

**LOAN AGREEMENT
HOME PROGRAM**

PART I

THIS LOAN AGREEMENT, in two parts, Part I and Part II (this “Loan Agreement”), is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **LOWRY AFFORDABLE HOUSING PARTNERS LLC**, a Colorado limited liability company, whose address is 1660 Duke Street, Alexandria, Virginia 22314 (“Borrower” or “Contractor”).

WITNESSETH:

WHEREAS, the City is acting pursuant to federal grant conditions with respect to rental housing assistance pursuant to the Home Investment Partnership Program (“HOME Program”); and

WHEREAS, the Borrower is eligible to receive HOME Program funds pursuant to the National Affordable Housing Act of 1990, and implementing regulations under 24 C.F.R. Part 92, and is ready, willing and able to meet the conditions associated therewith;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties agree as follows:

1. LOAN TO BORROWER: Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of Seven Hundred Twenty Thousand and No/100 Dollars (\$720,000.00), to be repaid over a term of approximately forty (40) years with interest at the rate of one percent (1.00%) per annum. Borrower shall execute a promissory note in a form satisfactory to City evidencing this loan (the “Promissory Note”). Principal and interest shall be due and payable, at such place as may be designated by City, in annual installments based on Surplus Cash Flow (as defined below), commencing November 1, 2018 and due upon the first day of each November 1 thereafter through and including November 1, 2057. The entire unpaid balance of principal and accrued interest due shall become payable on or before forty (40) years from the date of the Promissory Note. Interest shall commence accruing twenty-four (24) months after the date of the Promissory Note.

The capitalized terms used herein shall have the following definitions:

“*Cash Flow*” means Borrower’s Gross Revenues less Operating Expenses, less Reserve Requirements, less Scheduled Debt Service Payments.

“*Company Administration Fees*” means an annual payment of \$22,344 in the first year the Borrower receives rental income, prorated for the number of months the Borrower has received rental income, increasing by 3% annually thereafter.

“*Credit Deficiency Payments*” means those payments to be paid to the Investor Member if the actual annual Low Income Housing Tax Credits or energy tax credits available to the Investor Member are lower than the credits expected, as estimated in Exhibit A-2 of the Operating Agreement, and as further limited by Article III of the Operating Agreement.

“*Deferred Development Fee*” means the portion of the Development Fee of which payment to the Developer is deferred and later paid based upon available Cash Flow.

“*Deferred Property Management Fee*” means a property management fee that was not paid to the management agent in accordance with the property management agreement because the management agent is an affiliate of the Managing Member and the Project’s Operating Expenses, Reserve Requirements, and Scheduled Debt Service Payments are in excess of Gross Revenue.

“*Developer*” means VOANS and The Housing Authority of the City and County of Denver, Colorado.

“*Development Fee*” means the fee to be paid to VOANS and Developer for development services.

“*DHA Administration Fee*” means the fee payable to The Housing Authority of the City and County of Denver, Colorado for oversight of the Project (as defined below) and the Section 8 Housing Assistance Payment Contract in an amount equal to two percent (2%) of the Effective Gross Income of the Project paid annually from available cash flow, and, if not paid, such fee shall accrue with interest at the rate of 2.81% per annum from year to year and shall be payable out of the next available Cash Flow or capital proceeds, which fee will only be paid as long as The Housing Authority of the City and County of Denver, Colorado remains a member of the Managing Member.

“*DHA Loan Cash Flow Debt Service*” shall mean debt service based on available Cash Flow due to The Housing Authority of the City and County of Denver, Colorado for its loan to the Project.

“*Effective Gross Income*” means for any specified period of time, the amount of

gross revenues from all sources derived from the Project as the result of the normal operation of the Project received on a cash basis, including (a) proceeds from rental interruption insurance, (b) proceeds from temporary condemnation in the nature of a lease, and (c) rental and operating subsidies which shall be calculated on an accrual basis but only if received within sixty (60) days of such accrual, but excluding (i) non-recurring revenue such as sale proceeds and refinancing proceeds.

“*Gross Revenue*” means, for any specified period of time, the amount of gross revenues from all sources derived from the Project as the result of the normal operation of the Project including but not limited to apartment rents (including rental assistance payments), storage rents, license fees, laundry revenue, other equipment revenue, vending machine income, parking income, late fees, month to month premiums, utility reimbursements, rental interruption insurance, and all other forms of income derived from the ownership and operation of the Project.

“*Investor Member*” means Wincopin Circle, LLLP, a Maryland limited liability partnership, or its successors or assigns as permitted by the Operating Agreement.

“*Investor Member Income Tax Liability*” means an amount sufficient to pay federal income taxes on federal income allocated to the Investor Member for a given year by the Borrower, assuming the Investor Member is subject to the maximum federal income tax rate then in effect.

“*Investor Services Fees*” means an annual fee paid to the Investor Member of \$3,500 in the first year the Borrower receives rental income, prorated for the number of months the Borrower has received rental income, increasing by 3% annually thereafter.

“*Managing Member*” shall mean Lowry AHP MM LLC, a Colorado limited liability company.

“*Operating Agreement*” means the First Amended and Restated Operating Agreement by and among the Managing Member and the Investor Member, dated on or about the date of the Promissory Note.

“*Operating Deficit Contribution Repayment*” means an amount sufficient to reimburse funds advanced by the Managing Member to cover Operating Expenses, Reserve Requirements, or Scheduled Debt Service Payments in excess of Gross Revenue.

“*Operating Expenses*” means all costs associated with the management, operation

and maintenance of the Project, including without limitation the provision of resident services.

“*Operating Reserve*” means the reserve fund established and controlled by the Investor Member to be used to cover Operating Expenses, Reserve Requirements, or Scheduled Debt Service Payments in excess of Gross Revenue, as provided in the Operating Agreement.

“*Operating Reserve Payments*” means any payments required to bring the Operating Reserve to its required level as provided in the Operating Agreement.

“*Reserve Requirements*” means all funds required by the Colorado Housing and Finance Authority and any other investor or lender into the Project to be escrowed for purposes of future maintenance and operating expenses.

“*Scheduled Debt Service Payments*” means all payments required by the Borrower’s construction and permanent lenders to be paid on a monthly, quarterly, or annual basis at a specified interest rate and amortization term to which the City has subordinated their loan.

“*Surplus Cash Flow*” means Cash Flow less: (i) Credit Deficiency Payments; (ii) Investor Member Income Tax Liability; (iii) Investor Services Fees; (iv) Operating Reserve Payments; (v) Deferred Property Management Fee; (vi) DHA Administration Fee; (vii) Deferred Development Fees; (viii) less Operating Deficit Contribution Repayments; (ix) Company Administration Fees; (x) DHA Loan Cash Flow Debt Service; (xi) VOANS Loan Cash Flow Debt Service.

“*VOANS*” means Volunteers of America National Services.

“*VOANS Loan Cash Flow Debt Service*” means debt service based on available cash flow due to VOANS for its loan to the Project from funds provided by a Housing Development Grant from the Colorado Division of Housing.

2. SECURITY: Repayment of the Promissory Note shall be secured by a Deed of Trust (the “Deed of Trust”), in form satisfactory to City, granted by Borrower and encumbering the real property known and numbered as 6756 East Archer Drive, Denver, Colorado (the “Property”) subject to prior encumbrances not exceeding Sixteen Million Five Hundred Thousand and No/100 Dollars (\$16,500,000.00) in principal amount.

3. SUBORDINATION AND ADDITIONAL DOCUMENTS: The Director of the

City's Office of Economic Development ("OED") or permitted designee, is authorized to execute documents necessary to subordinate the lien of the City's Deed of Trust so long as (i) the subordination agreement is in the form attached hereto as **Exhibit D**; (ii) encumbrances prior to the City's Deed of Trust do not exceed \$16,500,000.00; and (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Covenant (defined below), or the Deed of Trust.

The Director of OED or permitted designee, is authorized to execute documents necessary to subordinate the lien of the City's Covenant to a land use restriction agreement so long as (i) encumbrances prior to the City's Deed of Trust do not exceed \$16,500,000.00; and (ii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Covenant, or the Deed of Trust.

The Director of OED, or permitted designee, is authorized to execute documents necessary to consent to the transfer of the Property and the Project from the Borrower to an affiliate of the Borrower or to an entity of which the Borrower, or its affiliate, is the general partner, managing member, or a similar controlling entity, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the City's Deed of Trust do not exceed \$16,500,000.00; and (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Covenant, or the Deed of Trust.

Commencing thirty (30) years from the date of the Covenant (as defined below) and ending on the date thirty-five (35) years from the date of the Covenant (the "Note Purchase Option Period"), VOANS or the Developer or an affiliate of VOANS or the Developer, including an entity of which the VOANS or the Developer, or their affiliate, is a controlling entity (collectively, the "Note Purchasing Entity") may purchase the Promissory Note and the City's rights and obligations pursuant to this Loan Agreement and the Deed of Trust from the City for a purchase price equal to One Thousand Dollars and No Cents (\$1,000.00), so long as the Note Purchasing Entity is the owner of the Property and the Project prior to or simultaneous with the purchase of the Promissory Note. During the Note Purchase Option Period, the Note Purchasing Entity shall notify the City of its intent to purchase the Promissory Note by delivering a notice of purchase to the City at least forty-five (45) days prior to the proposed sale date. The Director of OED, or permitted designee, is authorized to and shall execute documents necessary to sell the Promissory Note and the City's rights and obligations pursuant to the Loan Agreement and the

Deed of Trust so long as (a) such documents are in form satisfactory to the City Attorney; (b) encumbrances prior to the City's Deed of Trust do not exceed \$16,500,000.00 in principal amount; and (c) Borrower is not then in default of its obligations under the Loan Agreement, the Promissory Note, or the Deed of Trust.

4. USE AND DISBURSEMENT OF FUNDS: Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing (the "Project"), in accordance with **Exhibit A**, attached hereto and incorporated herein. No funds will be disbursed until Borrower has complied with all applicable federal environmental and historic preservation clearances as certified by OED in writing. The Borrower shall submit to the City requisitions with documentation of incurred costs on OED approved forms, and otherwise comply with the financial administration requirements set forth in **Exhibit B** attached hereto and incorporated herein. Where the City's funds are disbursed for construction, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain ten percent (10%) of each disbursement of funds, exclusive of expenses which are not subject to lien waivers, which retainage shall be released upon final inspection and approval of the City and receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers. In addition, OED shall retain Ten Thousand and No/100 U.S. Dollars (\$10,000.00) of the total funds to be disbursed under this Loan Agreement, which retainage shall be released upon receipt from Borrower of all information necessary for the U.S. Department of Housing and Urban Development ("HUD") HOME Program reporting, as set forth in **Exhibit E** hereto. The City's disbursement of funds is subject to availability of funds from HUD through its Cash Management System. These budget items may be revised with the written approval of OED, which approval will not be unreasonably withheld, conditioned or delayed, provided the revised budget does not exceed the amount of the loan. Expenses incurred prior to February 1, 2017 are not eligible for reimbursement.

5. DEADLINE FOR DISBURSEMENT OF FUNDS: Borrower must provide evidence of private funding commitments necessary to develop the Project on the Property and the final executed partnership agreement for the Borrower on or before August 1, 2017. Failure to meet this deadline shall result in the termination of this Loan Agreement. No funds shall be disbursed under this Loan Agreement until such time as these conditions are met. Further, all cost overruns and/or funding shortfalls shall be the sole responsibility of the Borrower.

Borrower further agrees that (a) documentation for all draw down requests will be submitted no later than twenty-four (24) months after the date of the Promissory Note and (b) Borrower shall endeavor to complete the construction of the Project within a fifteen (15) month period. This timeline includes requests for disbursement of the Ten Thousand and No/100 U.S. Dollar (\$10,000.00) retainage set forth in Section 4, above. These deadlines may be extended with the written approval of OED.

6. RESTRICTIONS ON USE OF PROPERTY:

A. Affordability limitations. Four (4) of the units at the Property (the “HOME Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by HUD, under 24 C.F.R. 888.11, or (ii) a rent that does not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals fifty percent (50%) of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit. By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current rent guidelines from the OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or HUD, and comply with same.

The City shall determine maximum monthly allowances for utilities and services annually in accordance with 24 C.F.R. 92.252(d)(1). Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services.

The City shall review rents for compliance and approval in accordance with 24 C.F.R. 92.252(d)(2) & (f)(2) within ninety (90) days after OED requests rent information from the Borrower.

B. Occupancy/Income Limitations. The HOME Units shall be occupied by tenants whose incomes are at or below fifty percent (50%) of the median income for the Denver area as determined by HUD pursuant to section 24 C.F.R. 5.609 or any successor regulation. By executing this Loan Agreement, Borrower acknowledges receipt of HUD’s current income guidelines from OED. It shall be Borrower’s responsibility to obtain updated guidelines from OED or HUD, and comply with same.

C. Designation of Units. All of the HOME Units are floating, and are designated as follows:

BEDROOMS	HOME Units
1 Bedroom	2
2 Bedroom	1

3 Bedroom	1
4 Bedroom	0
TOTAL	4

Borrower shall provide the address of HOME Units to the City by the time of project completion.

D. Covenant Running with the Land. At closing, Borrower shall execute a covenant in form satisfactory to the City (“Covenant”), setting forth the rental and occupancy limitations described in subparagraphs A and B above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The Covenant shall encumber the Property for a period not less than thirty (30) years from the date of project completion as defined in 24 C.F.R. 92.2. The thirty (30) year term consists of: twenty (20) years as required by HUD, and an additional ten (10) years as required by the City. After the first twenty (20) years from the date the Covenant is recorded have lapsed, Borrower will have satisfied the HUD requirements. Violation of said Covenant shall be enforceable as an event of default pursuant hereto.

E. Project-Based Section 8 Subsidy. Notwithstanding any other provisions of this Loan Agreement to the contrary, in the event of a decrease or termination of the Project-Based Section 8 rental subsidy for the Project, except if such reduction or termination arises from an uncured default by the Borrower or other material failure to comply with agreements, laws and regulations applicable to the Project, the City agrees that it will work with Borrower to address Borrower’s request to seek alternative sources of funding, and/or modify the occupancy restrictions and/or modify the rent and income limits otherwise required by this Loan Agreement to the minimum extent necessary to maintain breakeven operations, provide that such adjustments are in compliance with section 42 of the Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder (collectively, “Section 42”), the City’s Charter and the Denver Revised Municipal Code. Prior to any modification, Borrower shall submit a plan outlining the proposed modifications necessary to maintain the financial feasibility of the Project, which shall be reviewed and approved by the City for compliance with Section 42, the City’s Charter and the Denver Revised Municipal Code.

7. **LEASES**: Borrower shall enter into a written lease with the tenants of the HOME Units for a period of not less than one year, unless by mutual agreement between the tenant and

the Borrower a shorter period is specified.

8. PROHIBITED LEASE TERMS: Leases or other instruments pursuant to which HOME Units are occupied may not contain any of the following provisions:

A. Agreement to Be Sued. Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.

B. Treatment of Property. Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. However, the owner may dispose of personal property remaining in the unit after the tenant has moved out, in accordance with Colorado law.

C. Excusing Owner from Responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.

D. Waiver of Notice. Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.

E. Waiver of Legal Proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

F. Waiver of Jury Trial. Agreement by the tenant to waive any right to a trial by jury.

G. Waiver of Right to Appeal. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge a court decision in connection with the lease.

H. Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by tenant to pay attorney fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant.

I. Mandatory Supportive Services. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

9. PROHIBITION OF CERTAIN FEES: Borrower is prohibited from charging fees that are not customarily charged in rental housing (e.g. laundry room access fees), except that Borrower may charge the following; reasonable application fees to prospective tenants; parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood,

and; fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

10. TERMINATION OF TENANCY: Borrower may not terminate the tenancy or refuse to renew the lease of a tenant of any of the HOME Units except for a serious violation or repeated violations of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; or for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by Borrower's service upon the tenant of a written notice specifying the grounds for the action.

11. MAINTENANCE AND REPLACEMENT: Borrower shall maintain the Property in compliance with all applicable housing quality standards and local code requirements. Newly constructed or substantially rehabilitated housing must meet applicable requirements referenced at 24 C.F.R. 92.251.

12. TENANT SELECTION: Borrower must adopt written tenant selection policies and criteria that:

A. Are consistent with the purpose of providing housing for very low-income and low-income families;

B. Are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;

C. Give reasonable consideration to the housing needs of families that would have a preference under federal selection preferences for admission to public housing;

D. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, with prompt written notification to any rejected applicant of the grounds for any rejection.

13. LEAD-BASED PAINT HAZARDS: Housing Assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.), and is therefore subject to 24 C.F.R. Part 35.

14. AFFIRMATIVE MARKETING: Borrower shall comply with the affirmative marketing procedures outlined in the marketing plan, attached hereto as **Exhibit C** and incorporated herein, to provide information and otherwise use diligent efforts to attract eligible tenants from all racial, ethnic, and gender groups in the Property's housing market area in accordance with 24 CFR 92.351. Except Borrower may limit eligibility or give preference to a

particular segment of the population in accordance with 24 CFR 92.253(d).

15. EXPENSE: The Borrower agrees to pay all direct costs, expenses and attorney fees reasonably incurred by the City in connection with the Borrower's breach or default of this Loan Agreement or the Promissory Note, Deed of Trust, or Covenant, and agrees to pay reasonable loan closing costs, including the costs of title insurance or guarantee as determined by City.

16. PUBLICATIONS/ANNOUNCEMENTS: Contractors using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods funded by OED, or publicizing activities or projects funded by OED shall first receive approval from OED. In any event, all such publicizing activities must include the following statement: "The funding source for this activity is the City and County of Denver, Office of Economic Development." OED shall be acknowledged in any events regarding the project being funded, including groundbreaking and openings.

17. EXAMINATION OF RECORDS/ANNUAL MONITORING: The Borrower agrees that the Comptroller General of the United States, HUD, the City, or any of their duly authorized representatives shall, until the expiration of five (5) years after the expiration of the affordability period set forth in the section above entitled "**RESTRICTIONS ON USE OF PROPERTY,**" have access to and the right to examine any directly pertinent books, documents, papers, and records of the Borrower involving transactions related to this Loan Agreement during normal business hours and with reasonable notice. Borrower must also require its contractors and subcontractors to allow access to such records when requested. Borrower shall fully cooperate with City in an annual monitoring of Borrower's performance and site inspection to verify compliance with the requirements of this Loan Agreement. The records maintained by Borrower shall include, without limitation, (i) records evidencing the income of each family occupying a HOME Unit, and (ii) a copy of the lease pursuant to which each HOME Unit is occupied.

Borrower shall submit to the City the following reports: (1) Annual report on rents and occupancy of HOME Units to verify compliance with affordability requirements in Paragraph 6; (2) Reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; and (3) For floating units, information on unit substitution and filling vacancies to ensure that the project maintains the required unit mix.

18. CONDITIONS:

A. This Loan Agreement is subject to the Home Investments Partnership Program Grant Agreement entered into between the City and HUD, the National Affordable Housing Act of 1990, and HUD regulations at 24 C.F.R. Part 92. The obligation of the City to lend the above sums is limited to funds appropriated for the purpose of this Loan Agreement by the United States of America and paid into the City treasury.

B. This Loan Agreement is also subject to the terms and conditions set forth in Part II.

C. This Loan Agreement is also subject to the provisions of the City Charter and Revised Municipal Code as the same may be amended from time.

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

20. INSURANCE: Borrower or its contractor(s) shall procure and maintain insurance in the following types and amounts:

A. Where loan proceeds are disbursed for construction, Builders Risk Insurance or an Installation Floater in the amount of the value of the Property as improved and renovated, with the City and County of Denver named as loss payee.

B. Commercial General Liability Insurance covering all operations by or on behalf of Borrower, on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$1,000,000 for each personal and advertising injury claims, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Borrower's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates of insurance for each subcontractor.

C. Worker's Compensation and Employer's Liability Insurance at statutory limits and otherwise sufficient to ensure the responsibilities of Borrower and its contractor under Colorado law.

D. Special cause of loss form property insurance satisfactory to the City in the amount of the value of the property subject to the Deed of Trust and Covenant, with the City

named as loss payee.

E. Certificates of Insurance evidencing the above shall be submitted to OED prior to the disbursement of funds hereunder. Policies shall include a waiver of subrogation and rights of recovery as against the City. Insurance companies providing the above referenced coverage must be authorized to issue insurance in Colorado and be otherwise acceptable to the Director of Risk Management.

21. DEFENSE & INDEMNIFICATION:

A. Borrower agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Loan Agreement (“Claims”), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Borrower or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Borrower’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Borrower’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/ or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. Borrower will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

D. Insurance coverage requirements specified in this Loan Agreement shall in no way lessen or limit the liability of the Borrower under the terms of this indemnification obligation. The Borrower shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Loan Agreement.

22. DEFAULT AND ACCELERATION: Borrower expressly agrees that any breach of this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant shall constitute a default only after Borrower fails to cure such default breach within 30 days after written notice thereof from the City, provided that if such cure cannot be reasonably completed within the 30 days, the Borrower may be allowed such additional time as the City reasonably agrees to, as long as the Borrower is proceeding diligently to effect a cure (the “Cure”), at the reasonable discretion of the City. The City also may declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan Agreement proves to have been false in any material respect when made or furnished. Upon the existence of a default in which Borrower fails to effectuate a Cure, and without necessity of any additional notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower, the City shall have the right to accelerate any outstanding obligations of the Borrower, which shall be immediately due and payable, including payments under the Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust. Upon default, the outstanding principal shall draw accrue interest at the rate of ten percent (10%) per annum.

Notwithstanding anything to the contrary contained herein, if any default under the Loan Documents occurs, prior to exercising any remedies hereunder, the City shall give Borrower and the investor member of Borrower (the “Investor”) simultaneous written notice of such default. The City hereby agrees that any cure of any default made or tendered by Investor shall be deemed to be a cure by Borrower, and accepted or rejected on the same basis as if made or tendered by Borrower. Investor shall have a period of thirty (30) days after receipt of notice, or such longer period of time as may be set forth herein, to cure a default prior to exercise of remedies by the City hereunder or under any related Loan Documents.

23. ASSIGNMENT AND SUBCONTRACTING: The City is not obligated or liable under this Loan Agreement to any party other than the Borrower. The Borrower shall not assign, sublet or subcontract with respect to any of the rights, benefits, obligations or duties under this Loan Agreement except upon prior written consent of the City.

24. AUDIT REQUIREMENT: Non-profit organizations that expend \$750,000 or

more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225, and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”) and applicable federal regulations.

25. WAIVER: No waiver of any breach or default under this Loan Agreement shall be held to be a waiver of any other or later breach or default. All remedies afforded in this Loan Agreement shall be construed as cumulative, in addition to every other remedy provided herein or by law.

26. CITY NOT PARTY TO CONSTRUCTION CONTRACT: The City is not, and nothing in this Loan Agreement shall be construed to constitute the City, a party to any construction contract pursuant to which the loan or grant proceeds hereof are expended.

27. DURATION/BINDING EFFECT: This Loan Agreement shall remain in effect for the period of affordability specified in Section 6(D) above and until the Promissory Note has been paid in full, and shall be binding upon the parties and shall inure to the benefit of their respective successors, assignees, representatives, and heirs.

28. SECTION 3 COMPLIANCE: This Loan Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 and implementing regulations thereunder, as more fully described in Part II attached hereto.

29. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:

A. The Borrower represents and warrants that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

B. The Borrower will not enter into any lower tier transaction with a person who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the federal agency from which the transaction originated.

C. The Borrower shall include the certification contained in subparagraph A of this Section in any and all subcontracts hereunder and shall require any subcontractors or sub-consultants to comply with any and all applicable federal laws, rules and regulations, policies and procedures or guidance concerning the federal debarment, suspension, and exclusion

program.

D. The Borrower will immediately notify OED in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded at the time the parties executed this contract if due to changed circumstances the Borrower or any of its principals have subsequently been excluded by a federal agency.

E. The representation made in subparagraph A of this Section is a material representation of fact upon which reliance was placed when this transaction was entered into.

30. COUNTERPARTS: This Loan Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed to be an original and, taken together, shall constitute one and the same instrument.

31. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Borrower shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision can result in the City terminating the Loan Agreement or barring the Borrower from City facilities or from participating in City operations. The Borrower shall cooperate and comply with the provisions of 2 CFR Part 2429 regarding a Drug-Free Workplace.

32. NOTICES: All notices required by the terms of the Loan Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Borrower at the address first above written, and with a copy to:

with a copy to:

Wincopin Circle, LLLP
c/o Enterprise Community Asset Management, Inc.
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attn: General Counsel

And to:

Gallagher Evelius & Jones LLP
218 N. Charles Street, Suite 400
Baltimore, MD 21201
Attn: Kenneth S. Gross, Esq.

and if to the City at:

Executive Director of the Office of Economic Development or Designee

City and County of Denver
201 West Colfax Avenue, Dept. 204
Denver, Colorado 80202

With a copy of any such notice to:

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

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.

33. NONRECOURSE: Notwithstanding any other provision contained herein, or the Promissory Note, the Deed of Trust, or the Covenant, it is agreed that the execution of this Loan Agreement, the Promissory Note, the Deed of Trust, and the Covenant shall impose no personal liability on Borrower or any member of Borrower for payment of any of the obligations described herein or therein, and the City's sole recourse shall be against the Project.

34. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Borrower consents to the use of electronic signatures by the City. The Loan Agreement, and any other documents requiring a signature hereunder, 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 the Loan 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 the Loan 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.

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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-201734154-00

Contractor Name: LOWRY AFFORDABLE HOUSING PARTNERS
LLC

By: *Patrick Sheridan*

Name: Patrick Sheridan
(please print)

Title: Assistant Secretary
(please print)

ATTEST: [if required]

By: *Larenda Trenise Love*

Name: Larenda Trenise Love
(please print)

Title: Notary Public
(please print)

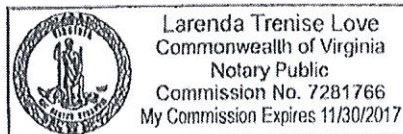


EXHIBIT A

Project Timeline – Lowry Family Housing 6756 East Archer Drive Denver, Colorado 80230

Timeline:

Financial Closing Date:	June 1, 2017
General Contractor Notice to Proceed:	June 1, 2017
Construction Completion/Units ready to be occupied:	July 31, 2018
Lease-up date of restricted units:	December 1, 2018

Sources and Uses:

Permanent Sources		Uses	
First Mortgage (PAB)	\$3,600,000	Land Cost	\$1,400,000
CHIF Loan	\$1,000,000	Hard Costs	\$13,840,808
DHA	\$1,800,000	Soft Costs	\$2,656,502
CDOH	\$648,000	Developer Fee & Profit	\$1,891,690
	\$720,000		
FHLB	\$500,000		
Deferred Developer Fee	\$350,255		
LIHTC - Federal	\$6,578,752		
LIHTC – State	\$3,120,000		
Energy/Solar Credit	\$71,993		
GP Land Contribution	\$1,400,000		
Total Sources	\$19,789,000	Total Uses	\$19,789,000

Project Activities	Project Cost	City Funds	Other Funds
Land Cost	\$1,400,000	\$0	\$1,400,000
Hard Costs	\$13,840,808	\$720,000	\$13,120,808
Soft Costs	\$2,656,502	\$0	\$2,656,502
Developer Fee & Profit	\$1,891,690	\$0	\$1,891,690
Total	\$19,789,000	\$720,000	\$19,069,000

EXHIBIT B

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the Office of Economic Development (OED) - Financial Management Unit (FMU) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by OED shall be in accordance with established FMU procedures for line-item reimbursements. The Contractor must submit expenses and accruals to OED on or before the last day of each month for the previous month's activity. Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with OED policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense, except for the final voucher for reimbursement.
- 1.1.3 The Contractor shall submit the final voucher for reimbursement no later than **forty-five (45) days after the end of the contract period.**
- 1.1.4 The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget attached to and made a part of this Agreement (Exhibit A).

1.2 Vouchering Requirements

- 1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to OED in order to be paid.
 - a. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.
 - b. The second exception will be that costs cannot be reimbursed until they total a minimum of \$35 unless it is a final payment voucher, or the final voucher for the fiscal year (ending December 31).
- 1.2.2 No more than six (6) vouchers may be submitted per contract per month, without prior approval from OED.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within forty-five (45) days of the Agreement end date to allow for correct and prompt closeout.
- 1.2.4 City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.

- 1.2.5 Only allowable costs determined in accordance with 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”) applicable to the organization incurring the cost will be reimbursed.
- 1.2.6 The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the last day of the following month for expenses incurred in the prior month. The request for reimbursement should include:
- a. Amount of the request in total and by line item;
 - b. Period of services for current reimbursement;
 - c. Budget balance in total and by line item;
 - d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).
- 1.2.7 If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to OED prior to the draw request.
- 1.2.8 The standardized OED “Expense Certification Form” should be included with each payment request to provide the summary and authorization required for reimbursement.

1.3 Payroll

- 1.3.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll: (1) the amount of time worked by the employee for this pay period; and (2) the amount of salary paid to the employee, including information on payroll deductions.
- 1.3.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee’s name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.

- 1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

1.4 Fringe Benefits

- 1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary paid under this contract. Fringe benefits may also include medical plans, retirement plans, worker's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or, 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.

1.5 General Reimbursement Requirements

- 1.5.1 Invoices: All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.
- 1.5.2 Mileage: A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.
- 1.5.3 Pager/Cell Phone: Written statement from executive director will be required certifying that cell phone is necessary and reasonable to run the program. And, if the monthly usage charge is exceeded in any month, a detailed phone log will be required for the amount of the overage.
- 1.5.4 Administration and Overhead Cost: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by OED.
- 1.5.5 Service Period and Closeout: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received

by OED within forty-five (45) days after the end of the service period stated in the contract.

2.1 Program Income

- 2.1.1 Program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.
- 2.1.2 Program income may be deducted from total allowable costs to determine net allowable costs and may be used for current reimbursable costs under the terms of this contract. Program income which was not anticipated at the time of the award may be used to reduce the award contribution rather than to increase the funds committed to the project. ALL PROGRAM INCOME GENERATED DURING ANY GIVEN PERIOD SUBMITTED FOR PAYMENT SHALL BE DOCUMENTED ON THE VOUCHER REQUEST.
- 2.1.3 The Contractor, at the end of the program, may be required to remit to the City all or a part of any program income balances (including investments thereof) held by the Contractor (except AS APPROVED IN WRITING BY OED, INCLUDING those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs), unless otherwise directed in writing by OED.

3.1 Financial Management Systems

The Contractor must maintain financial systems that meet the following standards:

- 3.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- 3.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- 3.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.

- 3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- 3.1.5 Applicable OMB Omni Circular cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- 3.1.6 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Contractor will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- 3.1.7 The Contractor shall maintain separate accountability for OED funds as referenced in 24 C.F.R. 85.20 and the OMB Omni Circular.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- 3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- 3.1.10 The Contractor shall participate, when applicable, in OED provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

4.1 Audit Requirements

- 4.1.1 If the Contractor expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the OMB Omni Circular.
- 4.1.2 A copy of the final audit report must be submitted to the OED Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to OED along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to OED within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to OED

funding, the Contactor shall prepare and submit a Corrective Action Plan to OED in accordance with the Single Audit Act Amendments and the OMB Omni Circular, as set forth in 24 C.F.R. Part 45 for each applicable management letter matter.

- 4.1.4 All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **OED Financial Management Unit**.
- 4.1.5 The Contractor will be responsible for all Questioned and Disallowed Costs.
- 4.1.6 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

5.1 Budget Modification Requests

- 5.1.1 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require only notification to OED with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by OED. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.
- 5.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to OED prior to the last Quarter of the Contract Period, unless waived in writing by the OED Director.

6.1 Procurement

- 6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than five thousand dollars (\$5,000) in the aggregate.
- 6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

- 6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

7.1 Bonding

- 7.1.1 OED may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21, where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

8.1 Records Retention

- 8.1.1 The Contractor must retain for five (5) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.
- 8.1.2 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

9.1 Contract Close-Out

- 9.1.1 All Contractors are responsible for completing required OED contract close-out forms and submitting these forms to their appropriate OED Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by OED in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by OED within thirty (30) days prior to end of contract.
- 9.1.3 OED will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. If Contractor fails to perform in accordance with this Agreement, OED reserves the right to unilaterally close out a contract, "unilaterally close" means that no additional money may be expended against the contract.

10.1 Collection of amounts due

- 10.1.1 Any funds paid to a Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and the City. If not paid within a reasonable period after demand, OED may 1) Make an administrative offset against other requests for reimbursements, 2) Withhold advance payments otherwise due to the Contractor, or 3) other action permitted by law.

EXHIBIT C
(Affirmative Marketing)

City and County of Denver
Affirmative Marketing Program

The City and County of Denver is committed to the goal of adequate housing for all its citizens and to affirmatively furthering fair housing opportunities. The City has developed written material explaining the HOME Programs for dissemination and will inform the public, owners, and potential tenants about Federal fair housing laws. These materials will display the “equal housing opportunity” slogan and logo. The City will also publicize its HOME programs through press releases, solicitations to property owners and written communications to fair housing groups and local lenders. The City will display the “equal housing opportunity” slogan on all such communications.

All contracts, grant agreements and/or loan agreements between the City or its agents and property owners executed in connection with the HOME Programs will:

- (1) prohibit discrimination in the rental of housing rehabilitated through the City’s HOME programs on the basis of race, color, religion, sex, national origin, age, handicap, or household composition;
- (2) require compliance with all applicable fair housing and equal opportunity laws, and
- (3) include a copy of our Affirmative Marketing Program and require compliance with all procedures contained herein for the period of affordability of the term of the loan, whichever is greater.

In the City’s Housing Loan Program, the objective of the Affirmative Marketing Program and a project’s Affirmative Marketing Plan will be to increase the racial/ethnic diversity of the project’s tenant population so that the tenant population is not made up exclusively of persons of one race/ethnicity.

In order to accomplish this, owners will be required to adopt a plan that will inform and solicit applications from persons in the housing market who are least likely to apply for the housing without special outreach. In general, persons who are not of the race/ethnicity of the majority of the residents of the neighborhood in which the property is located will be considered as persons least likely to apply.

The City will work with the project owner to identify which racial/ethnic groups in the population are least likely to apply for housing in each project without special outreach. The City will assist the owner in developing a project specific Affirmative Marketing Plan which includes special outreach efforts and the City will approve the Plan. The property manager or rental agent will be required to maintain records enabling the City to assess the results of the owner’s actions to affirmatively market units. These records will include rental applications, all vacancy notices, and rental receipts. The City or its agent will review the owner’s records and these records must be made available to

the City. Additionally, the City will require the owner to submit annual tenant reports that will include tenant characteristics including race/ethnicity.

The project's Plan will identify specific actions the owner must take when becoming aware of an impending vacancy. In some cases the owner will also be required to advertise the vacancy in a general circulation newspaper.

Owners who rent exclusively to one segment of the population to the exclusion of applicants from other segments will be notified of potential noncompliance. The City will provide technical assistance to the owners in expanding outreach efforts. If necessary, specific corrective actions will be required.

Owners who discriminate or who fail to comply with the requirements of this Affirmative Marketing Program may be found in breach of contract or in default on their grant or loan agreement, and the City may take action to recover all funds made available to the owner by the City plus applicable penalties.

The City has adopted a policy to aggressively encourage landlords to rehabilitate units that are accessible to persons with physical disabilities.

EXHIBIT D

FORM OF SUBORDINATION AGREEMENT

After recording return to:
FirstBank
Attn: Loan Operations
12345 West Colfax Avenue
Lakewood, CO 80215

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "Agreement"), is made and entered into as of the ____ day of _____, 2017, by and among LOWRY AFFORDABLE HOUSING PARTNERS LLC, a Colorado limited liability company ("Borrower"), the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado ("City"), FIRSTBANK, a Colorado state banking corporation (the "Bank"), VOLUNTEERS OF AMERICA NATIONAL SERVICES ("VOANS") and THE HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER, COLORADO, a public body corporate and politic of the State of Colorado ("Authority")

RECITALS:

A. On or about even date herewith, Borrower has received from the City a loan in the amount of \$720,000 as evidenced by a Promissory Note payable to the City in such amount (the "Subordinate Loan") in connection with the construction and development of a 72-unit affordable housing apartment development, consisting of 20 units of transitional housing for individuals moving out of homelessness, and 51 units serving low income persons at or below 50% of area median income in the City and County of Denver, Colorado and 1 manager's unit (the "Project") located on the real property described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). None of the units in the Project are subject to inclusionary housing requirements in the Denver Revised Municipal Code ("DRMC") § 27-101, *et seq.*

B. The Subordinate Loan is secured by a Deed of Trust dated of even date herewith (the "Subordinate DOT," together with any other collateral securing the Subordinate Loan, excluding the Rental and Occupancy Covenant recorded on _____ 2017 at Reception No. _____, the "Subordinate Instruments"), recorded on _____, 2017 at Reception No. _____ encumbering the Property.

C. In the documents evidencing the Subordinate Loan the City granted VOANS and the Authority an option to purchase the Subordinate Loan ("Option").

D. On or about _____, pursuant to the terms of a Financing Agreement (“Financing Agreement”), the Authority will issue Multifamily Housing Revenue Bond (Lowry Family Housing Project) Series 2017 in the maximum principal amount of \$[9,947,073.00] (the “Bond”), Senior Lender will purchase the Bond and the Authority will lend to Borrower the proceeds of the Bond pursuant to a Promissory Note (the “Construction Loan”) to construct and provide permanent financing for the Project. The Bond and the Promissory Note evidencing the Construction Loan are hereafter referred to collectively as the “Bank Note”). The Bank Note and the Financing Agreement are secured by among other collateral (i) a Deed of Trust and Security Agreement granted by the Borrower for the benefit of the Bank (“Bank Deed of Trust”), creating a first and prior lien on the Property, (ii) an Assignment of Rents and other Rights, and (iii) a Uniform Commercial Code Financing Statement recorded with the clerk and recorder of the City and County of Denver, Colorado (collectively, the foregoing, the “Bank Security Instruments”).

E. The Bank Deed of Trust was recorded in the real property records of the City and County of Denver, Colorado on November _____ at Reception No. _____ and the Bank Assignment of Rents was recorded in the real property records of the City and County of Denver, Colorado on _____ at Reception No. _____.

F. The Bank agreed to make the Bank Loan only upon the execution of this Subordination Agreement by the City and the acknowledgement and agreements herein by VOANS and the Authority.

NOW, THEREFORE, in consideration of the Recitals, which are hereby made a part hereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Subordination to the Bank Deed of Trust. The City hereby subordinates in all respects whatsoever the Subordinate Instruments, along with any and all other of the City’s right, title and interest in and to the Property and any rents and proceeds thereof to the Bank Security Instruments and, unless the Bank has authorized in writing otherwise, any amendments, modifications or extensions thereto.

2. Subordination of Right, Title, and Interest of the City in the Property. All right, title and interest of the City in and to the Property, and rents and proceeds thereof, pursuant to the Subordinate Instruments shall in all respects be junior, subordinate and subject to the prior right, title and interest of the Bank in and to the Property, and rents and proceeds thereof, pursuant to the Bank Security Instruments.

3. Limitations on Payment. The City shall not receive, or take action to collect or enforce, payment from Borrower, nor will Borrower make payment to the City, of any amounts outstanding under the Subordinate Loan or any part thereof; except that the City may receive, and Borrower is entitled to make payments of available cash flow of Borrower under the Subordinate Loan as long as, but only in the event that, no event of default (after lapse of any applicable notice and cure period) then exists with respect to the Bank Note (“Event of Default”).

4. City Limits. Until repayment in full of the Bank Loan, without written permission of the Bank, the City shall refrain from joining or initiating any action to which it

would otherwise be entitled in the event of a default under the Subordinate Loan, including but not limited to taking possession of, selling, or disposing of Property or other collateral of the City pursuant to the Subordination Instruments, or any other document evidencing or securing the Subordinate Loan (collectively, the “Subordinate Loan Documents”), whether relating to a default in payment, failure to perform any other covenant in the Subordinate Loan Documents, or an event of default under any other document resulting in an event of default under the Subordinate Loan Documents. The term “any action” as used in this paragraph 4 includes, without limitation, the appointment of a receiver or the commencement of foreclosure proceedings.

5. Intentionally Omitted

6. Default. Upon the occurrence of an Event of Default and prior to the commencement of foreclosure by Bank under the Bank Deed of Trust, Bank agrees it shall to provide notice of such default to the City (provided Bank shall have no liability if such notice is not provided) and to provide the City forty-five (45) days to cure a monetary default and thirty (30) days to cure a non-monetary default, each time period accruing from the date of delivery of the notice of such default to the City; on the condition that (i) Bank shall be required to provide reasonable notice of default to the City; (ii) the City shall be entitled to a cure period for default as specified above; and (iii) the City’s cure period shall be co-terminus with (and not in addition to) the cure period provided to Borrower.

Upon the occurrence of a default under the Subordinate Loan Documents, the City agrees to provide to Bank a copy of any notice of default provided to Borrower.

7. Condemnation Awards and Insurance Proceeds. Until repayment in full of the Bank Loan, the City further agrees that any and all rights of the City under the Subordinate DOT, including without limitation any and all rights of the City to condemnation awards or insurance proceeds, shall be, and are hereby expressly made, subject and subordinate to the lien of the Bank Deed of Trust and to the rights, interests and remedies of the Bank and its successors and assigns (including the purchaser at any foreclosure sale or the transferee of any transfer in lieu of foreclosure) under the Bank Deed of Trust. If following any such application or disposition of the insurance proceeds or condemnation awards and other compensation in accordance with the terms of the Bank Note or Bank Deed of Trust any balance remains, then such excess shall be made payable to the joint order of Borrower and the City as their interests may appear under the Subordinate DOT.

8. Undertakings Unaffected. The City’s undertakings herein shall not be affected or impaired by (a) any neglect or omission on the part of the Bank to preserve any collateral at any time securing payment of the Bank Note, or (b) any act on the part of the Bank in releasing, canceling, or surrendering all or part of such collateral, or in extending the time for payment with respect to all or any part of the Bank Note or such collateral, or in enforcing or realizing upon such collateral. No notice whatsoever need be given to the City at any time of any payments made under the Bank Note or with respect to any collateral securing the Bank Note.

9. Limitation on Transfer. The City will not assign, pledge or otherwise transfer, or permit or suffer to be assigned, pledged or otherwise transferred the Subordinate Loan, or any

part thereof, except upon prior written notice to the Bank and unless such assignee, pledgee, or transferee agrees in writing to be bound by the terms and conditions of this Agreement.

10. Continuing Nature of Subordination. This Agreement shall be irrevocable and shall continue effective until the Bank Note has been paid in full and all financing arrangements between Borrower and the Bank have been terminated.

11. Successors and Assigns. This Agreement is binding not only upon the City and Borrower, but also upon the successors and assigns of each of them, and is enforceable not only by the Bank but also by its successors and any assignee of or participant in the Bank Note, but shall not inure to the benefit of or be enforceable by any other party or subordinate the Subordinate Loan to any claim other than the Bank Note.

12. Governing Law. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws of the State of Colorado.

13. Section Titles; Gender. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the masculine and feminine forms, and vice versa.

14. Notices. Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in writing and shall be deemed to have been validly served, given or delivered upon receipt when personally delivered or sent by facsimile transmission with written print out of transmission (and immediately sent by one of the delivery methods) or overnight courier that provides written confirmation of delivery, or when duly deposited in the United States mails, certified or registered with proper postage prepaid, addressed to the party to be notified as follows:

If to Borrower: Lowry Affordable Housing Partners LLC
 c/o Volunteers of America
 1660 Duke Street
 Alexandria, VA 22314
 Attention: Asset Management and Senior Vice President of Legal
 Affairs
 Fax: (703) 341-7000

with a copy to: The Housing Authority of the City and County of Denver,
 Colorado
 P.O. Box 40305, Santa Fe Drive Division
 777 Grant Street
 Denver, Colorado 80204
 Attn: Ismael Guerrero, Executive Director
 Fax: (720) 932-3008

with a copy to: Wincopin Circle LLLP
c/o Enterprise Community Investments, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Attn:
Fax: (____) ____-____

with a copy to: Gallagher Evelius & Jones LLP
218 N. Charles Street, Suite 400
Baltimore, Maryland 21201
Attn: Kenneth S. Gross, Esq.
Fax: (410) 468-2786

If to Bank: FirstBank
10403 West Colfax Avenue
Lakewood, Colorado 80215
Attention: Paula Claussen
Fax: (303) 742-3018

with a copy to: Lewis Roca Rothgerber Christie LLP
1200 17th Street, Suite 3000
Denver, Colorado 80202-5055
Attention: Lindsay McKae, Esq.
Fax: (303) 623-9222

If to the City: Executive Director of the Office of Economic Development
City and County of Denver
201 West Colfax Avenue, Dept. 204
Denver, Colorado 80202

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same document.

16. VOANS/Authority Consent. VOANS and the Authority hereby acknowledges and agrees to the terms and conditions of this Agreement and agrees that the Option is subject to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BORROWER:

Lowry Affordable Housing Partners LLC, a Colorado limited liability company

By: Lowry AHP MM LLC, a Colorado limited liability company,
Its Managing Member

By: Volunteers of America National Services, a Minnesota nonprofit corporation,
Its Managing member

By: _____
Patrick Sheridan, Assistant Secretary

STATE OF VIRGINIA)
) ss.
CITY OF ALEXANDRIA)

The foregoing instrument was signed and acknowledged before me this ___ day of _____, 2017, by _____ in his capacity as _____ of Volunteers of America National Services, managing member of Lowry AHP MM LLC, the managing member of Lowry Affordable Housing Partners LLC.

Notary Public

Print, Type or Stamp Name

CITY AND COUNTY OF DENVER:

a Colorado municipal corporation

By: _____
Its: _____

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____ 2017,
by _____, as _____ of the CITY AND COUNTY OF
DENVER, a municipal corporation of the State of Colorado.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

(S E A L)

BANK:

FIRSTBANK,

a Colorado state banking corporation

By: _____
Paula Claussen, Senior Vice President

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017,
by Paula Claussen, Senior Vice President of FirstBank, a Colorado state banking corporation.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

(S E A L)

VOANS:

VOLUNTEERS OF AMERICA NATIONAL SERVICES,

a _____

By: _____

Name: _____

Title: _____

STATE OF VIRGINIA)

) ss.

CITY OF ALEXANDRIA)

The foregoing instrument was signed and acknowledged before me this ___ day of _____, 2017, by _____ in his capacity as _____ of Volunteers of America National Services, a _____.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: _____

Notary Public

Print, Type or Stamp Name

AUTHORITY:

**THE HOUSING AUTHORITY OF THE CITY AND
COUNTY OF DENVER, COLORADO**

a public body corporate and politic of the State of Colorado

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____ as _____ of The Housing Authority of the City and County of Denver, Colorado, a public body corporate and politic of the State of Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: _____

[SEAL]

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

TBD

EXHIBIT E
Form of HOME Rental Outcome Performance Measurement Report

Name of Organization:

2017 Contract #:

2017 IDIS #:

Contract Period:

The purpose of this report is to document and measure Outcome Indicators as prescribed by Housing and Urban Development. Listed are the agreed upon Objective and Outcome. Record Outcome Indicator figures for the reporting period and compute the totals. Briefly describe any qualitative indicators of the success of the program. ***Even if your organization has not served any individuals in the reporting period provide a narrative in the narrative section below.*** The information is recorded in IDIS (Integrated Disbursement and Information System). Please DO NOT modify this template without prior approval from OED staff.

Reporting Period: Quarter _____ Year _____

Overall Program Function and Highlights: Please provide a narrative on your program this quarter and any anecdotal feedback you have received on the success of your program. Include any successes/opportunities or challenges, obstacles, significant changes and/or changes in timeline that may impact the ability to achieve program Objectives and Outcomes. Also include status of your tasks outlined in your scope of services.

Housing and Neighborhood Development Outcomes: Please provide information on outcomes from your program this quarter and any anecdotal feedback you have received on the success of meeting the outcomes.

HUD Reporting Requirements: These are HUD's Common Indicators. Please provide only unduplicated numbers for each category.

1. LEAD PAINT

Applicable Lead Paint Requirement:
Housing constructed before 1978
Exempt: housing constructed 1978 or later
Otherwise exempt

Lead Hazard Remediation Actions:
Visual Assessment/Paint Stabilization (24 CFR 35.1015)
Other Actions required by Local/State Codes

2. Money Leveraged- Provide the amount of money leveraged from other federal, state, local and private sources used to carry out this program.

Amount of money leveraged (Cumulative Total):	\$
--	----

Race Codes

- 11 White
- 12 Black or African American
- 13 Asian
- 14 American Indian or Alaska Native
- 15 Native Hawaiian or Other Pacific Islander
- 16 American Indian or Alaska Native & White
- 17 Asian & White
- 18 Black/African American & White
- 19 American Indian or Alaska Native & Black or African American
- 20 Other Multi Racial

Household Type

- 1. Single
- 2. Elderly, aged 62 years or older
- 3. Single parent
- 4. Two parents
- 5. Other

Occupant

- 1 – Tenant
- 2 – Owner
- 9 – Vacant Unit

Assistance Type

- 1. Section 8
- 2. HOME TBRA
- 3. Other federal, state, or local assistance
- 4. no assistance

PART II
SUPPLEMENTARY GENERAL CONDITIONS (HOME)

ARTICLE I
FEDERAL REQUIREMENTS

Except as specifically set forth herein, the following conditions take precedence over any conflicting conditions in the Agreement.

Sec. 100. Definitions. As used in this Part II:

A. “City” means City and County of Denver or a person authorized to act on its behalf.

B. “Contractor” means a person or entity that has entered into an Agreement with the City under which the person or entity will receive federal funds under the Home Investment Partnership Program (“HOME”). “Subcontractor” means any person or entity that enters into an agreement or contract with a Contractor.

C. “OED” means the City’s Office of Economic Development or a person authorized to act on its behalf.

D. “HUD” means the United States Department of Housing and Urban Development or a person authorized to act on its behalf.

E. “Construction contract or agreement” means a contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

Sec. 101. Cranston-Gonzales National Affordable Housing Act. This Agreement is subject to Title II of the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701-12839), and HUD regulations at 24 C.F.R. Part 92.

Sec. 102. Uniform Administrative Requirements. This Agreement is subject to the requirements of 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”), and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

Sec. 103. Nondiscrimination Under Title VI of the Civil Rights Act of 1964.

A. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations at 24 C.F.R. Part 1, prohibiting discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

B. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968. This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations at 24 C.F.R. 100, prohibiting housing discrimination on the basis of race, color, religion, sex, disability/handicap, familial status, or national origin. The Contractor agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975. This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and implementing regulations at 24 C.F.R. 146. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. The Contractor will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974. This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 C.F.R. Part 6 and Section 570.602), providing that no person in the United States shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, religion or sex under any program or activity funded in whole or in part under Title I of the Act.

Sec. 107. Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063. This Agreement is subject to Executive Order 11063, issued November 20, 1962, as amended by Executive Order 12259, issued December 31, 1980, and implementing regulations at 24 C.F.R. Part 107, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing provided, rehabilitated, or operated with federal assistance or are owned or operated by the Federal Government.

Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973. This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and regulations at 24 C.F.R. Part 8, providing that no otherwise qualified individual with handicaps in the United States shall, solely by reason of a handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under

any program or activity receiving federal funds.

Sec. 109. Violence Against Women Reauthorization Act of 2013. This Agreement is subject to the Violence Against Women Reauthorization Act of 2013, which provides protections to victims of domestic violence in public housing, as well as in housing funded by the HOME program.

Sec. 110. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.

A. The work to be performed under this contract 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). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of this notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's

obligations under 24 C.F.R. Part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

Sec. 111. Relocation Assistance and Property Acquisition Requirements. This Agreement is subject to the relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implementing regulations at 24 C.F.R. Parts 42 and 92. The Contractor must comply with the City's Anti Displacement and Relocation Assistance Plan on file.

Sec. 112. Conflict of Interest. The provisions of 24 C.F.R. 92.356 regarding "Conflict of Interest" are expressly incorporated herein by this reference.

Sec. 113. Political Activity Prohibited. None of the funds provided under this Agreement shall be used directly or indirectly for any partisan political activity, or to further the election or defeat of any candidate for public office.

Sec. 114. Lobbying Prohibited. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

Sec. 114(a). Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and Certification. Section 319, P.L. 101-121. Any contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

A. 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, 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.

B. 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 shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall 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 section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Sec. 115. Copyrights. If this Agreement results in a book or other copyright material, the author is free to copyright the work but HUD and the City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted, as stated in 24 C.F.R. 84.36.

Sec. 116. Patents. Any discovery or invention arising out of or developed in the course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

Sec. 117. Program Income. Unless otherwise specified in Part I of this Agreement, all program income as defined by HUD at 24 C.F.R. 570.500(a) shall be returned to the City. Any program income on hand when this Agreement expires, or received after this Agreement expires shall be paid to the City.

ARTICLE II

DISBURSEMENTS AND ACCOUNTING

Sec. 201. Eligible and Ineligible Costs. Costs under this Agreement are governed by the OMB Omni Circular as applicable. All costs incurred by the Contractor using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (A) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (B) Be allocable to Federal awards under the provisions of the OMB Omni Circular; (C) Be authorized or not prohibited under State or local laws or regulations; (D) Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types of amounts of cost items; (E) Be consistent with policies, procedures and practices applied uniformly to activities of the City, both Federally assisted and non-Federally assisted; (F) Be accorded consistent treatment—a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost; (G) Be determined in accordance with generally accepted accounting principles;

(H) Not be allocable to or included as a cost of any other Federally financed program; (I) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (J) Be fully documented.

The following costs or expenditures by the Contractor are specifically ineligible for reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

Sec. 202. Documentation of Costs. All costs must be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

Sec. 203. Charges Against Project Account.

A. Payments under the Agreement shall be made on an actual basis for services that are performed and fully documented as having been performed. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget. The budget for this Agreement may be revised upon written request of the Contractor, and written approval from the Community Development Administration.

B. At any time prior to final payment, the City may have the invoices and statements of costs audited. Each payment shall be subject to reduction for amounts which are found by the City not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

C. In the absence of error or manifest mistake, all payments when approved shall be evidence of the services performed, except that all payments made by the City to the Contractor are subject to correction in accordance with the audit findings of the City or HUD. The Contractor shall promptly repay the City the amounts determined to be due on the basis of such audit.

D. Prior to final payment, the Contractor shall first furnish the City evidence in affidavit form that all claims, liens, or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of their services have been properly paid and settled.

E. Contract funds remaining unspent by the Contractor at the termination of the Agreement for any cause shall be returned to the City within the time specified by the City. Interest shall accrue in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

F. Unless otherwise specified in this Contract or the exhibits hereto, the effective indirect cost rate shall be at a rate of zero percent (0.00%) per annum.

Sec. 204. Method of Payment and Disbursements. The Contractor must submit properly executed invoices and requests for payment to OED. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner. When disbursing funds for construction, the City may withhold the final ten percent (10%) of the money made available under the Agreement pending final payment. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

Sec. 205. Travel Expenses. Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses City employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

Sec. 206. Designation of Depository. The Contractor shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation (“FDIC”) for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally secured. The Contractor is encouraged to use minority or female-owned banks.

Sec. 207. Refunds. The Contractor agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

ARTICLE III

CONSTRUCTION CONTRACTS AND LABOR STANDARDS

Sec. 301. Lead-Based Paint Hazards. The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 C.F.R. 92.355. The Contractor is responsible for the inspections and certifications required.

Sec. 302. Davis-Bacon Act. Except for the construction or rehabilitation of residential property that contains less than twelve (12) HOME units, the Contractor and all subcontractors hired under contracts for more than \$2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-5, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the “Federal Labor Standards Provisions,” Form HUD-4010.

Sec. 303. Contract Work Hours and Safety Standards Act. All federally assisted construction contracts of more than \$2,000.00 and all other contracts employing mechanics or laborers of more than \$2,500.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327, *et seq.*) and Department of Labor regulations (29 C.F.R. 5), requiring that wages be paid at not less than one and one-half times the basic wage rates for all hours worked

in excess of forty in a work week. No mechanic or laborer shall be required to work under conditions which are unsanitary, hazardous or dangerous to health and safety.

Sec. 304. Anti-Kickback Act. If this Agreement involves construction or repair, then it is subject to the Copeland “Anti-Kickback” Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 C.F.R. Part 5), prohibiting and prescribing penalties for “kickbacks” of wages. Wages must be paid at least once a week in accordance with the requirements of 29 C.F.R. 5.5.

Sec. 305. Equal Employment Opportunity Under Executive Order No. 11246, as Amended. If this Agreement involves a federally assisted construction project in excess of \$10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 C.F.R. Part 130, and the Department of Labor Regulations at 41 C.F.R. Chapter 60.

The Contractor agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 C.F.R. Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The Contractor agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

“During the performance of this Agreement, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.

(3) The Contractor 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 Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 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 his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions or paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the Agreement.

The Contractor agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with the requirements contained herein, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.”

ARTICLE IV **ENVIRONMENTAL AND HISTORIC CONDITIONS**

Sec. 401. Environmental Clearance. Pursuant to 24 CFR 58.22, no funds under this Agreement may be obligated or spent for acquisition, demolition or construction, or disposition, refinancing and other real property-affecting activities, such as granting easements and covenants, until Contractor has received written environmental clearance from OED. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

Sec. 402. Compliance with Clean Air and Water Acts. Contractor and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency (“EPA”) regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

Sec. 403. Additional Environmental and Historic Conditions. This Agreement is also subject to the following statutes, executive orders and regulations, when the Contractor is so instructed by the City or the United States of America.

A. National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), HUD

regulations (24 C.F.R. Part 58) and the Council on Environmental Quality regulations (40 C.F.R. Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;

B. National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;

C. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921, *et seq.*), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;

D. Reservoir Salvage Act of 1960 (16 U.S.C. 469, *et seq.*) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 U.S.C. 469, *et seq.*), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

E. Flood Disaster Protection Act of 1973, (42 U.S.C. 4001, *et seq.*), relating to mandatory purchase of flood insurance in areas having special flood hazards;

F. Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951, *et seq.*) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;

G. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961, *et seq.*), requiring review of all actions affecting a wetland;

H. Safe Drinking Water Act of 1974, (42 U.S.C. 300h-3), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

I. Endangered Species Act of 1973, (16 U.S.C. 1531, *et seq.*), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;

J. Wild and Scenic Rivers Act of 1968, (16 U.S.C. 1271, *et seq.*), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse effect on the National Wild and Scenic Rivers System;

K. Clean Air Act, (42 U.S.C. 7401 – 7671q, implementing regulations at 40 C.F.R. Part 51), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L. Farmland Protection Policy Act of 1981, (7 U.S.C. 4201, *et seq.*) relating to

the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M. HUD Environmental Criteria and Standards, (24 C.F.R. Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

N. Environmental Justice in Minority Populations and Low-Income Populations, (Executive Order 12898) providing for the achievement of environmental justice as part of each Federal agencies mission.

ARTICLE V **TERMINATION**

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or any part thereof are not appropriated by City Council or paid into the City Treasury, the City may immediately terminate this Agreement.

Sec. 502. Termination for Cause.

A. The City may terminate this Agreement whenever the Contractor materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to the Contractor's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

Sec. 503. Termination for Convenience. The City may terminate this Agreement at any time the City desires. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

Sec. 504. Payment After Termination. The Contractor shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

Sec. 505. Return of HOME funds. Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any HOME funds on hand and any accounts receivable attributable to the use of HOME funds must be immediately returned to the City. If HOME funds are spent on a project that is terminated before completion, the funds must be repaid to the City's HOME Investment Trust Fund.

ARTICLE VI

MISCELLANEOUS

Sec. 601. Personnel. The Contractor represents that it has or will secure all personnel required in performing its services under this Agreement. All services required of the Contractor will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

Sec. 602. Subject to Local Laws. This Agreement shall be construed and enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

Sec. 603. Contractual Relationship. The Contractor shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of the Contractor shall be that of an independent contractor.

Sec. 604. When Rights and Remedies Not Waived. Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of the Contractor, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

Sec. 605. Sales and Use Taxes. The Contractor or any subcontractor is not exempt from payment of the City Sales Tax or Use Tax. In accordance with applicable State and local law, the Contractor will pay, and/or require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired under this Agreement.

Sec. 606. Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 607. Titles and Subheadings. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 608. Notices. All notices shall be given by certified mail. Notices to the City shall be separately addressed to the Mayor and the Director of OED. Either of the parties may designate in writing substitute addresses or persons to receive notices.

Sec. 609. Published Information and Announcements. The contractor agrees to

coordinate with OED to assure that the activity financed in whole or in part by this agreement is properly referenced by the contractor in press releases, brochures, annual reports, speeches and other published information and announcements.

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