is made pursuant to and

in accordance with the terms of this Agreement, and any such appropriations failure shall not be considered to be a breach or default on the part of the City and shall not result in the City having liability to DHA or any third party for any penalty, liability, or other expense.

b. The City has the right to terminate this Agreement for Cause. Prior to termination of this Agreement by the City for Cause, the City shall notify DHA in writing of its intent to terminate this Agreement for Cause, shall identify the deficiencies in DHA's performance giving rise to such intent, and shall give DHA ninety (90) days to cure such deficiencies. If cure is not reasonably possible within ninety (90) days, then upon request by the DHA ED, the City ED will provide DHA with an extension of this cure period of no more than ninety (90) additional days, unless a longer extension is agreed to in writing by the City ED and the DHA ED, to cure the alleged violation(s), provided that DHA begins the process to cure within thirty (30) days and diligently pursues the same to completion. However, nothing gives DHA the right to perform services under this Agreement beyond the time it has failed to cure within the allowed cure period the deficiencies in DHA's performance giving rise to the City's intent to terminate this Agreement. Upon termination of this Agreement, and without necessity of notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by DHA, the City shall have the right to foreclose upon any Developable Property that is subject to a Deed of Trust, and to enforce or assign its rights under the Deed(s) of Trust, subject to the terms of any applicable subordination agreement(s).

c. Notwithstanding the preceding paragraph, the City may terminate this Agreement if the DHA or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with DHA's obligations and provision of services under this Agreement. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

d. Upon termination of this Agreement, with or without Cause, DHA shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in this Agreement.

7. EXAMINATION OF RECORDS:

a. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of DHA, involving transactions related to this Agreement until the later of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations and, with respect to sale, rental and occupancy requirements, until five (5) years after the expiration of the affordability period specified in Exhibit A. DHA must also require its contractors and subcontractors to allow access to such records when requested.

b. The City Auditor shall further have the right at any time, and from time to time, to audit DHA's records related to this Agreement, and within ten (10) days of receipt by DHA of a written request DHA shall make all such records available for such examination. If DHA's records exist in electronic form, DHA shall maintain a means of transferring said records to hardcopy form.

c. If, as a result of any audit relating to the fiscal performance of DHA in relation to this Agreement, the City receives notice of any irregularities or deficiencies in said audits, then the City shall notify DHA of such irregularities or deficiencies. DHA shall correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If the identified irregularities or deficiencies cannot be corrected by the date designated by the City, then DHA shall so notify the City in writing and shall identify a date that DHA expects to correct the irregularities or deficiencies; provided, however, that the irregularities or deficiencies shall be corrected no later than ninety (90) days from the date of the City's notice, unless otherwise agreed to in writing by the Parties.

8. REPORTS/CORRESPONDENCE:

a. Quarterly Progress Reports. DHA shall submit quarterly reports to OED within forty-five (45) days of each quarter end for the preceding quarter in a form approved by the City ED, reporting on the progress of construction and acquisition of buildings and land parcels under this Agreement, as described in more detail in Exhibit A. Quarterly reports shall also include financial summaries of the dollars drawn to support the outcomes of this Agreement, including projects funded and how projects align with the priorities of the Housing Plan. Upon completion of construction, DHA shall include a summary of the number of units developed, rehabilitated and preserved as well as the status of such units.

b. Annual Progress Reports. DHA shall submit an annual report to OED no later than March 1 for the preceding calendar year in a form approved by the City ED describing in detail: (1) all services provided under this Agreement including but not limited to the total number of persons housed and units produced under this Agreement, types of units and assistance provided, the costs of units and assistance provided (regardless of funding source), and include in the annual report a comparison of actual production against the DHA requirements (as described in Exhibit A), (2) information about the progress of the Development Projects, (3) information about the Developable Properties, including a description of the real property acquired, a list of the parcels and buildings evaluated but not approved for acquisition and the rationale for such decision, and a list of the partners selected through a competitive process for vertical development of the Developable Properties, and (4) and any other information reasonably requested by the City ED concerning the provision of services under this Agreement.

c. Additional Reports. During the Term of this Agreement, DHA shall also prepare and deliver, on dates mutually agreed upon by the Parties, written reports and presentations to the Housing Advisory Committee, and upon request, the City Council, describing all of its projects, operations and outcomes under this Agreement, including but not limited to the requirements of Exhibit A.

9. **LAWSUITS:** DHA shall report in writing to the City within ten (10) calendar days of the date upon which DHA knows of any pending legal or governmental action or proceeding (including administrative actions or proceedings by a governmental entity) connected with or related to the services provided under this Agreement is initiated by or brought against DHA that rises to the level requiring DHA Board action (e.g. any claim requesting an award in excess of \$150,000, which may be subject to change based on policy set by DHA Board). DHA shall not use funds provided under this Agreement to pay for any of its legal fees, costs, or expenses incurred as a result of such legal action or proceeding initiated by or brought against DHA (including administrative actions or proceedings by a governmental entity).

10. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the DHA. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right

or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of this Agreement constitutes a waiver of any other breach.

11. INSURANCE: As DHA is a “public entity” within the meaning of the Act, DHA shall maintain insurance, by commercial policy or self-insurance, as is necessary to meet DHA’s liabilities under the Act. Proof of such insurance shall be provided upon written request by the City.

12. COLORADO GOVERNMENTAL IMMUNITY ACT: In relation to this Agreement, the Parties are relying upon and have not waived the monetary limitations and all other rights, immunities and protection provided by the Act.

13. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City’s prompt payment ordinance contained in Section 20-107, *et seq.* of the Code. DHA shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

14. ASSIGNMENT; SUBCONTRACTING: DHA shall not voluntarily or involuntarily assign any of its rights or obligations under this Agreement without obtaining the City ED’s prior written consent, such consent not to be unreasonably withheld. Any assignment without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The City ED has sole and absolute discretion whether to terminate this Agreement because of unauthorized assignment. In the event of any unauthorized assignment: (i) DHA shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any assignee.

15. INUREMENT: The rights and obligations of the Parties to this Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of this Agreement.

16. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or DHA receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

17. NO AUTHORITY TO BIND TO CONTRACTS: Neither party has any authority to bind the other on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Code.

18. SEVERABILITY: If a court of competent jurisdiction finds any provision of this Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

19. CONFLICT OF INTEREST:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement. DHA shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, Section 2-51, *et seq.* of the Code or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. DHA shall not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. DHA represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of DHA by placing DHA's own interests, or the interests of any party with whom DHA has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement if it determines a conflict exists, after it has given DHA written notice describing the conflict and an opportunity to cure.

20. NOTICES: All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail to:

The City:

Executive Director of the Office of Economic Development
201 West Colfax Avenue, Dept. 208
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

DHA:

Housing Authority of the City and County of Denver
Ismael Guerrero, Executive Director
777 Grant Street, 6th Floor
Denver, Colorado 80203

With a copy of any such notice to:

Housing Authority of the City and County of Denver
Joshua Crawley, Agency Counsel
777 Grant Street, 6th Floor
Denver, Colorado 80203

Housing Authority of the City and County of Denver
Ryan Tobin, Director of Real Estate Development
777 Grant Street, 6th Floor
Denver, Colorado 80203

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

21. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. DHA certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. DHA also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

(2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to DHA that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.

(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. DHA shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. DHA is liable for any violations as provided in the Certification Ordinance. If DHA violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of this Agreement. If this Agreement is so terminated, DHA shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying DHA from submitting bids or proposals for future contracts with the City.

22. GOVERNING LAW; VENUE: This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Code,

ordinances, regulations and Executive Orders of the City, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Agreement will be in the District Court of the State of Colorado, Second Judicial District.

23. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Agreement, DHA may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. DHA shall insert the foregoing provision in all subcontracts.

24. FORCE MAJEURE: If either Party to this Agreement is rendered unable wholly or in part, by an event of Force Majeure, to perform or comply with any obligation or condition of this Agreement, such Party, upon giving written notice and reasonably full particulars to the other Party, shall be relieved of such obligation or condition during the continuance of such inability. Written notice of any claim of inability to perform or comply due to Force Majeure must be promptly provided to the other Party within thirty (30) days after the incurrence of the Force Majeure event.

25. COMPLIANCE WITH ALL LAWS: DHA shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City.

26. LEGAL AUTHORITY: DHA represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of DHA represents and warrants that he has been fully authorized by DHA to execute this Agreement on behalf of DHA and to validly and legally bind DHA to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either DHA or the person signing this Agreement to enter into this Agreement.

27. NO CONSTRUCTION AGAINST DRAFTING PARTY: The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

28. ORDER OF PRECEDENCE: In the event of any conflicts between the language of this Agreement and the exhibits hereto, the language of this Agreement controls.

29. INTELLECTUAL PROPERTY RIGHTS: The City and DHA intend that all property rights to any and all Materials shall belong jointly to the City and DHA. DHA shall disclose all such items to the City. The City may use all such Materials as it sees fit, including disclosing such Materials to the public and posting the Materials on the City's website.

30. SURVIVAL OF CERTAIN PROVISIONS: The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable.

31. CONFIDENTIAL INFORMATION:

a. City Information: DHA acknowledges and accepts that, in performance of all work under the terms of this Agreement, DHA may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. DHA agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to DHA shall be held in confidence and used only in the performance of its obligations under this Agreement. DHA shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent DHA would to protect its own proprietary or confidential data.

b. Open Records: The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. (2013), and that in the event of a request to either party for disclosure of such information, the party receiving the request (the "Request Party" shall advise the other party (the "Non-Request Party") of such request in order to give the Non-Request Party the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the Request Party will tender all such material to the court

for judicial determination of the issue of disclosure and the Non-Request Party agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same.

32. CITY EXECUTION OF AGREEMENT: This Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

33. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: This Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.

34. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: DHA shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

35. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: DHA consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature under this Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

36. LIABILITY: Each Party will be responsible for any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of its actions or omissions or any action or omission of its officers, employees, and agents in connection with the subject matter of this Agreement or any amendment hereto. Nothing in this Section 36 or any other provision of this Agreement or any Addendum shall be construed as a waiver of the

notice requirements, defenses, immunities and limitations the City or DHA may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et seq.) or to any other defenses, immunities, or limitations of liability available to the City or DHA by law.

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Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____


By _____

By _____



Contract Control Number: OEDEV-201843652-00

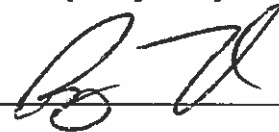
Contractor Name: HOUSING AUTHORITY CITY CNTY OF DENVER

By: 

Name: ISMAEL GUERRERO
(please print)

Title: EXECUTIVE DIRECTOR
(please print)

ATTEST: [if required]

By: 

Name: Ryan Tobin
(please print)

Title: Director of RE Dev.
(please print)



EXHIBIT A
SCOPE OF WORK

I. INTRODUCTION AND BACKGROUND

Denver is experiencing significant population growth and skyrocketing housing costs that put market rent and home prices out of reach for low- and moderate-income households throughout the City. The City created the Affordable Housing Fund to support the development, rehabilitation and preservation of affordable housing and the provision of programmatic support for low- and moderate-income households, as set forth in Article V, Chapter 27 of the Code (“Dedicated Fund”). As part of the implementation of the Affordable Housing Fund, the City with input from the Housing Advisory Committee has developed the Housing Plan, which includes financial and production goals for a mix of housing affordable to households in various ranges of AMI. Housing developed, rehabilitated or preserved under the terms of the Agreement shall be consistent with the priorities outlined in the Housing Plan.

Capitalized terms used herein shall have the meanings set forth in the Agreement to which this Exhibit A is attached or in the glossary of terms attached to the Agreement as Exhibit B.

II. SCOPE OF WORK

A. Development of Pipeline Affordable Housing Projects.

By no later than December 31, 2024, DHA shall have developed, rehabilitated and preserved at least 1,294 total units, within the following three catalytic redevelopments, referred to herein as the Development Projects: Sun Valley Homes, Westridge Homes, and the Shoshone development, as described in further detail below. All of such units shall be affordable to tenant households earning no more than 80% of AMI.

Of the at least 1,294 total units within the Development Projects:

- Approximately 388 of the total units will be affordable to Very Low-Income Populations;
- Approximately 388 of the total units will be affordable to Low-Income Populations; and
- Approximately 518 of the total units will be affordable to Moderate-Income Populations.

(1) Within the Sun Valley project, which consists of several specific parcels in the Sun Valley neighborhood (generally located at 990 Alcott Way, Denver, CO), DHA shall develop no less than 932 units of new rental housing, including the total replacement of 333 units of existing affordable rental housing.

- (2) Within the Westridge project, which consists of several parcels in the West Colfax neighborhood (generally located at 3537 West 13th Avenue, Denver, CO), DHA shall develop no less than 290 units of new rental housing, including the preservation/replacement of 200 units of existing affordable rental housing.
- (3) Within the Shoshone project, which consists of a parcel located within the Highland neighborhood (generally located at 3220 Shoshone St, Denver, CO), DHA shall develop no less than 72 units of new rental housing.

To the extent authorized by the Agreement, the City ED has the authority to approve modifications to the distribution of units produced among development projects described in subsections II.A.(1)-(3), so long as the total number of units produced are not projected to fall below the minimum stated above. Additionally, by mutual agreement of the DHA ED and the City ED, the City ED may, on behalf of the City, approve DHA's development, rehabilitation or preservation of units within one or more substitute or additional catalytic project(s) in satisfaction of the Shoshone requirement described in subsection II.A.(3) above, so long as the number of units produced by such substitution project(s), or such additional project(s) together with the Shoshone project, is no less than 72.

DHA shall prioritize the use of non-competitive tax credits to develop and preserve the units within the Development Projects. In addition, DHA shall not be eligible to compete for the use of other City housing resources for the production of units in the Development Projects prior to December 31, 2024. This restriction does not apply to any 2018 tax credit or financial commitment made to the Gateway Project as part of the Sun Valley Homes project prior to the execution of the agreement.

The Parties acknowledge the Scope of Work required by Section II.A is based upon current and projected market conditions and the Financial Model Assumptions, and may be subject to change over time. DHA and its consultants developed financial models using these assumptions supported by DHA's current affordable housing development experience.

B. Acquisition of Buildings or Land

By no later than December 31, 2024, DHA shall use a portion of the funds provided under the Agreement, as further described in Section II.C. below, to acquire Developable Properties and select Development Partners in order to create a pipeline of new affordable housing developments and preserve existing affordable housing that will provide a minimum of 1,200 units that: 1) serve residents experiencing or at risk of becoming Homeless through Permanent Supportive Housing with appropriate supportive services as defined below, and 2) serve Very Low-Income Populations to Moderate-Income Populations, with no less than fifty percent (50%) of such units serving Very Low-Income Populations. DHA shall ensure that all such affordable units will be restricted in perpetuity. To ensure that units are affordable to these populations, and that the Developable

Properties can adequately fund supportive services as needed, DHA shall provide, subject to available federal funding and HUD eligibility, at least three hundred (300) project-based vouchers to subsidize rent for Developable Properties.

In order to more effectively respond to specific Developable Property opportunities that arise, DHA proposes to release an RFQ for housing development teams that include experienced Development Partners, capable of efficiently executing development plans on such Developable Properties, consistent with the selection criteria in the RFP, as described in Section II.B.iii herein.

DHA shall create an Advisory Group to advise and guide the effective leveraging of AH Property Tax Allocation proceeds through strategic partnerships, opportunistic land and property acquisitions, and coordinated underwriting to the extent possible with local and state funding partners. In consultation with the City ED, the DHA ED shall appoint members to the Advisory Group and may establish criteria for membership of the Advisory Group including local and state funding partners, representation from members of the Housing Advisory Committee and members having other relevant expertise. The Advisory Group shall include designated representatives from:

- Denver Housing Authority
- City of Denver Office of Economic Development
- City of Denver Department of Human Services
- Colorado Housing and Finance Authority
- Colorado Division of Housing
- Metro Denver Homeless Initiative (MDHI)
- Corporation for Supportive Housing (CSH)

The Advisory Group will provide DHA with recommendations on the investment of proceeds under Section II.B of this Scope of Work, including but not limited to:

- i. Program guidelines, including, but not limited to due diligence guidelines, financial modeling and holding strategies;
- ii. Acquisition criteria for Developable Properties that is consistent with the goals of the Housing Plan, including factors such as proximity to transit and geographic dispersion of parcels throughout the City;
- iii. Assist in development and evaluation of RFQs and/or RFPs for Development Partners for the development, rehabilitation or preservation of Developable Properties acquired in accordance with the Scope of Work ;
- iv. Participate in overall program evaluation; and
- v. Recommend and participate in public processes and communication strategy.

The goal of the Advisory Group will be to provide advice to DHA on acquisition and development processes, coordinating with public or quasi-public agencies to leverage debt and other resources in serving Very Low-Income Populations and those experiencing or at risk of becoming Homeless,

utilizing the 300+ project-based vouchers provided by DHA, as well as tax credit and other gap financing, program communications plans, program community support, and supportive service dollars.

DHA shall acquire Developable Properties that are reasonably distributed throughout the City, and County of Denver, and shall not spend more than 15% of acquisition funds in any one City Council District – with the exclusion of City Council District 3 which will be limited to no more than 5% of the acquisition funds due to the existing concentration of DHA and other affordable housing developments in the District. The City ED may grant a waiver for any one City Council District (with the exclusion of City Council District 3) to allow the funds to exceed 15%, with the stipulation that DHA shall acquire Developable Properties in at least six City Council Districts. Acquisition of buildings or land under this section of the Scope of Work shall be consistent with geographic priorities as outlined in the Housing Plan, including priority for acquisition of properties in proximity to transportation options such as high frequency bus (within ¼ mile) and fixed-rail transit (within ½ mile).

DHA may pursue acquisition of Developable Property in coordination with an identified Development Partner. DHA will sell lease, grant, or otherwise convey Developable Property it has acquired to Development Partners at no more than the price at which DHA purchased it, plus any associated maintenance and holding costs. No less than fifty percent (50%) of the units produced by Development Partners on Developable Properties sold by DHA, taken collectively, shall be subject to restrictive covenants requiring such units to have rents affordable to, and be occupied by, Very Low-Income Populations in perpetuity. As a condition of the sale, lease, or transfer of Developable Property by DHA, the Development Partner will be required to:

- Develop or cause to be developed affordable housing projects per the DHA-approved development plan and in furtherance of the goals, schedule and outcomes of the Agreement.
- Include DHA as an assignee in any offer for purchase of real estate; provide DHA with a reversion right should the development plan fail to achieve financial closing within two years; commit to a permanent use restriction ensuring permanent affordability and provide DHA with the right of refusal to acquire the developed property should the Development Partner choose to exit at any time.
- Following acquisition, ensure by recordation of a restrictive covenant that no less than forty percent (40%) of the units in any building shall be restricted to Very Low-Income Populations at rents that are affordable to such individuals and families.

Notwithstanding the foregoing, DHA is permitted to sell Remnant Parcels that are deemed unsuitable for residential development to any purchaser at fair market value and without the income and affordability restrictions set forth above. DHA is further permitted to sell at fair market

value Remnant Parcels that are deemed suitable for residential development but not suitable for development in accordance with the income and affordability restrictions set forth above, provided that DHA either (a) cause a restrictive covenant to be recorded on such Remnant Parcel requiring that at least twenty percent (20%) of the units in a residential development be restricted to Moderate-Income Populations at rents or sale prices that are affordable to such individuals and families, or (b) obtain the prior written approval of the City ED for such sale. In the event of any sale of a Remnant Parcel, the Property Sale Proceeds of such sale shall be considered program-related revenue, be reinvested into the D3 Program and be used in accordance with the requirements of this Section II.B., and remain subject to the requirements set forth in the Agreement.

DHA will serve as the property owner and manager for Opportunity Acquisitions until a Development Partner is identified and/or project financing becomes available to transfer ownership/rights of the site. DHA may undertake entitlement efforts to increase the value and development potential of such Opportunity Acquisitions, including: rezoning, subdivisions, and general development planning with the City.

In consultation with the Advisory Group, DHA will prioritize housing development proposals that support the most Permanent Supportive Housing units and/or units affordable to Very Low-Income Populations; that leverage additional state and federal funding; that take advantage of the permanent supportive housing developer fee boost available under the LIHTC program as appropriate; that are financially feasible using non-competitive 4% LIHTC's when possible; and that present minimal debt burden and/or support property cash flow sufficient to pay for supportive services.

For the acquisition of buildings, DHA shall:

- Be eligible to acquire existing unsubsidized rental housing
- Not be the primary developer of any such building. In the event of an acquisition of existing unsubsidized or subsidized rental housing, DHA may acquire the building and, for a period of no more than two (2) years unless a longer time period is approved by the City ED, provide property management services until a Development Partner is identified.
- Following acquisition, ensure by recordation of a permanent restrictive covenant that not less than forty percent (40%) of the total residential units in a building shall be restricted to individuals and families earning less than thirty percent (30%) AMI.

Upon request by the DHA ED, the City ED, in his sole discretion, may approve the acquisition of a building that is not currently designated for residential use but could be converted through a rehabilitation to be used for residential development.

DHA shall not be prohibited from using funds provided under the Agreement for acquisition as a designee under Article III, Chapter 27 of the Code (Preservation Ordinance) of existing subsidized rental housing that qualifies as a Developable Property.

For the acquisition of parcels of land for future development, DHA shall:

- Acquire land parcels that are at least one-half (0.5) acre and no larger than three (3) acres. The City ED, in his sole discretion, may approve a land parcel that is less than one-half (0.5) acre or larger than three (3) acres.
- Not be the primary developer of any such land.
- Except as provided in Section B above with regard to the sale of Remnant Parcels, following acquisition and prior to the sale, lease or conveyance of the land, ensure by recordation of a permanent restrictive covenant that not less than forty percent (40%) of the units developed on the parcel shall be restricted for Very Low-Income Populations.

Property Sale Proceeds from the sale of Developable Properties shall remain subject to the requirements set forth herein in perpetuity.

C. AH Property Tax Allocation Estimates; Allocation of Funds by DHA.

The following table shows estimates of AH Property Tax Allocation amounts that will be available for and subject to appropriation under the Agreement. The amounts set forth in this table are estimates of future AH Property Tax Allocations, based on current and anticipated conditions and assumptions. The mill rate and amounts set forth below are subject to change and shall in no way be considered fixed or binding.

Payment Dates	Estimated Amounts Available for Appropriation from City (Previous Year's Property Tax Revenue at .442 Mills)
1/31/2019	\$7,326,879
1/31/2020	\$7,326,879
1/31/2021	\$7,473,417
1/31/2022	\$7,473,417
1/31/2023	\$7,622,885
1/31/2024	\$7,622,885
1/31/2025	\$7,775,343

1/31/2026	\$7,775,343
1/31/2027	\$7,930,850
1/31/2028	\$7,930,850
1/31/2029	\$8,089,467
1/31/2030	\$8,089,467
1/31/2031	\$8,251,256
1/31/2032	\$8,251,256
1/31/2033	\$8,416,281
1/31/2034	\$8,416,281
1/31/2035	\$8,584,607
1/31/2036	\$8,584,607
1/31/2037	\$8,756,299
1/31/2038	\$8,756,299

No more than fifty percent (50%) of Net Proceeds may be spent on the development, rehabilitation and preservation of units (and associated project fees, costs and expenses) required by Section II.A of this Scope of Work.

No less than fifty percent (50%) of Net Proceeds may be spent on the acquisition of property described in Section II.B of this Scope of Work.

The allocation percentages set forth in this Section II.C. shall also apply to any debt proceeds received by DHA, if repayment of such debt is paid in whole or in part by the AH Property Tax Allocation proceeds provided under the Agreement.

D. Affordability Requirements.

All units within the Development Projects, as described in Section II.A of this Scope of Work will be subject to covenants restricting their use and affordability in perpetuity following construction or rehabilitation. DHA shall monitor compliance with affordability covenants on housing units developed hereunder. DHA shall be responsible for filing and recording the covenants with the City Clerk and Recorder’s Office in a form and manner reasonably satisfactory to the City.

All units developed on land or in buildings acquired as described in Section II. B of this Scope of Work will be subject to covenants restricting their use and affordability in perpetuity following

development, rehabilitation or preservation. DHA shall monitor compliance with affordability covenants on housing units developed hereunder.

The City shall have the right to monitor compliance with affordability covenants, including the confirmation of the income eligibility of tenants, on properties developed, rehabilitated or preserved under Section II.A or Section II.B of this Scope of Work. This shall include the right to conduct periodic on-site monitoring visits at Development Projects and to periodically inspect DHA's files, records and any other documentation related thereto to assure compliance with covenants and other restrictions placed thereon. Should OED determine or identify any violations or potential violations of such covenants or any applicable rules or regulations, OED shall have the right to pursue any and all available remedies.

E. Project Phasing.

All Sun Valley Homes units, Westridge units, and the Shoshone units (and any other units that are provided pursuant to an approved substitute development) as described in Section II.A of this Scope of Work shall be "developed" by December 31, 2024 as defined as either having reached financial close or by the issuance of a certificate of occupancy.

Developable Property acquired pursuant to Section II.B. of this Scope of Work shall be acquired by December 31, 2024. Development on the Developable Property of no fewer than 1,200 units as described in Section II.B. of this Scope of Work will be produced by December 31, 2029 as defined by the issuance of a certificate of occupancy.

F. DHA Governance.

DHA's Board will have final approval over the deployment of all funds received as a result of the Agreement, including approval of development budgets and land and property acquisitions.

G. Monitoring and Annual Reporting.

Within 45 days of quarter end, DHA shall provide OED with quarterly reporting on the progress of construction and acquisition of buildings and land parcels under the Agreement. Quarterly reporting updates shall include a summary of construction progress for the Development Projects and Developable Property. Quarterly reporting shall include financial summaries of the dollars drawn to support the outcomes of the Agreement, including projects funded and how projects align with the priorities of the Housing Plan. Upon completion of construction, DHA shall include a summary of the number of units developed as well as the status of such units.

No later than March 1st of each year, DHA shall provide OED with an annual report describing in detail all services provided under the Agreement, including but not limited to: (1) progress on the Development Projects, (2) the total number of persons housed and units produced under the Agreement, types of units and assistance provided, the costs of units and assistance provided (regardless of funding source), and include in the annual report a comparison of actual production against the DHA requirements (as described in this Exhibit A), (3) information about the Developable Properties, including a description of the real property acquired, Remnant Parcels sold and proceeds from such sales, a list of the parcels and buildings evaluated but not approved for acquisition and the rationale for such decision, and a list of the partners selected through a competitive process for vertical development of the properties, and (4) and any other information reasonably requested by the City ED concerning the provision of services under the Agreement.

DHA shall work with the Advisory Group, OED and the Housing Advisory Committee to develop Annual Action Plans aimed at implementing the Housing Plan's goals, recommendations, and priorities on an annual basis. Such Annual Action Plans shall include planned development at the Development Projects for the upcoming year. The Annual Action Plans shall also include projected investments into Developable Property for the upcoming year, and disposition of previously acquired buildings or land parcels to entities outlined in Exhibit B.

EXHIBIT B GLOSSARY

Unless the context clearly indicates otherwise, the following terms when used in the Intergovernmental Agreement and Exhibit A and capitalized, shall have the meaning given in this Exhibit B. Terms are defined in alphabetical order.

Act: The Colorado Governmental Immunity Act, §24-10-101 et seq., C.R.S., as amended.

Advisory Group: The Acquisition and Development Advisory Group formed pursuant to the Agreement for the purpose of advising and guiding the effective leveraging of funds received by DHA in connection with the Agreement and used pursuant to Section II.B of Exhibit A, through strategic partnerships, opportunistic and property acquisitions, and coordinated underwriting with local and state funding sources and partners.

Agreement: The Intergovernmental Agreement, together with all exhibits thereto, and any approved amendments, modifications or restatements thereof. References to sections or exhibits are to the Agreement unless otherwise qualified.

AHF or Affordable Housing Fund: The dedicated Affordable Housing Permanent Fund created by the City for the support of affordable housing in the City through property tax revenue and fees as adopted by City Council.

AH Property Tax Allocation: The separate itemized mill levy assessed by the City to fund affordable housing programs through the Dedicated Fund as more particularly set forth in Section 27-150(i) of the Denver Revised Municipal Code. The AH Property Tax Allocation was levied at the rate of one-half of one mill (.5 mill) for 2016 property taxes to be collected in 2017. The City will maintain the AH Property Tax Allocation to fund affordable housing programs for 2017 taxes to be collected in 2018 as described by ordinance. The AH Property Tax Allocation will be adjusted annually in coordination with the adjustment to other City levies to the extent necessary to comply with the city property tax revenue limitation.

AMI: The latest published area median income, adjusted for household size, for the Denver metropolitan area as determined by the U.S. Department of Housing and Urban Development.

Annual Action Plan: A plan developed by DHA annually in collaboration with the Advisory Group, OED and the Housing Advisory Committee aimed at implementing the Housing Plan's goals, recommendations and priorities. The Annual Action Plan shall include projected investments into buildings or land parcels for the upcoming year, and disposition of previously acquired buildings or land parcels to entities outlined in Attachment 1 to the Agreement.

Cause: The willful misconduct by DHA, failure by DHA to comply with the terms of the Agreement, or failure by DHA to perform its obligations and services in accordance with the

Agreement, as described in more detail in the Scope of Work (including, without limitation, failure by DHA to make satisfactory progress in providing the deliverables set forth in the Scope of Work), as reasonably determined by the City.

CDOH: The Colorado Division of Housing.

Certification Ordinance: Division 5 of Article IV of Chapter 20 of the Code, and any amendments.

Charter: The Charter adopted by the voters of the City and County of Denver.

CHFA: The Colorado Housing and Finance Authority.

City: The City and County of Denver, a Colorado municipal corporation and county.

City Council: The elected legislative body of the City.

City Council District: The election districts of the City, as such are delineated and numbered on the date of the Agreement.

City Designee: The individual named and authorized by the City ED to act on behalf of the City ED under this Agreement.

City ED: The Executive Director of the Office of Economic Development.

Code: The Denver Revised Municipal Code.

D3 Program: The DHA Delivers for Denver Program to be established by DHA to facilitate sustainable affordable housing within the City including the Sun Valley project, the Westridge project, and the Shoshone development and the acquisition of Developable Property.

Dedicated Fund: The Affordable Housing Property Tax Revenue Fund created by the City for the purpose of receiving and accounting for revenues derived from the portion of the City's property taxes dedicated for affordable housing programs as set forth in Article V, Chapter 27 of the Code.

Deed of Trust: The deed of trust granted by DHA to the City on each piece of Developable Property acquired pursuant to Subsections 5.a. of the Agreement.

Developable Property: Existing buildings or parcels of land determined to be suitable for the development or rehabilitation of housing that will be affordable to Homeless and Very Low-Income Populations and acquired by DHA for that purpose.

Development Partner: A pre-qualified lead development partner or project sponsor from a housing development team that includes experienced developers of Permanent Supportive Housing, affordable housing service providers, and property managers.

Development Projects: Collectively, the Sun Valley Homes project, Westridge Homes project, and the Shoshone development project, as further described in paragraphs (1)-(3) of Section II.A of the Scope of Work, and any other projects that are approved as additions to or substitutions for such projects per the terms of the Agreement.

DHA: The Housing Authority of the City and County of Denver, Colorado, a public body corporate and politic with its principal place of business located at 777 Grant Street, Denver, Colorado 80203, and its affiliates and subsidiaries.

DHA Board: The nine-member Board of Commissioners, one of whom is a DHA resident.

DHA Designee: The individual named and authorized by the DHA ED to act on behalf of the DHA ED under this Agreement.

DHA ED: The Executive Director of DHA.

DHA's Procurement Policy: The formal procurement policy as approved and amended from time to time by the DHA Board.

Financial Model Assumptions: The *Financial Model Assumptions* included in Addendum A attached to, and incorporated as part of, the Scope of Work.

Force Majeure: Any acts of God and the public enemy, war, acts of terrorism, the elements, fire, strikes, and any other industrial, civil, or public disturbance; inability to obtain materials, supplies, permits, or labor; and laws, orders, rules, regulations, acts, or restraints of any government or governmental body or authority, civil, or military or other event or circumstance that is beyond the control and without the fault or negligence of the party affected, that could not be reasonably anticipated, and which by the exercise of reasonable diligence the party affected was unable to prevent.

Gateway Project: The first mixed-income replacement housing phase of the Sun Valley Development Project that will be development by DHA starting in late 2018 and include 187 total rental units with 34 market-rate units to achieve the mixed-income program approved by HUD as part of the Choice Neighborhood Initiative (CNI) Implementation Grant awarded to DHA in 2016 for the redevelopment of Sun Valley Homes.

Holding Costs: All management and maintenance costs and expenditures associated with Opportunity Acquisitions.

Homeless: An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning: (i) an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground; (ii) an individual or family living in a supervised publicly or privately operated shelter

designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); (iii) an individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution; or (iv) an individual or family who will imminently lose their primary nighttime residence.

Housing Advisory Committee: The City's affordable housing advisory committee created pursuant to Section 27-153 of the Code.

Housing Plan: The five-year comprehensive housing plan adopted by the City Council on February 20, 2018.

HUD: The United States Department of Housing and Urban Development.

LIHTC: Low-Income Housing Tax Credits.

Low-Income Populations: Individuals and families earning no more than sixty percent (60%) of AMI.

Materials: Materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by DHA or its consultants and/or contractors and paid for, in part, with funds received from the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever.

Moderate-Income Populations: individuals and families earning no more than eighty percent (80%) of AMI.

Net Proceeds: The total of (1)(a) AH Property Tax Allocation proceeds received by DHA and not used to secure repayment of debt, plus (b) any debt proceeds received by DHA if and to the extent that repayment of such debt is secured or guaranteed in whole or in part by the AH Property Tax Allocation proceeds provided under the Agreement, less cost of issuance and any reserve, minus (2) administrative fees assessed by DHA, which shall not exceed 4% of item (1)(a) and (b) above.

Non-Appropriation Year: Any fiscal year in which the City fails to appropriate the AH Property Tax Allocation for deposit into the AHF by December 15th of the immediately preceding fiscal year.

Non-Appropriation Event: Each instance where the City fails to appropriate AH Property Tax Allocation for deposit into the AHF for any fiscal year by December 15th of the immediately preceding fiscal year.

Non-Request Party: Has the meaning ascribed to such term in Section 31(b) of the Agreement.

OED: The City Office of Economic Development.

Opportunity Acquisitions: Developable Property acquired for strategic reasons without an identified Development Partner.

Party or Parties: Any or all of the parties to the Agreement.

Permanent Supportive Housing: Decent, safe, community-based housing that provides tenants with the rights of tenancy and links to intensive supportive services using the Housing First model.

Preservation Ordinance: Article III, Chapter 27 of the Code.

Property Management Fee: A fee for the cost of property management and maintenance expenditures for Opportunity Acquisitions acquired under Section II.B of Exhibit A.

Property Sale Proceeds: The amount received by DHA after all costs, expenses and fees, including Holding Costs, are deducted from the gross proceeds arising from the sale of Property acquired by DHA pursuant to subsection 5.a of the Agreement.

Proprietary Data: Any materials or information which may be designated or marked as “Proprietary” or “Confidential”, or which would not be documents subjected to disclosure pursuant to the Colorado Open Records Act or City ordinance and provided or made available to DHA by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

Remnant Parcel: A portion of a Developable Property purchased by DHA that is deemed unsuitable for affordable housing development in accordance with the Agreement, which shall not exceed 0.5 acres, unless otherwise agreed by the City ED and the DHA ED.

Request Party: Has the meaning ascribed to such term in Section 31(b) of the Agreement.

RFP: Request for Proposals.

RFQ: Request for Qualifications.

Scope of Work. The Scope of Work attached to the Agreement attached to and incorporated in the Agreement by reference as Exhibit A,

Term: The Agreement will commence on January 1, 2019 and terminate on December 31, 2038.

Very Low-Income Populations: Individuals and families earning no more than 30% of AMI.