

**CITY OF OKLAHOMA CITY  
HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)  
LOAN AGREEMENT WITH  
ONE RED OAK, LLC AND HARMONY AFFORDABLE HOUSING PARTNERS, LP  
FOR HARMONY SCHOOL APARTMENTS  
MULTIFAMILY HOUSING DEVELOPMENT**

This Loan Agreement is made this 16th day of August, 2022, between The City of Oklahoma City, an Oklahoma municipal corporation having its principal place of business at 200 North Walker, Second Floor, Oklahoma City, OK 73102, hereinafter called “Lender” or “CITY”; and One Red Oak, LLC, an Oklahoma limited liability company with a principal place of business at 12308 Beryl Lane, Oklahoma City, OK 73170; and Harmony Affordable Housing Partners, LP, an Oklahoma limited partnership with a principal place of business at 100 W. Park, Suite 101, Tecumseh, OK 74873, hereinafter called “Borrowers” or “Developer”.

**Definitions:** Unless specifically provided otherwise or the context otherwise requires, when in this Loan Agreement:

1. “Act” means the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12721 et seq., as amended, and regulations promulgated there under.
2. “HUD” means the United States Department of Housing and Urban Development.
3. “Regulation(s)” or “HOME Regulation(s)” means the HOME Investment Partnerships Program Final Rule at 24 CFR Part 92 as updated in 2013, with guidance as provided, and/or other federal regulations as specified.
4. “HOME Funds” means HOME Investment Partnerships Program (HOME) Funds provided to the City by HUD pursuant to the Act.
5. “Funds” or “Loan Funds” means HOME Program Funds provided to Borrowers by Lender pursuant to the terms of this Agreement.
6. “HOME Program” means the HOME Investment Partnerships Program.
7. “Borrowers” means the developer of affordable housing using CITY-administered HOME Funds through the CITY’s Affordable Housing Development Program identified in the CITY’s 2021-22 Second Year Action Plan as amended.
8. “Loan Documents” means this Loan Agreement, Promissory Note and Mortgage and any other instrument executed as security for the Note or the indebtedness evidenced thereby.
9. “Project” means pre-approved activities including clearance, provision of site improvements and construction to support the development of residential housing for households with low to moderate income as defined in paragraph 15 below, in a multifamily complex assisted with other leveraged public and matched private funds.
10. “Project Site” means the real property on which the construction of the Project takes place as identified by legal description in Exhibit “A” to Schedule “A” of this Agreement. “Project Site” may also refer to the property address for the developed Project.
11. “Project Activities” means the components of the Project applied for by Borrowers and approved by Lender identified in Schedule “A” and which are eligible for funding under the terms of the Act, Regulations and this Loan Agreement.
12. “Initial Project Completion” means construction is complete, a certificate of occupancy has been obtained, and the Borrowers have submitted to the CITY copies of the initial leases for rental of the assisted units and certain completion information provided in a manner and format satisfactory to the CITY. **Initial Project Completion shall occur by September 1, 2024.**

13. "Appropriate Draw Request" shall consist of a complete and accurate invoice submitted to Lender by the appropriate representative of the Borrowers using the procedures described in Article IV Section 4.3 and Schedule "B" in this Agreement, as applicable.
14. (This number intentionally left blank.)
15. "Low- and Moderate- Income Persons" or households with "Low- and Moderate- Income s" means such persons or households with incomes less than 80% of median income limits annually established for Oklahoma City by HUD and adjusted by household size.
16. "Occupancy Requirements" means no less than 51% of units in the project shall be rented to persons or households with low- and moderate-incomes. .
17. "Promissory Note and Mortgage," or individually, "Note" and "Mortgage" means the instrument executed by Borrowers in favor of the Lender evidencing the loan and security for repayment of the Loan.
18. "Affordability Requirements" means the rental housing assisted with HOME funds must meet the Affordability Requirements of the Regulations at 24 CFR § 92.252 and must adhere to terms of the Declaration of Affordability Requirements approved by Lender and filed by Borrowers as a requirement to receive Funds under this Agreement.
19. "Declaration of Affordability Requirements" means the mechanism provided by the Lender and executed and filed of record by Borrowers in favor of Lender to ensure units assisted with HOME funds in this Project meet the Affordability Requirements for not less than the applicable period specified in this agreement and/or the Regulations at 24 CFR § 92.254, whichever is longer.
20. "Period of Affordability" or "Affordability Period" is the period of time from initial project completion that the project must adhere to the Affordability Requirements. For the purposes of this Agreement, the Affordability Period for each assisted unit is twenty (20) years.

#### RECITALS

WHEREAS, Borrowers have applied to Lender for HOME Funds and Lender has approved a loan for Five Hundred Fifty Thousand and 00/100 (\$550,000.00) of HOME Funds (hereafter referred to "Loan Funds" or the "Loan" or the "Funds") to assist with the Project; and

WHEREAS, the Funds are allocated in the Affordable Housing Development Program activity in the CITY's Fiscal Year 2021-2022 Second Action Year Plan as amended and are available to the Borrowers by the City Council solely upon the terms and conditions set forth below; and

WHEREAS, the CITY, as Lender, has agreed to provide these Funds to Borrowers exclusively for development of the Project; and

WHEREAS, the Funds will assist in the development of the Project to provide housing opportunities for households with low- and moderate-income; and

WHEREAS, the Loan shall be evidenced by this Loan Agreement and secured by a Promissory Note and Mortgage, executed by Borrowers in favor of Lender on the Project Site(s), provided that the Promissory Note and Mortgage shall be subordinated at all times to the first real estate mortgage lender; and

WHEREAS, Lender is willing to make the Loan to Borrowers for the purposes hereinabove set forth, all upon the terms and conditions herein set forth; and

WHEREAS, Lender makes no commitment of future support and assumes no obligation for future support of the activities contracted for herein, except as expressly set forth in this Agreement; and

WHEREAS, the City Council of The City of Oklahoma City deems it desirable to enter into a Loan Agreement with the Borrowers named herein.

NOW, THEREFORE, effective August 16, 2022, the CITY and Developer agree as follows:

Scope of Work. As part of the CITY's HOME Program (HOME), the Developer shall undertake and complete the activities described in Schedule "A", and Schedule "A-1" which itemizes special conditions, both attached hereto and incorporated as a part hereof by reference.

Duration of Agreement. The term of this Agreement shall correspond to the term of the loan provided by this Agreement, which is hereby established as beginning on August 16, 2022 and extending twenty (20) years from the date the funds are first drawn. Provisions of this Agreement subject to any federal or state requirements shall remain in effect for the applicable federal or state period.

Duration of Affordability. The term of the affordability period established by this Agreement is twenty (20) years from the date of Initial Project Completion as defined by this Agreement.

## ARTICLE I

1.1 The Funds. In reliance upon Borrowers' representations and warranties, and subject to the terms and conditions herein, and in the Loan Documents, Lender hereby agrees to loan Borrowers a principal sum of Five Hundred Fifty Thousand and 00/100 (\$550,000.00). The Lender shall obtain the loan funds from HUD for use in Lender's HOME Program and from no other source. The Borrowers have the right to receive such Funds from Lender only pursuant to the terms and conditions of this Agreement and in accordance with the Act, and then, only to the extent HOME Funds are made available to Lender by HUD. Should anticipated sources of Funds become unavailable to Lender, Lender shall within ten (10) working days, notify Borrowers in writing, and Lender shall be released from all contractual liability for that portion of the Funds yet to be provided to Borrowers by Lender under the Promissory Note and Mortgage and this Loan Agreement which have not been received by Lender from HUD.

1.2 Apportionment of Funds. Per guidance issued by HUD in CPD Notice 15-003: Interim Policy on Maximum per-Unit Subsidy Limits for HOME Program, published on March 17, 2015, Loan Funds shall be restricted to an amount per dwelling unit in accordance with the Section 234-Condominium Housing basic mortgage limits, for elevator-type projects. Current mortgage limits were published on March 17, 2022 by the HUD Office of Community Planning and Development in Federal Register Volume 87 Number 52. Lender shall allow the per-unit subsidy amount to be increased by 270 percent of the original per unit limits, per HUD's 2021 annual high cost percentage and area revisions as published in Mortgagee Letter 2021-22 on September 14, 2021.

1.3 Term, Rate and Conditions. This shall be an interest-only loan. The Loan will be financed at 1% annual interest with a final balloon payment per the terms of the Promissory Note of even date herewith. Absent an Event of Default, the Borrowers promise to pay the Lender, at 420 West Main Street, Suite 920, Oklahoma City, Oklahoma 73102, or at such place as Lender may designate in writing, the principal sum of Five Thousand Five Hundred and 00/100 dollars (\$5,500.00), beginning on September 1, 2023 and on September 1st each year thereafter until all funds advanced pursuant to the terms of the Loan Agreement have been fully repaid or in whole as a lump sum prior to September 1, 2039. Any unpaid balance is due in whole at the end of the loan term if not sooner paid.

1.4 Loan Documentation Security. The Loan is evidenced by this Loan Agreement and by the Note. The Loan shall be secured by a Mortgage on the Project Site(s). The Mortgage shall be in a form and substance acceptable to Lender.

1.5 Demand. Besides any other remedies that may be available to Lender under any of the Loan Documents, Lender may demand repayment of the Loan or foreclose on the Mortgage in the event of the following:

- (a) The occurrence of an Event of Default as defined in Article VI under this Agreement or any of the Loan Documents, which is not cured within the applicable period;
- (b) Borrowers convey, sells, transfers or assigns all or any substantial part of the Project or Project Site(s), whether voluntarily or involuntarily, or by the operation at law without the prior written consent of Lender. Execution of the releases of the Promissory Note and Mortgage and any other security instrument filed of record pursuant to this Loan Agreement shall constitute written consent.

1.6 Timely Completion. Initial Project Completion shall occur by September 1, 2024. If the project is not initially completed by September 1, 2024, the Developer shall be required to repay all funds and the Agreement shall be terminated, unless otherwise extended and amended.

## **ARTICLE II BORROWER'S REPRESENTATIONS AND WARRANTIES**

In order to induce Lender to make the Loan, Borrowers represent and warrant the following information as true and correct as of the date of execution hereof and which shall survive the execution and delivery of this Loan Agreement and the other Loan Documents as follows:

2.1 Organization of Borrowers; Authority to Enter into Agreement. Borrowers are Oklahoma corporations duly formed, validly in existence and in good standing under the laws of the State of Oklahoma. Borrowers have the right and power to occupy the Project Site(s), and to develop the Project thereon; and Borrowers have full power and authority to enter into this Agreement, to borrow money as contemplated and to execute and carry out the provisions of the Loan Documents. All necessary directors of the corporation have duly authorized the execution, delivery and performance of the Loan Documents and no other action of Borrowers is required for the execution, delivery and performance of the Loan Documents. This Loan Agreement, the Promissory Note and Mortgage, and all other Loan Documents executed and delivered under this Loan Agreement constitute, or, if not yet executed and delivered, will when so executed and delivered, constitute valid and binding obligations of Borrowers, each enforceable under their respective terms.

2.2 Financial Statements. Any financial statements delivered to Lender in connection with the Loan or the application on behalf of Borrower are true and correct, have been prepared in accordance with generally accepted accounting principles consistently applied, fairly represent the respective financial conditions of the subjects thereof as of the dates thereof and for the periods covered, and no materially adverse change has occurred in the financial conditions presented therein since the execution of the Loan Documents. Borrowers have a duty to immediately notify Lender of any material change in its financial condition for so long as the Loan Documents remain in effect. Information is material if omitting, misstating or obscuring it could reasonably be expected to influence the decisions that the primary users of general purpose financial statements make on the basis of those financial statements.

2.3 No Litigation. As of the date of execution of the Loan Documents, the Borrowers represent that there are no actions, suits or proceedings pending, or threatened against or affecting the Borrowers, the Project Site(s) or the Project in any court at law or in equity, or before or by any governmental or other municipal authority which might have a materially adverse effect on the ability of Borrower to perform its obligations under any of the Loan Documents to which Borrowers are a party.

2.4 Title. Borrowers hold, or will hold as a requirement to availability of the Loan Funds, and for as long as this Agreement and the other Loan Documents are in effect, marketable title, in fee simple, to the Project Site(s), less and except oil, gas and other minerals previously reserved or conveyed of record and subject only to recorded plat restrictions, recorded utility easements.

2.5 Project Activities.

2.5.1 Borrowers shall:

- (a) commence the Project no later than September 1, 2022, or within 60 days of issuance of all necessary Building Permits, whichever is later; and
- (b) complete the Project with diligence and continuity in good workman-like manner, fully draw all HOME funds and attain Initial Project Completion no later than September 1, 2024; and
- (c) evidence that the Project is occupied for the purpose intended with eligible tenants who have low- or moderate-income no later than September 1, 2024; and
- (d) obtain a one (1) year builder's warranty against defects in the construction or systems installed.

2.5.2 If Borrowers fail to comply with the activity requirements above, Borrowers shall be in Default of this Agreement and shall be required to pay back all funds drawn upon demand of Lender, no later than sixty (60) days from Notice from Lender of the event of default.

2.5.3 Notwithstanding the foregoing deadlines, in the event the Borrowers' failure to meet such deadlines is the result of force majeure, acts of God or other occurrences outside the control of the Borrowers, including without limitation, any governmental agencies' delay or failure to perform, Borrowers shall be afforded a reasonable extension of time beyond such deadline to account for such occurrence.

2.6 Use of Funds. Funds advanced by Lender to Borrowers under this Agreement and Promissory Note and Mortgage shall be used to pay for Home eligible costs of the Project Activities under the Act and Regulations and for no other purpose.

2.7 Housing Opportunities. Lender relies upon representations made by Borrowers that the Project will allow Borrowers to develop dwelling units that will be occupied by low- and moderate- income persons or households. By its execution of the Loan Documents, Borrowers acknowledge their representations pertaining to the development of dwelling unit(s) to be occupied by low- and moderate- income persons or households.

2.8 Covenants, Zoning and Codes. To Borrowers' best knowledge, Borrowers have complied and will continue to comply with all environmental statutes and regulations applicable to development of the Project; and all permits, consents, approvals or authorization by, registrations, declarations, withholding of objections or filings with any governmental body necessary for the valid execution, delivery and performance of the Loan Documents, or necessary to develop the Project, have been obtained, are valid, adequate and in full force and effect or will be obtained prior to the commencement of any development activities for which a permit, consent, approval or authorization is necessary. Borrowers also assure that development of the Project will conform to and comply with all covenants, conditions, restrictions and reservations affecting the Project Site and with all applicable zoning, environmental protections, use and building codes, laws, regulations and ordinances.

2.9 Compliance with Documents. As of the date hereof and for so long as the Loan Documents remain in effect, Borrowers certify current and continuing full compliance with all of the representations and warranties and terms and conditions of the Loan Documents, and further, that no Event of Default has or shall have occurred and be continuing, which, with the lapse of time for giving notice would constitute such an Event of Default under the foregoing.

2.10 Incorporation of Representations and Warranties. The Borrowers' request for any reallocation to Borrowers of Loan proceeds under the Loan Documents shall constitute a certification by the Borrowers that the aforesaid representations and warranties are true and correct as of the date of such request, except with respect to financial statements that were prepared at an earlier date.

2.11. Renting of the Property. Borrowers' marketing and rental of the assisted dwelling unit(s) shall be in accordance with the requirements of the Act, particularly those at 24 CFR §§92.216 and 92.252 as applicable.

2.12 Sale and/or Conveyance of the Property. It is expressly understood and agreed by the Borrowers that the property shall not be conveyed without prior written consent of the Lender. Execution of releases by the CITY of the Promissory Note and Mortgage and Declaration of Affordability Requirements shall constitute written consent.

2.13 Property Standards. Construction shall comply with applicable statutes, codes, and ordinances for the type of construction work contemplated. After construction and during the Affordability Period—as defined herein(?)—the assisted units shall meet state and local codes or policies for existing dwelling units or rehabilitation projects, and at minimum, shall meet the property standards established by HUD for housing that is decent, safe, sanitary, in good repair and sustainable, pursuant to 24 CFR 5.703 and 24 CFR 92.251.

### ARTICLE III EXECUTION AND CONDITIONS

3.1 Closing. Execution of the Loan and the Loan Documents, by all parties subject to this Loan Agreement shall serve as an informal loan closing unless counsel for the parties agree in writing to a location, date and time for a formal loan closing.

3.2 Conditions Precedent to Closing. Lender's obligation to enter into and perform its duties under this Agreement or the Loan Documents shall be to the full and complete satisfaction of the following conditions:

3.2.1 Documents. Lender shall have reviewed and approved of each of the following documents which shall be duly authorized, executed (and where appropriate, acknowledged), and all delivered by the parties thereto: this Loan Agreement, the Promissory Note and Mortgage, the Declaration of Affordability Requirements and any and all other documents as Lender may deem reasonably necessary regarding the Loan and include as part of the Closing Documents.

3.2.2 Evidence of Authority. Lender shall, upon written request, receive evidence satisfactory to it that Borrower and the persons signing for Borrowers have the capacity and authority to execute and deliver the Loan Documents for Borrowers.

3.2.3 Property Insurance. Borrowers shall furnish Lender, at Borrowers' cost and expense, with evidence of builder's risk or comparable property insurance which indemnifies Borrowers against damage or theft to buildings while they are under construction using funds provided by this Agreement. The policy shall contain coverage that protects against physical loss or damage to the building, materials, fixtures and/or equipment being used in rehabilitating/constructing the project. Following construction, Borrowers shall furnish Lender with evidence of property insurance that covers most common risks to an existing property. Lender must be added as an additional insured interest on all policies.

3.2.4 Title Insurance. Borrowers shall furnish Lender, at Borrowers' cost and expense, with an ALTA (American Land Title Association) Loan Policy of title insurance in a sum equal to the value of the property assisted with funds under this Loan Agreement, showing the Borrowers have marketable title in fee simple to the Project Site(s) and that the Promissory Note and Mortgage, of a valid lien subject only to superior mortgage lien(s) authorized by the Lender, and that the Declaration of Affordability Requirements in favor of the Lender have been filed of record on the Project Site.

3.2.5 Insurance. Borrowers shall, for so long as the Loan Documents remain in effect, at its own cost and expense, carry and maintain general public liability insurance against claims for bodily injury, personal injury, death or property damage occurring or arising out of the Project, which insurance shall cover such claims as may be occasioned by any act, omission, or negligence of the Borrowers or their officers, agents, representatives, assigns or servants relating to the Project or its operation. The limits of liability insurance, which may be increased from time to time as deemed necessary by Lender, with the approval of Borrowers,

which shall not be unreasonably withheld, shall not be less than One Million Dollars (\$1,000,000) combined single limit personal injury and property damage insurance or aggregate insurance in a total amount sufficient to cover damages to all property held by Borrowers. The insurance required above shall be issued by an insurance company or companies authorized to do business within Oklahoma. Lender shall be named as an additional insured on all such policies, and any such policy or policies shall be primary to any other valid and collectible insurance. Certificate or certificates or other evidence satisfactory to Lender evidencing the existence and terms and conditions of any insurance required above shall be delivered to Lender prior to or at closing. The policy or policies of insurance required by this Loan Agreement shall not be canceled or given notice of non-renewal nor shall the terms or conditions be altered or amended without thirty (30) days written notice to and written approval being given by the Lender. If the policy provided is aggregate insurance, then Borrowers shall secure from the insurer a statement that indicates Borrowers have adequate remaining insurance cover to comply with the requirements of this Agreement.

#### **ARTICLE IV CONDITIONS PRECEDENT TO FUND ADVANCES**

4.1 Conditions Precedent to Initial Draw of Funds. Lender's obligation to pay Funds is subject to Borrowers submitting the required forms and in the required format attached hereto as Schedule "B" and to Borrowers' compliance with the terms of Article III above, and said obligation is subject to Lender's receipt of the following documents and satisfaction of the following conditions precedent:

- (a) *Environmental Review.* Lender shall have completed the Environmental Review under 24 CFR Part 58, shall have received Notice of Release of Funds from HUD and shall have completed a site-specific environmental review prior to Borrower starting Project Activities and prior to the availability of Funds under this Agreement. Availability of Loan Funds is conditioned on the Lender's determination to proceed with, modify or cancel any project activity based on the results of the site-specific environmental review. Borrowers do not assume the Lender's environmental responsibilities, but shall be responsible to the Lender for providing sufficient project information to assure compliance with Environmental Review Record regulations and the Lender's Environmental Review Procedures prior to commencing activity.
- (b) Receipt by Lender of any other documents and assurances as it may reasonably request which are required by any federal, state, or county regulatory agency which requests Lender to provide such documents or assurances;
- (c) Lender shall have received and have in its possession sufficient Funds to fund the draw request of Borrowers;
- (d) No condition of subsequent payments as set forth in Section 4.2, below, shall be breached regarding the first payment;
- (e) Receipt by Lender of an Appropriate Draw Request covering the sum(s) to be paid, which sum shall be in proportion to other funds secured for the Project completion; and
- (f) If requested by Lender, Borrowers shall provide to Lender existing loan commitments from an institutional or individual lender(s) or equity investor(s) which shall be in a form and in an amount satisfactory to Lender for development of the Project.
- (g) Borrowers shall file instruments approved by the City at the office of the Oklahoma County Clerk to secure the City's financial and affordability interest in the Project.

4.2 Conditions Precedent to Subsequent Draws. Besides compliance with the conditions precedent in Article III and Section 4.1, Lender's obligation to make any payment of Funds after the initial payment shall be subject to satisfaction of the following conditions and in the required format attached hereto as Schedule "B."

- (a) Borrowers shall fully comply and shall not be in default of any the Loan Documents, provided, however, that Lender may elect to make payments notwithstanding the existence of a default, and any payment so made shall be deemed to have been made under the Loan Documents and shall be secured by the Promissory Note and Mortgage;

(b) Neither the Project nor the Project Site shall have been materially damaged, destroyed, condemned or threatened with condemnation unless Borrower shows to Lender's reasonable satisfaction that the Project will be completed under this Agreement; and

(c) No order or notice shall have been made by, or received from, any governmental agency having jurisdiction, stating the development of the Project is or will materially violate any law, ordinance, code or regulation affecting the Project or the Project Site.

4.3 Borrowers' Draw Requests. Funds shall be released for eligible costs and expenses, or as approved by the Lender. Borrowers acknowledge they has no right to the Funds other than to have them disbursed by Lender under the terms of this Loan Agreement and under the Act and then only to the extent Lender has received Funds from HUD.

## ARTICLE V BORROWER LOAN COVENANTS

Throughout the term of this Agreement, and for so long as Loan Documents remain in effect, and until the Loan is fully paid or the terms otherwise satisfied, Borrowers covenant and agrees:

5.1 General. After the date hereof and for so long as any amount remains unpaid on the Promissory Note and Mortgage, or for so long as any commitment exists to extend credit, or for so long as Loan Documents remain in effect, Borrowers covenant and agrees they will comply with subparagraph (a), (b), (c), (d) and (e) below:

(a) Promptly pay the amount owed when the same becomes due;

(b) Own and continuously maintain the dwelling unit(s) until conveyed for the benefit of low- and moderate-income persons as contemplated;

(c) Preserve and keep in force and effect its existence as a corporation in good standing in Oklahoma, and retain legal title to the Project Site, except as to approved sales related to Project completion, or sales, transfers and assignments in Section 5.5(a) hereof;

(d) Maintain, preserve and keep the property and the Project Site and equipment thereon in good repair, working order and condition and timely make all needed and proper repairs, renewals, replacements and additions thereto so at all times the efficiency and habitability of all units shall be fully preserved and maintained; and

(e) Obtain and maintain the insurance required, and upon written request by Lender, Borrowers shall provide Lender with proof, satisfactory to Lender, that said insurance is in full force and effect.

5.2 Payment of Obligations. Borrowers shall pay all indebtedness, taxes and other obligations pertaining to the Project or Project Site for which it is liable before the same become delinquent.

5.3 Changes to Project. There shall be no material change to the originally approved design or budget of the Project, without at least 30 days' notice by Borrowers to Lender and within 30 days after written approval of the Lender is given. If additional approvals are required from HUD, the Secretary or the appropriate governmental authorities, the Borrowers shall not make changes to the approved Project design or budget until those approvals are obtained.

5.4 Compliance with Laws and Regulations. All work performed in connection with Borrowers' development of the Project and Borrower's use of the proceeds of the Loan shall comply with the Act and all other applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies. This includes the National Environmental Protection Act and other related authorities, and Section 3 requirements of the Housing and Urban Development Act of 1968 relating to the provision of opportunities for low-income persons .

Borrowers shall comply with all cross-cutting requirements applicable to the use of HOME funds on the Project with particular attention to the following:

(a) Executive Order 14026

The Order requires that the hourly minimum wage paid by contractors or subcontractors to workers performing on Federal contracts or contracts funded with Federal funds must be \$15.00 per hour, beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor.

All contracts, including lower-tier subcontracts, shall specify, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c),<sup>1</sup> in the performance of the contract or any subcontract thereunder, shall be at least \$15.00 per hour beginning January 30, 2022.

(b) Civil Rights and Non-discrimination. Title VI of the Civil Rights Act, as amended by Public Law 102-166-NOV. 21-1991, 105 STAT, 1075; Oklahoma Fair Housing Law §25-1451 through §25-1453 and Chapter 25 Article III §25-39 of the Oklahoma City Municipal Code, 2020, as amended, No person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of age, familial status, disability, race, color, religion, sex, sexual orientation, gender identity, creed, ancestry or national origin. Borrower shall maintain complete records for four (4) years from the end date of this Agreement of all applicants for housing, and of disposition of such applications, to assure compliance with this Section.

(c) Section 3 Compliance. Developer shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, a copy of which is attached hereto and labeled as Schedule "C" and is incorporated as a part of this Agreement by reference. DEVELOPER SHALL INCLUDE THE PROVISIONS FOR SECTION 3 COMPLIANCE IN EACH AGREEMENT FOR SERVICES WITH A SUBCONTRACTOR. It is specifically agreed and understood by both parties hereto that Developer shall comply with all applicable regulations of the United States Department of Housing and Urban Development (HUD). Developer shall maintain full and adequate records of compliance with applicable laws, rules and regulations. Such records shall be open for inspection by the CITY and/or HUD's authorized representatives.

(d) Davis-Bacon and Related Acts (DBRA) All contractors and subcontractors performing on federal contracts in excess of two thousand dollars (\$2,000.00) (and contractors or subcontractors performing on federally assisted contracts under the related Acts), except with respect to contracts for the rehabilitation or construction of residential property containing less than eight (8) units, must pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in the contract's DBRA wage determination for corresponding classes of laborers and mechanics employed on similar projects in the area. DBRA labor standard clauses must be included in covered contracts.

Apprentices may be employed at less than predetermined rates if they are in an apprenticeship program registered with the Department of Labor, or with a state apprenticeship agency recognized by the Department. Trainees may be employed at less than predetermined rates if they are in a training program certified by the Department.

Contractors and subcontractors on prime contracts in excess of one hundred thousand dollars (\$100,000) are required, pursuant to the Contract Work Hours and Safety Standards Act, to pay employees one and one-half times their basic rates of pay for all hours over forty (40) worked on covered contract work in a workweek. Covered contractors and subcontractors are also required to pay employees weekly and to submit weekly certified payroll records to the contracting agency.

Every employer performing work covered by the labor standards of the DBRA must post the WH-1321 "Employee Rights Under the Davis-Bacon Act" poster at the site of the work in a prominent and accessible place where it may be easily seen by employees. There is no particular size requirement. The wage determination must be similarly posted.

The Davis Bacon Wage Decision determination is attached hereto and labeled as Schedule "G." Related Contract Provisions For Non-Federal Entity contracts are attached hereto and labeled as Schedule "H." Related Federal Labor Standards provisions are attached hereto and labeled as Schedule "I". A copy of the "Employee Rights Under the Davis-Bacon Act" poster shall be provided to Developer by the CITY upon request.

All contractors must maintain payroll and basic records for all laborers and mechanics during the course of the work, and for a period of three years thereafter. Records to be maintained include:

- (i) Name, address, and Social Security number of each employee
- (ii) Each employee's work classification(s)
- (iii) Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents
- (iv) Daily and weekly numbers of hours worked
- (v) Deductions made
- (vi) Actual wages paid
- (vii) If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected
- (viii) If applicable, detailed information regarding approved apprenticeship or trainee programs.

5.5 Call Provision. Besides Lender's right to demand repayment of the Loan at any time pursuant to Section 1.5, Lender may also call the Loan immediately due and payable if at any time during the term of the Loan without Lender's prior written approval:

- (a) Borrowers convey, sells, transfer or assigns all or any substantial part of the Project, or Project Site, whether voluntarily or involuntarily, or by the operation of law without the prior written approval of Lender;
- (b) There occurs any default under the Promissory Note and Mortgage, this Loan Agreement or the Loan Documents which is not remedied in full within any curative period provided.

5.6 Inspections. Lender and its designee or representatives shall have the right at all reasonable times during regular business hours (and at any time in the event of an emergency) to enter upon the Project Site and inspect the Project(s) to determine that the same is in conformity with this Agreement, the Act and all laws, ordinances, rules and regulations applicable to the Project and Borrowers; use of the Loan Funds. Lender and its designee or representatives shall have the right to inspect Borrowers' books and records relating to the Project and Borrowers' use of the Loan Funds. Borrowers shall permit Lender and its designee or representatives to examine and copy all books, records and other papers relating to the Project and Borrowers' use of the Loan Funds to document Borrowers' compliance with the Act and applicable regulations.

5.7 Audits and Financial Reports. Under OMB Circular A-133, Non-Federal entities that expend \$500,000 or more in Federal awards in any year shall have a single or program audit conducted by a public accountant, which meets the general standards specified in generally accepted government auditing standards (GAGAS).

Borrowers shall provide Lender, at Lender's or the Secretary's request, with copies of all audit reports and/or unaudited quarterly financial statements prepared by Borrower. These documents shall be provided to The City on or before June 1<sup>st</sup> of each year as long as this Agreement remains in effect.

5.8 Notification to Lender of Litigation or Complaints. Borrowers shall immediately notify Lender in writing of all material proceedings, litigation or claims which may adversely affect Borrowers' rights or any part of the Project or Project Site, and of all complaints or charges made by any governmental authority affecting the Project, Project Site, or Borrowers which may require material changes in the development of the Project or use of the dwelling(s) constructed.

5.9 Incidence of Loss. Borrowers shall notify Lender immediately upon any incidence of loss or damage to the property, materials or equipment related to the project. Risk of loss shall be upon Borrower and shall be covered by requirements of Article III. Any incidence of damage or loss to properties purchased, developed or rehabilitated with funds under this Agreement shall be reported to the Oklahoma City Police Department immediately and a copy of the police report shall be submitted to Lender within five (5) business days from the incident of loss or damage.

5.10 Indemnify Lender. Borrowers shall indemnify and hold Lender, its elected and appointed officials and any employees, harmless from all claims and actions of any person or entity against Lender caused by any acts of omissions of Borrowers and arising out of or connected with the Loan Documents, the Project Site and/or Project development or arising out of Borrowers' breach of this Loan Agreement, including the cost of defense using legal counsel approved by Lender. Notwithstanding anything contained herein to the contrary, the foregoing indemnification given by Borrowers to Lender shall not be effective or enforceable against Borrowers unless, 1) Lender gives Borrowers written notice of any such claims or actions of said person or entity made against Lender within ten (10) working days of Lender's written notice of such claims or actions, and 2) Lender does not commence or enter into any settlements or negotiations of settlement with any person or entity relating to the matters covered by Borrowers' indemnification without Borrowers' prior written consent. If Borrowers fail to defend or perform its obligations under this indemnification within ten (10) days after written request by Lender, Lender may settle, commence, appear in or defend any action or proceeding purporting to affect the rights, duties or liabilities of the parties to the Loan Documents, or the Project Site or the Project and Borrowers shall pay all of Lender's costs and expenses incurred, on demand. This section shall survive execution, delivery and performance of the Loan Documents.

5.11 Further Assistance. Borrowers shall, upon request of Lender, take or cause to be taken any action, execution, acknowledgment, delivery or recording of any further documents, opinion, or other instruments, or obtain such additional insurance as Lender is required to do or obtain by HUD or other federal, state or county regulatory agency or which Lender feels are required to carry out the intent of the Secretary, Lender and Borrowers under the Loan Documents. Upon the nonoccurrence of any of the foregoing, Lender may declare an Event of Default and exercise its rights and remedies under Article VI here below.

## **ARTICLE VI DEFAULT AND REMEDIES**

6.1 Event of Default. The occurrence of any of the following events and failure to cure within stated periods shall constitute an Event of Default:

- (a) Failure of assisted units to qualify as affordable housing throughout the affordability period, as defined in the Definitions section and in the Recitals above.
- (b) Any default by Borrowers in the repayment of any indebtedness owed to Lender under the Loan Documents for any purpose or reason, which is not paid in full within thirty (30) days from the date the debt is due and payable.
- (c) Any breach by Borrowers of the non-monetary representations, warranties, covenants and conditions of this Agreement (except as to any breach in Labor conditions) or the Loan Documents, that is not cured by Borrowers to Lender's reasonable satisfaction within sixty (60) days from the receipt of written notice thereof. If a non-monetary breach or default by Borrowers occurs that is outside of the control of Borrowers and which cannot be cured within said sixty (60) days, Borrowers shall have commenced to cure its breach or default within said sixty (60) days and thereafter diligently proceed to cure its breach or default. Notwithstanding anything to the contrary herein, any violation, breach or default by Borrowers of the Act or any laws, ordinances, rules or regulations applicable to the Project, the Project Site or Borrowers' use of the Loan Funds not cured within the applicable period shall constitute an Event of Default;
- (d) Any breach by Borrowers of the non-monetary representations, warranties, covenants and conditions of this Agreement applying to Labor requirements which cannot be cured by the Borrowers within ten (10) working days from receipt of written notice.

- (e) Any written representation, warranty or disclosure made to Lender by Borrowers which proves to be materially false or misleading as of the date when made, whether or not such representation or disclosure appears in this Agreement or the Loan Documents;
- (f) Any material deviation in carrying out the Project without the prior written approval of Lender that is not corrected within thirty (30) days after receipt of written notice from Lender to Borrowers;
- (g) Filing a petition in bankruptcy or for reorganization under any bankruptcy or insolvency law by or against Borrowers or filing an application for a receiver or trustee for all or a portion of the Project or the Project Site, which is not dismissed within ninety (90) days, or if Borrower makes an assignment for the benefit of creditors or becomes insolvent or cannot pay its debts as they mature, or any attachment or execution is levied against all or a portion of the Project or the Project Site and is not discharged within ninety (90) days; and/or
- (h) Failure by Borrowers to defend, indemnify and/or hold harmless Lender under Section 5.10 of this Loan Agreement.

6.2 **Remedies.** Upon the occurrence of an Event of Default, Lender may, besides any other remedies which Lender may have, or under the Loan Documents or by law, at its option without prior demand or notice, take any or all of the following actions:

- (a) Immediately terminate any further advance of Loan Funds; and/or
- (b) Declare the Note immediately due and commence collection proceedings against Borrowers, and/or foreclose the Mortgage.

All remedies of Lender provided for herein and in any other of the Loan Documents are cumulative and shall be in addition to all other rights and remedies provided by law. The exercise of any right or remedy by Lender shall not constitute a cure or waiver of default hereunder or under any other of the Loan Documents or invalidate any act done under any notice of default, or prejudice The CITY in the exercise of any of its rights hereunder or under any other Loan Documents unless, in the exercise of any of its rights hereunder or under any other Loan Documents unless, in the exercise of said rights, The CITY shall solely realize all amounts owed to it.

**ARTICLE VII  
SPECIAL PROVISIONS**

7.1 Not Applicable

**ARTICLE VIII  
DEFERRAL AND FORGIVENESS PROVISIONS**

8.1 Not Applicable

**ARTICLE IX  
COVENANTS**

9.1 **Affordability Requirements**

- (a) Sixteen (16) of the affordable units must remain available to families earning less than 50% of Area median Income and the remaining twenty-four (24) units must be rented to households earning less than 60% of the Area Median Income. Four (4) of the affordable units will be designated as HOME units. The HOME units will be designated as floating. All units must benefit persons with low to moderate income throughout the twenty (20) year Affordability Period.
- (b) Developer shall ensure continued affordability through a Declaration of Affordability Requirements, which shall be a covenant running with the land and shall, prior to first draw of funds, be filed of record in favor of the CITY at Developer's expense at the office of the Oklahoma County Clerk.

(c) At the end of the Affordability Period, and assuming no Developer default occurs, the CITY shall release the Declaration of Affordability Requirements by a written instrument in recordable form executed and acknowledged by the City upon the satisfaction of the affordability requirements in accordance with the terms of this Agreement.

9.2 Mortgage Requirement

(a) As security for the financial investment and certain performance requirements as defined herein, Developer at its own expense shall execute and file of record at the office of the Oklahoma County Clerk an instrument in favor of the CITY entitled: "Promissory Note and Mortgage HOME Investment Partnerships Program" (hereafter, Mortgage), by which the Developer shall pledge and mortgage the Project together with all improvements, easements, rights, and appurtenances.

(b) The Mortgage shall be released by the CITY by a written instrument in recordable form, executed and acknowledged by the CITY upon successful completion of the Affordability Requirements at the end of the Affordability Period.

**ARTICLE X  
ADDITIONAL REQUIREMENTS**

10.1 Day-to-Day Operation and Administration

Day-to-Day operation of the HOME Program, which is the subject of this Agreement, including accounting responsibilities, shall be performed by and be the responsibility of Developer.

10.2 Developer Contracts

Developer may enter into subcontracts for necessary assistance in completing the scope of work that is the subject of this Agreement. Such subcontracts shall be in writing and in accordance with applicable law and regulations. Developer shall be responsible for the subcontractor's compliance with all regulations, the work performed by such subcontractors and for all expenditures made under such subcontracts.

10.3 Additional Requirements

In addition to requirements of Section 5.4 of this Agreement Developer shall comply with the following:

(a) This Agreement is subject to regulations for the HOME Program in Title II of the Cranston-Gonzalez National Affordable Housing Act, and the HOME Final Rule at 24 CFR Parts 91 and 92.:

(1) Use of Funds

HOME funds shall be used by Developer for the purposes and objectives stated in the Scope of Work section of Schedule "A" of this Agreement, and for no other purpose(s).

(2) Repayment/Program Income

(i) For purposes of the supporting regulations, Developer is defined as an end user. **Revenue derived from multifamily rents or net operating income of the Project received by Developer is not considered Program Income for purposes of this Agreement.** Other revenue received by Developer during the Affordability Period, such as Net Sales Proceeds from the sale, disposition, or refinance of the Property, shall be considered Program Income (less any amount classified as "return of funds") for purposes of this Agreement if the requirements of the Agreement are not met. Other sources of Program Income, by way of example, may include interest earned by Developer on the use of HOME funds, or principal or interest payments made by Developer, if required, for use of HOME funds.

(ii) To satisfy the regulatory provision, the Developer shall return to the CITY all Program Income in any instance where the total amount received or due is in excess of one thousand dollars (\$1,000.00). Program Income received or due by the Developer in amounts less than one thousand dollars (\$1,000.00) may be accumulated by the Developer until the total reaches or exceeds one thousand dollars (\$1,000.00).

All recapture/repayment/return of funds resulting from failure to complete the project or to maintain compliance with affordability requirements must be remitted to the CITY for disposition by the CITY.

(3) Maintenance of Rental Property.

Developer shall require that the owners and managers of all rental housing assisted with HOME funds maintain said rental housing in compliance with the CITY's Housing Code requirements or minimum standards established by HUD, whichever is more stringent or as required by HUD, throughout the duration of this Agreement.

(4) Reversion of Assets.

Upon termination (not expiration with full compliance) of this Agreement, the Developer shall remit to the CITY any HOME funds on hand at the time of termination and any accounts receivable attributable to the use of HOME funds. In addition, in the case of projects that are incomplete at time of termination, the Developer shall return to the CITY all HOME funds drawn on the project or convey to the CITY any real property under the Developer's control that was acquired or improved with HOME funds.

(5) Agreements with Third Parties.

All written agreements between the Developer and third parties for HOME program assistance or utilizing HOME program funds must specify that the agreement will remain in effect for the period of affordability required by the CITY. If the affordability requirement is not met, 100% of HOME funds provided under this Agreement shall be due and payable to the City's HOME Program.

(6) Uniform Administrative Requirements.

The Developer shall comply with applicable uniform administrative requirements, as set forth in OMB Circular A-122, "Cost Principles for Non Profit Organizations" and OMB Circular A-110, as applicable.

(b) Developer shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Dun and Bradstreet Universal Numbering System (DUNS), and the Central Contractor Registration (CCR) database, and the Federal Funding Accountability and Transparency Act, including Appendix A to Part 25 of the Financial Assistance use of Universal Identifier and Central Contractor Registration, 75 Fed. Reg. 55671 (Sept. 14, 2010)(to be codified at 2 CFR part 25) and Appendix A to Part 170 of the requirements for Federal Funding Accountability and Transparency Act Implementation, 75 Fed. Reg. 55663 (Sept. 14, 2010)(to be codified at 2 CFR part 170).

#### 10.4 Reports and Audits.

(a) Developer shall furnish CITY a copy of Developer's DUNS number prior to any draw of funds under this Agreement.

(b) Developer shall furnish to CITY all reports required by the HUD and such additional reports as may be necessary to comply with all applicable laws, regulations, guidelines, and conditions specified in this Agreement; and further, Developer shall provide any other reports deemed reasonably necessary by CITY. CITY, the Federal Grant agency or the Comptroller General of the United States or any of their duly authorized representatives shall at all times have the right and option to monitor, inspect, audit and review the Developer's performance and operation of the HOME program to be performed under this Agreement; and in connection therewith, all of the above mentioned entities shall have the right to inspect any and all records, books, documents, or papers of Developer and the subcontractors of Developer, for the purpose of making audit examination, excerpts and transcriptions.

(c) If applicable, Borrowers shall provide an independent audit of all activities and funds including HOME activities and funds each program year during the duration of the affordability period established by this Agreement. Said audit shall be conducted in accordance with OMB Circular A-133. Copies of audit reports shall be submitted to the City within 60 days of completion.

(d) Borrower shall provide a Rental Completion Report project setup form (Form HUD-40097) within ninety (90) days of Initial Project Completion as defined in item no. 12 on page 1 of this Agreement; to be completed with requested tenant demographic information and project funding sources.

(e) Borrowers shall complete an annual HOME Rental Certification Form. Borrowers shall provide annual rent and occupancy reports, property rent rolls, annual rent schedules, Tenant income certifications, and copies of tenant lease agreements to fulfill HUD monitoring requirements.

10.5 Documentation Necessary for Required Assurances.

Developer shall develop and maintain documentation necessary to assure compliance with the provisions of the National Affordable Housing Act of 1990, and any amendments thereto, and shall provide such documentation and certification as needed to enable the Mayor, who is the Chief Executive of the CITY, to execute assurance of such compliance. In addition, Developer will furnish such information and maintain such records as may be needed to enable both Developer and the CITY to meet the requirements of the National Environmental Policy Act and the Clean Air Act, along with such regulations as may be adopted in connection therewith by the Environmental Protection Agency, the State of Oklahoma, or the CITY. Developer agrees to retain and maintain, for a period of three years after activity completion, all records pertaining to its HOME program funded activity, and all records necessary to document the income eligibility of clients and, or, the appropriateness of the work, service, or benefits provided by the Developer. If an audit finding(s) is not resolved by the end of the three-year period, the records shall be retained until the finding(s) is resolved.

10.6 Preparation of the HOME Investment Partnerships Program (HOME) Application to HUD.

The CITY shall be responsible for the preparation of the formal application to the United States Department of Housing and Urban Development for HOME Grant funds. When requested by CITY, Developer shall supply to CITY information necessary for the completion of such application.

10.7 Compliance with CITY Policy Statements.

CITY policy statements applicable to the CITY's HOME program are attached hereto and labeled as Schedule "D" and are made a part of this agreement by reference. Developer and all subcontractors shall comply with such CITY policy statements.

10.8 Citizen Participation (Not Applicable)

10.9 Conflict of Interest.

No member, officer, or employee of the CITY, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities regarding the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement, except as outlined in Schedule "F" if applicable, which is incorporated as a part of this Agreement by reference.

10.10 Non-Discrimination Certificate

In connection with the performance of this Agreement the Developer agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, familial status, handicap, age or ancestry. The Developer further agrees to take affirmative action to confirm that employees are treated without regard to their race, creed, color, national origin, sex, familial status, handicap, age or ancestry which actions shall include, but not be limited to employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Developer further agrees to post in a conspicuous place, available to employees and applicants for employment, notices to be provided by the City Clerk of CITY setting forth provisions of this section. The Developer further agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR, Part 60). In the event of the Developer's non-compliance with this non-discrimination clause, this Agreement may be cancelled or terminated by the CITY and the Developer declared by the CITY ineligible for further contracts with the CITY until satisfactory proof of intent to comply shall be made by the Developer. Developer further agrees to include this non-discrimination clause in any subcontracts connected with the performance of this Agreement.

#### 10.11 Hold Harmless Clause

The Developer shall defend, indemnify and save harmless the CITY from any and all damages, claims and causes of action against said CITY for damages or injury to any person or property arising solely out of, or in connection with the negligent performance or negligent acts of Developer, its subcontractors, agents or employees under the terms of this Agreement. In addition to the foregoing, Developer agrees to hold harmless the CITY from any liability arising from the claims of Developer's subcontractors or any others which Developer might employ or obtain services or materials from in connection with the performance of this Agreement.

#### 10.12 Termination

In accordance with 24 CFR 85.43, this Agreement may be suspended or terminated prior to the expiration of the term by unanimous written Agreement by the parties to this Agreement. The CITY may also unilaterally terminate or suspend this Agreement, in whole or in part, upon ten (10) day written notice from the CITY to the Developer for the following reasons:

- (a) Failure to perform the services set forth in the scope of services and requirements incident thereto.
- (b) Failure to comply with the provisions of this Agreement.
- (c) Making unauthorized or improper use of funds provided under this Agreement.
- (d) Submission of an application, report or other documents pertaining to this Agreement which contains misrepresentation of any material aspect.
- (e) The carrying out of the Scope of Services or the objectives of this Agreement is rendered improvable, unfeasible, impossible, or illegal.
- (f) Failure of the U.S. Department of Housing and Urban Development (HUD) to make funds available or if HUD suspends funds for any reason.
- (g) Upon the determination of the CITY that the Agreement be suspended or terminated without cause.
- (h) For the convenience of the CITY in accordance with 24 CFR 85.44.
- (i) When HOME funds are expended for projects that are terminated before completion, for whatever reason, 100% of the HOME funds that have been expended, including any developer fees, are ineligible and must be repaid.

#### 10.13 Compliance with Guidelines Set Forth by Community Development Citizens Committee

It is expressly understood between the CITY and the Developer that Developer may not make change orders which would require an increase in the proceeds provided in this Agreement. Requests for additional funds must be made in a new application and reviewed in accordance with normal HOME selection procedures.

#### 10.14 Lobbying Certification Required.

Developer shall execute a Lobbying Certification (Schedule "E") annually as an inclusion in this Agreement.

#### 10.15 Budget Policies.

It is expressly understood by Developer that budgets shall not be exceeded in any case. Developer may request consideration of budget revisions by the CITY. Every request for revision shall be submitted in writing. Program Income shall not be considered by Developer as increasing budget capacity unless approval has been sought and received in writing from the CITY.

#### 10.16 Miscellaneous

- (a) Should it become necessary to determine the meaning or otherwise interpret any word, phrase or provision of this Agreement, or should the terms in any way be the subject of litigation in any court of laws or equity, it is expressly agreed that the laws of Oklahoma shall exclusively control same.
- (b) The parties hereto agree to bind themselves, their heirs, executors, administrators, trustees, successors and assigns, all jointly and severally under this Agreement.
- (c) Developer states it possesses experience, know-how, and ability in conducting and performing the program which is the subject of this Agreement and agrees to use such experience, know-how and ability in its prosecution and completion of this Agreement for the benefit of CITY. Developer agrees to put forth its best efforts on behalf of the

CITY and promises to adhere to good business and professional practices in its prosecution and completion of this Agreement.

(d) All references herein to statutes, ordinances, codes and regulations shall include any amendments thereto adopted or put into effect during the duration of this agreement.

(e) The form and content of this Loan Agreement is subject to review by the U.S. Department of Housing and Urban Development (HUD). Any changes required by HUD, and any changes recommended by HUD and adopted by the City, arising from said review shall be amended to this Agreement. The Developer may accept or reject any such amended provision, provided however, that in the event the Developer does reject any such provision, this Agreement shall immediately be considered terminated.

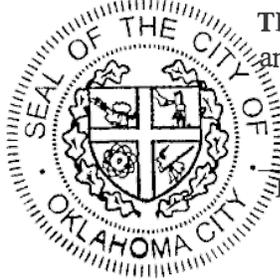
(f) The Developer shall provide property insurance in an amount satisfactory to the CITY for all property purchased with the Loan Funds naming the CITY as co-insured. The Developer shall provide a Certificate of Insurance to the CITY.

[Executions Appear on a Separate Page]

IN WITNESS WHEREOF, the parties hereto set their hands this 16th day of August, 2022.

ATTEST:

Amy K. Simpson  
City Clerk



**THE CITY OF OKLAHOMA CITY,**  
an Oklahoma municipal corporation

David Holt  
David Holt, Mayor

ATTEST:

Sherry Seaberg

**ONE RED OAK, LLC,**  
an Oklahoma limited liability company

By: Norman Seaberg  
Norman Seaberg, Manager

ATTEST:

Sherry Seaberg

**HARMONY AFFORDABLE HOUSING PARTNERS, LP,**  
an Oklahoma limited partnership

By: Norman Seaberg  
Norman Seaberg, Manager

REVIEWED as to form and legality.

Pete V. Douglas-Jolly  
Assistant Municipal Counselor

**SCHEDULE "A"**  
**SCOPE OF WORK, BUDGET AND PROJECT SITE(S)**

**Scope of Work:**

1. The work contemplated under this Loan Agreement is new construction and rehabilitation in support of the development of forty (40) multifamily affordable housing units reserved exclusively for rent to households with low incomes. Sixteen (16) of the affordable units must remain available to families earning less than 50% of Area median Income, and the remaining twenty-four (24) units must be rented to households earning less than 60% of the Area Median Income. Four (4) of the affordable units will be designated as HOME units. The HOME units will be designated as floating. All units must benefit persons with Low and Low-to- Moderate-incomes throughout the twenty (20) year Affordability Period.
2. Borrowers acknowledge that all residential units in the Project must be rented to households with low- and moderate-income in accordance with the Act, Regulations, and this Loan Agreement. All units in the Project means forty (40) residential units, or the entirety of the residential units in the Project. Thus, for purposes of monitoring and Project compliance, Borrowers acknowledge that all units must be rented to households with low-incomes.
3. Borrowers shall annually designate the HOME units subject to compliance reporting by unit number or address and shall report on income and rent limitations by unit as defined in Schedule "A-1" herein below.
4. Borrowers have submitted or will submit, documents satisfactory to Lender including a final detailed budget, scope of work, site plan, floor plans and elevations as part of its requirement to draw Funds under this Agreement.
5. The proposed project is covered by the Davis-Bacon and Related Acts (DBRA); as such, certain labor standards and prescribed minimum wages are imposed that shall be paid for work performed on the project. Developer shall be responsible for the compliance of all general contractors and subcontractors with all requirements of the DBRA and with provisions of all documents and payroll reports required. Failure to maintain compliance shall result in the withholding of funds.
6. Developer shall not proceed with any construction activity at the Project Site until full Environmental Review Record approvals have been obtained from HUD.

This proposed Project is covered by Section 3 of the Housing and Urban Development Act of 1968, as Amended by the Housing and Community Development Act of 1992.

**Budget:**

Funds under this Agreement shall constitute the full funding/contribution budgeted for the project as follows:

OKC GOLT	HOME Loan	Private Funding	Federal HTC	State HTC	LIHTC	Total Project Cost
\$1,100,000	\$550,000	\$1,450,000	\$813,535	\$846,453	\$6,149,041	\$10,909,029

**Match:**

Match sources and in-kind donations total **\$3,396,453** from state Housing Tax Credit, the City GOLT affordable housing program, and private funding.

**The Project Site:**

The Project site, having a physical address of 1537 NE 24<sup>th</sup> Street in Oklahoma City, is legally described as follows:

**SEE EXHIBIT "A" ATTACHED**

[The remainder of this page intentionally left blank]

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF Oklahoma, STATE OF OK, AND IS DESCRIBED AS FOLLOWS:

Lot Fifteen (15), in RANEY'S ADDITION, to Oklahoma City, Oklahoma, according to the recorded plat thereof. LESS AND EXCEPT THE FOLLOWING TWO TRACTS:

A part of Block fifteen (15) of Raney's Addition, Oklahoma City, Oklahoma County, Oklahoma, more particularly described as follows;

Commencing at the Southeast Corner of said Block fifteen (15), Raney's Addition, Oklahoma City, Oklahoma County, Oklahoma; Thence N00°00'05"E along the East property line a distance of 149.57 feet; Thence N90°00'00"W a distance of 61.97 feet to the Point or Place of Beginning; Thence N00°00'00"W a distance of 79.52 feet; Thence N00°00'00"W a distance of 48.86 feet; Thence N90°00'00"E a distance of 22.85 feet; Thence S00°00'00"E a distance of 5.00 feet; Thence N90°00'00"E a distance of 16.82 feet; Thence N00°00'00"E a distance of 5.00 feet; Thence N90°00'00"E a distance of

39.85 feet; Thence S00°00'00"E a distance of 48.86 feet to the Point or Place of Beginning.

AND

A part of Block fifteen (15) of Raney's Addition, Oklahoma City, Oklahoma County, Oklahoma, more particularly described as follows:

Commencing at the Southeast Corner of said Block fifteen (15), Raney's Addition, Oklahoma City, Oklahoma County, Oklahoma; Thence N00°00'05"E along the East property line a distance of 198.43 feet; Thence N90°00'00"W a distance of 61.97 feet to the Point or Place of Beginning; Thence N90°00'00"W a distance of 39.85 feet; Thence S00°00'00"W a distance of 5.00 feet; Thence N90°00'00"W a distance of 16.82 feet; Thence N00°00'00"W a distance of 5.00 feet; Thence N90°00'00"W a distance of 47.52 feet; Thence N00°00'00"W a distance of 40.00 feet; Thence N90°00'00"E a distance of 104.19 feet; Thence S00°00'00"E a distance of 40.00 feet to the Point or Place of Beginning.

**SCHEDULE "A-1"**  
**SPECIAL CONDITIONS**

**PART A: TASKS TO BE PERFORMED**

- i. It is expressly understood that the activities authorized and funded under this Agreement are **eligible HOME activities, including new construction and rehabilitation**, and are in support of development of housing for households with low and low to moderate income, developed with other leveraged public and matched private funds.
- ii. Developer shall purchase all permits and licenses for the completion and execution of the work and labor to be performed. Developer shall furnish all labor, materials, supervision and services to do the work specified. Developer shall keep the premises reasonably clean and orderly during the course of the work and remove all construction debris at the completion of the work. Developer shall allow inspections of the work by authorized inspectors for the protection of the CITY's interest.
- iii. This project, funded with HOME funds as defined below in PART B of this Schedule "A-1", contains forty (40) multifamily rental housing units, all of which must comply with income and rent limitations as defined herein.
- iv. This project is required to remain "affordable" - as defined by HUD - for a period of at least twenty (20) years. The affordability requirement applies without regard to the term of any loan or mortgage or the transfer of ownership. The CITY shall enforce this affordability period through a mechanism acceptable to the CITY and approved by HUD. If the affordability requirement is not met, the funds provided under this Agreement shall be immediately due and payable to the CITY's HOME Program. The affordability restriction may terminate upon foreclosure or transfer in lieu of foreclosure.
- v. The Developer understands that the original occupants of the assisted unit(s) must initially have income at or below 50 or 60 percent of the Area Median Income respectively; as determined using HUD's Section 8 definition of income. Of the forty (40) project units, sixteen (16) must be rented to households earning less than 50% of the Area Median income. The remaining twenty-four (24) units must be rented to households earning less than 60% of the Area Median Income. This project requires verification of all tenant asset income.
- vi. The Developer understands that all *subsequent* occupants of assisted unit(s) must have income at or below 80 percent of the Area Median Income as determined using HUD's Section 8 definition of income, unless lower income thresholds are imposed by the Low-Income Tax Credit provisions or other agreements.
- vii. The Developer understands that it must follow the requirements in 24 CFR 5.617(c) (pertaining to disallowance of increase in annual income) when making subsequent income determinations of persons with disabilities who are tenants in the Project.
- viii. The Developer shall count the income of **all** persons in the household, including nonrelated individuals, when making this determination. The Developer shall obtain and maintain written documentation that tenants are eligible and meet the income requirement.
- ix. The Developer understands that for the units assisted in the project, rents may not exceed rent limits as required by the HOME Investment Partnership Program (HOME) under regulations established at 24 CFR 92.252 and as published annually by HUD and provided to Developer by the CITY. Rent limits include both the rent and utilities.

- x. The Developer understands that for units assisted under the program, utilities, if tenant paid, may not exceed the utility allowance schedule provided annually by the CITY for the unit. The utility allowance shall be deducted from the maximum allowable rent for the assisted unit when determining the amount of allowable rent for the unit as published in the tenant lease agreement.
- xi. Developer shall own and is responsible to manage the project. Developer may outsource project management to an agency with sufficient experience managing affordable housing for families with low incomes, such as the Oklahoma City Housing Authority. If an alternative management company is selected, it must be pre-approved by the CITY.
- xii. If any assisted unit remains continuously vacant for more than 90 days, the Developer shall notify the CITY and submit a marketing plan within 30 days of such notification. The Plan will be reviewed by the City to ensure a sufficient occupancy level is maintained.
- xiii. The Developer shall not charge fees to tenants with low incomes if said fees are not reasonable or customary as described in more detail at the following sections of federal Regulations at 24 CFR 92.214 and 24 CFR 92.504(c)(3)(xi).
- xiv. The CITY shall monitor the rents, utility allowance, and income qualification of households living in the assisted unit(s) according to the following schedule: 1) Rent roll and utility monitoring every year; 2) Tenant income monitoring every year; 3) Physical inspection of the assisted unit(s) annually.
- xv. Regarding tenant income recertification, the CITY shall allow the Developer's property manager to perform full income verification using third party source documentation upon initial occupancy and thereafter in years 6, 12 and 18 of the affordability period. In the interim years, the head of the household in assisted unit(s) may provide either a written statement from a government agency that provides benefits to the household and examines the household's annual income each year, or the head of household may provide a statement of annual income with a certification that the information is complete and accurate. Every sixth year, Developer's property manager shall perform a full review of tenant eligibility in the assisted unit(s) and collect complete third-party source documentation, including but not limited to paystubs, tax returns, Social Security Award Letters, and/or Verifications of Employment. If Low Income Housing Tax Credit Recertification requirements are used, the property manager shall provide tenant income verification annually along with full third-party source documentation. The developer's property manager must follow the requirements in 24 CFR 5.617 (pertaining to disallowance of increase income) when making subsequent income determinations of persons with disabilities who are tenants in the Project.
- xvi. Tenant leases must be in writing, and the lease term must be for one year unless otherwise mutually agreed upon between the tenant and Developer or its property manager. Developer or its property manager shall maintain copies of leases for every tenant throughout the Affordability Period. Lease clauses requiring tenants to accept supportive services (with exception of residents in transitional housing) are prohibited. Termination or nonrenewal of leases may occur for good cause only and good cause does not include nonparticipation in supportive service or tenant increases in income.

**PART B: PROJECT COMPENSATION**

- i. Compensation for the activities defined in Schedule "A-1", Part A of this Agreement includes HOME Program Project funding in the amount of **\$550,000**.
- ii. It is understood and agreed to by the Developer that HOME funds shall not be expended for administration expenses, e.g. general management, oversight and coordination.

**PART C: SCHEDULE OF COMPLETION**

HOME Program funds to be drawn by the Developer under this Agreement must be set-up in the HUD Integrated Disbursement and Information System by authorized personnel in the Community Development Division of the Oklahoma City Planning Department within forty (40) months of the date of this Agreement. **The Developer must initiate project activities prior to September 1, 2022, or within 60 days of issuance of all Building Permits, whichever is later.**

All construction activity must be complete, all eligible expenses for payment must be incurred, and the **occupancy permit must be obtained by the Developer prior to September 1, 2024.**

All units must be **initially leased prior to September 1, 2025.**

**PART D: DEVELOPER REPORTING REQUIREMENTS**

- i. Developer shall keep adequate records of project activity and shall submit timely reports to the CITY upon request or as required by this Agreement.
- ii. Required reports include but are not limited to:
  - a. Annual Tenant income, lease agreements, occupancy reports, and rent roll reports.
  - b. Completion of the annual HOME Rental Certification Form
  - c. Annual unit inspection reports.
  - d. Minority Business Enterprise and Women Business Enterprise reports, which shall be submitted for the project prior to or upon initial draw of funding and, if applicable, annually within sixty (60) days from June 30 each year, as applicable.
  - e. Project completion report, which shall be submitted within ninety (90) days of Initial Project Completion as defined herein. Please note: delinquent completion reports shall be grounds for the CITY to require a return of funds drawn on the project or to call the loan due and payable.
  - f. Initial and annual Section 3 reporting as applicable.
  - g. Davis Bacon and Related Acts as applicable.

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**SCHEDULE "B"**  
**DRAW REQUEST FORMS AND FORMAT**

Borrowers are eligible to draw funds for a Project(s) under this Agreement after funds have been set up in the Lender's Distribution System.

Draw requests shall be for eligible costs and expenses, based upon progress, for completed work, for need, or as may be approved by the Lender and made in accordance with 24 CFR 84.22(b)(2), which states:

*"Cash advances to a recipient organization shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursement by the recipient organization for direct program or project costs, and the proportionate share of any allowable indirect cost."*

Borrowers agree that they will disburse Loan payments within three (3) days after receipt of each approved draw request from Lender. Draw requests should be made in consideration of the 3-day rule and shall be due to the CITY's Planning Department- Housing & Community Development Division staff - before noon on the Tuesday at least fourteen (14) working days prior to the expected receipt of actual funds.

Draw requests shall be made in accordance with the Lender's following disbursement procedures:

- 1) Borrowers must be registered as Vendors with the CITY to be eligible for Funds in this Agreement. Borrowers must submit, if they have not previously done so, a completed Vender Registration / W-9, which shall be provided to Borrowers by Lender as needed, prior to any distribution of funds.
- 2) Borrowers must submit their Unique Entity Identifier number (UEI) from SAM.gov to Lender prior to funds being set up in Lender's fund distribution system.
- 3) Borrowers must submit an invoice on company letterhead containing the Borrowers' company name, address, and other contact information, along with sufficient backup documentation to evidence 1) need, or 2) work performed. By way of example, need may be evidenced by a Borrowers draw schedule and the draw request submitted by Borrowers along with progress reports in fulfillment of that schedule. Work performed may be evidenced by supplier or vendor invoices submitted to Borrowers, a printout of Borrowers' expense ledger, etc.
- 4) Borrowers must submit with its initial draw request or have previously submitted its Minority Business Enterprise and Women Business Enterprise report(s).
- 5) Borrowers must submit with its draw requests or have previously submitted its Section 3 report(s). Section 3 reports apply to vendors and subcontractors as applicable. Section 3 applies to projects for which HUD's share of the project costs exceeds \$200,000; and contracts and subcontracts awarded on projects for which HUD's share or project costs exceeds \$200,000, and the contract or subcontract exceeds \$100,000.
- 6) Borrowers must ensure that a submitted draw request is date-stamped as received by the Planning Department. At the time of submission, Borrowers may request a copy of the date-stamped page as evidence of submission. Borrowers who have had draw requests denied s must resubmit. The new draw request shall require a subsequent date-stamp.

**SCHEDULE "C"**  
**SECTION 3 COMPLIANCE**

Page 1 of 3 Pages

In compliance with regulations at 24 CFR Part 75, Section 3 of the 1968 Housing and Urban Development Act, as amended, regarding Equal Employment Opportunity, Borrowers affirm that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low- income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low- income persons. No person shall be discriminated against or denied employment on the basis of age, familial status, disability, race, color, religion, sex, sexual orientation, gender identity, creed, ancestry or national origin.

The Brickstone Group LLC is appointed as the Equal Employment Opportunity Officer for Borrowers to coordinate Borrowers' efforts, to advise and assist key personnel and staff, and to officially serve as focal point for complaints regarding Section 3 compliance, etc.

Furthermore, Section 3 requirements and language shall be in each subcontract bid and/or proposal for work on this Project. Borrowers will require 24 CFR Part 75, and Executive Order 11246 Compliance by covered sub-contractors.

**1. UTILIZING LOWER INCOME RESIDENTS:**

To the maximum extent feasible Borrowers and any subcontractors will use residents with lower income as trainees and workers (if qualified) to complete the work of this Project. Special outreach efforts will be made to various public and private recruitment sources. Special emphasis will be made to recruit minorities in the project area. *Minority* means any African American, Native American (*i.e.*, American Indian, Eskimo, Aleut and Native Hawaiian), Hispanic American, Asian-Pacific American, or Subcontinent-Asian American.

Borrowers and all subcontractors will determine by craft the approximate workforce needs to complete the Project. Workforce needs shall be made known to local recruitment sources and within housing authority complexes. The racial mix of the total workforce shall, to the extent possible, reflect the racial mix in the Project area.

**2. PROMOTION, DEMOTION, PAY RATES, LAYOFFS, ETC.:**

All personnel actions of Borrowers shall be made on a non-discriminatory basis without regard to age, familial status, disability, race, color, religion, sex, sexual orientation, gender identity, creed, ancestry or national origin. Borrowers shall inform each sub-contractor of these affirmative requirements and ensure compliance:

**3. 24 CFR 75 Section 3 Contract and Subcontract Clause**  
§ 75.27 Contract provisions.

- (a) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

Page 26 of 45

- (b) Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

#### 4. § 75.1 SECTION 3 - PURPOSE.

This part establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to persons with low- and very low-incomes , particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

Safe Harbor Benchmarks:

- 25% of all labor hours must be performed by a Section 3 worker
- 5% of all labor hours must be performed by Targeted Section 3 workers

Section 3 worker is:

- A worker whose income for the previous or annualized calendar year is below the oncome limit established by HUD
- Employed by a Section 3 business concern
- The priority hiring of Targeted Section 3 workers living in public or Section 8-assisted housing or within a 1-mile radius of the Project site; or
- If <5,000 people live within one mile of Section 3 project. Then, Service Area = an area within a circle centered around the Section 3 Project site that encompasses 5,000 people

Section 3 business

- At least 51% owned and controlled by low- or very low-income persons
- Businesses where Section 3 workers perform over 75% of the labor hours over a 3-month period; or
- At least 51% owned and controlled by current public housing or Section 8-assisted housing residents

#### 5. § 75.19 SECTION 3 REQUIREMENTS

(a) Employment and training.

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the Project is located.

(2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

(i) Section 3 workers residing within the service area or the neighborhood of the Project, and

(b) Contracting.

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the Project is located.

(2) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this section should be given to:

(i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the Project, and

**6. SECTION 3 RECORDS AND REPORTS:**

Borrowers shall document efforts made to comply with these Section 3 requirements. Borrowers shall submit all reports required in a timely fashion. Borrowers shall also ensure that all sub-contractors submit required reports as appropriate. Borrowers and all contractors and sub-contractors shall maintain Section 3 worker, and Targeted Section 3 worker certifications, labor hours worked by all workers, the labor hours worked by Section 3 workers, and Targeted Section 3 workers. If the Safe Harbor benchmarks are not met, then any or all qualitative activities must be documented to show the Safe Harbor benchmarks have been met to comply (see 24 CFR 75.31 for examples).

**SCHEDULE "D"**  
**CITY POLICY STATEMENTS FOR CONTRACTORS**  
**UNDER THE**  
**HOME INVESTMENT PARTNERSHIPS PROGRAM**  
**(HOME PROGRAM)**

**A. Procurement Standards:**

1. All procurement transactions, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition consistent with the Cost Principles for Nonprofit Organizations, OMB Circular A-122 and such other standards as may be incorporated in this Agreement by the CITY.
2. Positive efforts shall be made by Developer to utilize small business and minority-owned business sources of supplies and service.
3. An inventory of all articles purchased at a cost over \$500, or which are considered equipment, shall be appropriately tagged by the Developer and records shall be maintained on all such items. A copy of the inventory shall be kept up to date and submitted to the Planning Department Grants Management staff upon reasonable request. An updated inventory shall be provided to the City within 24 business hours from when an inventory change occurs.
4. All loss, damage or theft of equipment or supplies purchased with HOME monies shall be investigated and fully documented in a written report made to the Oklahoma City Police Department. A copy of the Police report shall be forwarded within ten (10) days to the Planning Department and items lost due to theft removed from the Project's inventory list.

**B. Program Income:**

1. 24 CFR 570.504(c) and 24 CFR 92.504(c)(3) provide that this Agreement shall specify whether Program Income is to be returned to the CITY or retained by the Developer.
2. All program income earned in whole or in part with HOME funds shall be reported in monthly financial reports and shall be returned to the CITY within 30 days of receipt.
3. Developer shall not consider program income as an automatic increase in budget capacity. Developer may submit a written request for use of Program Income returned to the CITY along with a proposed revised budget. The request shall identify specific activities for which the funds would be used. The CITY shall consider such requests in light of its responsibilities for meeting specified objectives and maintaining prioritized spending ratios. Due to the procedural requirements of the CITY and its responsibilities under State law, and to prevent undue burdening, a response to such requests may be delayed. Funds shall not be used for expenditures that are not contained in an approved budget. No Program Income may be used without specific written approval from the City.

**C. Federal Audits, Records**

1. Developer shall employ those management techniques necessary to insure adequate and proper fiscal accountability of all HOME funds received and disbursed. This may include but not be limited to separate ledgers for HOME funds and other funds and/or a separate bank account with ledger documentation.
2. A record of all HOME expenditures shall be kept on file by the Developer and reserved for a three (3) year period for federal audit.

3. Progress reports shall be retained by the Developer for a three year period for audit purposes.
4. Developer shall submit to the CITY a copy of any audit reports pertaining to the use of HOME funds.
5. Non-profit contractors or developers must comply with the independent audit provisions of A-133 if applicable.

D. Personnel Changes:

By-laws, personnel policies, pay scales and internal operating procedures of Developer shall be the responsibility of and determined by its Board of Directors in accordance with applicable law and regulations. Copies of such personnel policies, by-laws, pay scales and internal operating procedures, along with any changes in connection therewith, shall be furnished to the CITY upon request for its review and comment.

E. Liability Insurance.

The Housing & Community Development Division of the CITY's Planning Department shall be furnished copies of all licenses and certifications of Public Liability Insurance for all HOME program activities, upon request, after the execution of this Agreement.

F. Immigration Status.

The only those clients eligible for project assistance shall be those whom:

1. Qualify as a citizen by birth, naturalized citizenship or as a national of the United States; or
2. Have immigrant status under 101(a)(15) or 101(a)(20) of the Immigration and Nationality Act (INA); or
3. Have permanent residence under 249 of INA; or
4. Have refugee, asylum, or conditional entry status under 203, 207 or 208 of the INA; or
5. Have parole status under Section 212(d) (5) of the INA; or
6. Have threat to life or freedom under Section 243(h) of the INA; or
7. Have amnesty under Section 245(a) of the INA

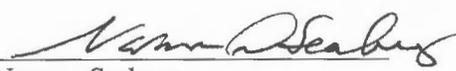
**SCHEDULE "E"**  
**CERTIFICATION REGARDING LOBBYING**

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

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

**ONE RED OAK, LLC,**  
an Oklahoma limited liability company

**HARMONY AFFORDABLE HOUSING PARTNERS, LP,**  
an Oklahoma limited partnership

BY   
Norman Seaberg

BY   
Norman Seaberg

TITLE: Manager

TITLE: Manager

DATE: 7/25/2022

DATE: 7/25/2022

ATTEST:

ATTEST:

  
SECRETARY

  
SECRETARY

**SCHEDULE "F"  
CONFLICTS OF INTEREST**

None identified.

**SCHEDULE "G"**  
**HARMONY APARTMENTS MULTIFAMILY HOUSING PROJECT**  
**DAVIS BACON WAGE DECISION**

"General Decision Number: OK20220074 02/25/2022

Superseded General Decision Number: OK20210074

State: Oklahoma

Construction Type: Residential  
RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

County: Oklahoma County in Oklahoma.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022, Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination if it is higher) for all hours spent performing on that contract in 2022.

If the contract was awarded on or between January 1, 2015, and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022, Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

\* BROK0005-001 06/01/2021

	Rates	Fringes
BRICKLAYER.....	\$ 25.92	11.89
<hr/>		
SUOK2017-002 04/03/2019		

	Rates	Fringes
CARPENTER.....	\$ 14.18	0.00
CEMENT MASON/ CONCRETE FINISHER.....	\$ 18.57	0.00
ELECTRICIAN, Includes Low Voltage Wiring.....	\$ 23.14	0.00
HVAC MECHANIC (HVAC Duct Installation Only).....	\$ 27.20	14.32
HVAC MECHANIC (Installation of HVAC Unit Only).....	\$ 30.91	12.42
IRONWORKER, STRUCTURAL.....	\$ 17.10	4.22
LABORER: Common or General.....	\$ 13.00 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.	\$ 16.12	10.00
PLUMBER.....	\$ 33.14	0.00
<hr/>		

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

\*\*Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union, which prevailed in the survey for this classification, which in this example would be Plumbers 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Division National Office Branch of Wage Surveys. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

## SCHEDULE "H"

### APPENDIX II TO 2 CFR PART 200- CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by Developer under this HOME award must contain provisions covering the following, as applicable.

1. Davis Bacon provisions (previously referenced in section 5.4(d) of the Agreement) as applicable.
2. Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
3. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity over \$100,000, that involve the employment of mechanics or laborers, must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work over the standard work week is permissible provided that the worker is compensated at not less than one and a half times the basic rate of pay for all hours worked over 40 hours in the work week. The requirements of 40 U.S.C. 3704 apply to construction work and provide that no laborer or mechanic must work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
4. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
5. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts over \$150,000 must contain a provision that requires the non-Federal award to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
6. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

SCHEDULE "H" Page 2 of 2 Pages

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
8. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
9. All contracts over \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be affected and the basis for settlement.
10. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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CEO's Initials

**SCHEDULE "I"**  
**FEDERAL LABOR STANDARDS PROVISIONS**

## Federal Labor Standards Provisions

## U.S. Department of Housing and Urban Development Office of Labor Relations

### Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) **Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract. HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347inslr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(III) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) **Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. **Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. **Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

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(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.