



Community Development Department

DATE: March 12, 2024

FROM: Ben Ehreth, Community Development Director

ITEM: Supplemental HOME funds to pass through the City to the North Dakota Housing Finance Agency.

REQUEST:

Consider the request for additional supplemental HOME funds to pass through the City to NDHFA as a subrecipient.

BACKGROUND INFORMATION:

In 2019, the City of Bismarck provided HOME funds to Community Works of North Dakota for the purchase of Boulevard Apartments at 1100 East Boulevard Avenue. Since that time, the City has assigned all HOME rights and responsibilities to NDHFA.

Because the City of Bismarck was the initial recipient of the HOME funds and the responsible entity of the environmental review conducted for the issuance of funds, the supplemental funds would need to pass from the State of North Dakota, to the City, and through to NDHFA. The additional supplemental assistance to be awarded is \$661,702.00.

RECOMMENDED CITY COMMISSION ACTION:

Approve the request for supplemental HOME funds in the amount of \$661,702.00 to pass from the State of North Dakota, to the City of Bismarck and through to NDHFA for the Community Works of North Dakota project at Boulevard Apartments, 1100 East Boulevard Avenue.

STAFF CONTACT INFORMATION:

Ben Ehreth, Community Development Director, 701-355-1842, behreth@bismarcknd.gov
Hilary Balzum, CDBG Program Administrator, 701-355-1847, hbalzum@bismarcknd.gov

ATTACHMENTS:

1. Boulevard Apartments Supplemental HOME Assistance

RECIPIENT AND GRANTOR INFORMATION

Program Type		Project Name		
Instrument Type <input type="checkbox"/> Grant <input type="checkbox"/> Loan <input type="checkbox"/> Cooperative Agreement		Instrument Number		
Recipient Name				
Address		City	State	ZIP Code
Grantor/Lender North Dakota Housing Finance Agency, PO Box 1535, Bismarck, ND 58502-1535				
Recipient Federal Identification Number		Budget/Project Period		Date
Recipient Type <input type="checkbox"/> State Government <input type="checkbox"/> Local Government <input type="checkbox"/> Indian Tribal Government <input type="checkbox"/> Individual <input type="checkbox"/> For Profit Organization <input type="checkbox"/> Other Non-Profit Organization <input type="checkbox"/> Other (specify) _____				
Funding Source <input type="checkbox"/> Federal \$ _____ <input type="checkbox"/> State \$ _____ <input type="checkbox"/> Other \$ _____				
Eligible Use of Funds				
Type of Award <input type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment No.		Federal Grant Number (if applicable)		CFDA Number (if applicable)
Administering Agency North Dakota Housing Finance Agency		Project Administrator		Telephone Number (701) 328-8080
Procurement Method (if applicable) <input type="checkbox"/> Formal Bid <input type="checkbox"/> Noncompetitive Negotiation/Application <input type="checkbox"/> Competitive Negotiation/Application <input type="checkbox"/> Small Purchase				

FUNDING AUTHORIZATION

NDHFA Funds Awarded this Action	\$ _____
NDHFA Carryover Funds Authorized	\$ _____
NDHFA Previous Award(s) this Project Period	\$ _____
NDHFA Previous De-authorizations this Project Period	\$ _____
Current NDHFA Funds Authorized	\$ _____
Recipient Share of Budget	\$ _____
Total Approved Budget	\$ _____
Remarks	

This award agreement is entered into by the RECIPIENT and GRANTOR specified above. The RECIPIENT agrees to implement the tasks delineated in this award and will comply with all incorporated and referenced terms and conditions. The award consists of this signatory sheet, the attached terms and conditions letter, and previously provided application.

EVIDENCE OF RECIPIENT ACCEPTANCE

Print Name	Signature	Date
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EVIDENCE OF GRANTOR ACCEPTANCE

Print Name	Signature	Date
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HOME SUBRECIPIENT AGREEMENT

Instrument Number: HOME-2019-02

THIS HOME SUBRECIPIENT AGREEMENT is entered into as of the ____ day of March, 2024, by and between the City of Bismarck, a municipal corporation under the laws of the State of North Dakota, with a mailing address of PO Box 5503, Bismarck, ND 58506-5503, ("Subrecipient"), and the Industrial Commission of North Dakota acting as the North Dakota Housing Finance Agency, an instrumentality of the State of North Dakota, with an address at Post Office Box 1535, Bismarck, North Dakota 58502-1535, ("Agency").

WHEREAS, CWND Bismarck, LLLP, a North Dakota limited liability limited partnership, ("Borrower"), the Subrecipient, and North Dakota Department of Commerce, Division of Community Services ("DCS") entered into a certain HOME Development Agreement ("Development Agreement") on the 1st of November, 2020 ("Effective Date"); and

WHEREAS, as of the Effective Date, DCS administered the HOME Program for the State of North Dakota. As of July 1st, 2021, DCS ceased administering the HOME Program for the State of North Dakota and Agency began administering the HOME Program for the State of North Dakota; and

WHEREAS, Agency is the administrator of HOME Investment Partnerships Program funds ("HOME Funds") received from the U.S. Department of Housing and Urban Development ("HUD") under the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 et seq. ("Act"); and

WHEREAS, the purpose of the HOME Investment Partnerships Program ("HOME Program") is to increase and preserve the supply of decent, safe, sanitary, and affordable housing for low-income and very-low-income households; and

WHEREAS, Agency, acting pursuant to the Act, heretofore adopted a HOME Request for Proposals and 2023 Annual Allocation Plan ("Plan") to carry out housing activities eligible under the HOME Program; and

WHEREAS, the Subrecipient has been selected by the Agency to act as a pass-through-funding entity of the Agency's HOME Program, to be funded by the Agency acting as a Participating Jurisdiction ("PJ"); and

WHEREAS, the Subrecipient was provided eight thousand two hundred ninety-two and 69/100 dollars (\$8,292.69) by DCS for the reimbursement of qualified administrative expenses, and through the Development Agreement, an additional six hundred eighty-nine thousand six hundred fifty and 00/100 dollars (\$689,650.00) in HOME Funds ("Initial Loan Amount") to Borrower acting as a pass-through entity funded by DCS; and

WHEREAS, the Borrower applied for, and the Agency has awarded, additional HOME Funds to the Borrower in the amount of six hundred sixty-one thousand seven hundred two and 00/100 dollars (\$661,702.00) ("Additional Loan Amount"); and

WHEREAS, the Subrecipient has agreed to fund the Additional Loan Amount to the Borrower as a pass-through entity on behalf of the Agency; and

WHEREAS, the Subrecipient and Agency agree for the need to separate the Subrecipient's requirements and obligations to the Agency under the HOME Program's requirements for subrecipients from the Development Agreement into this Agreement; and

WHEREAS, subject to the Subrecipient's performance of its obligations under this Agreement and the HOME Program, the Agency agrees to provide HOME Funds to the Subrecipient; and

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants set forth herein, Agency and Subrecipient do agree, for themselves and for their respective successors and assigns, as follows:

1. **Written Agreement.** Subrecipient shall require any entity awarded the Subgrant to enter into a written agreement with the PJ which shall satisfy the requirements defined in §92.2 of Title 24, Part 92, Code of Federal Regulations (24 CFR §92.1, *et seq*, referred to herein as the "HOME Regulations") and include the minimum required provisions of a written agreement pursuant to 24 CFR §92.504(b) and (c)(2).
2. **Term.** This Agreement shall remain in effect until one hundred percent (100%) of the Subgrant has been expended on qualified expenses ("Term").
3. **Amount and Use of HOME Funds.** The Agency agrees to provide up to one million three hundred fifty-nine thousand six hundred forty-four and 69/100 dollars (\$1,359,644.69) in HOME Funds to the Subrecipient. Up to eight thousand two hundred ninety-two and 69/100 dollars (\$8,292.69) of the Subgrant may be expended by the Subrecipient for qualified administrative costs required to administer the activities of the HOME Program. The remaining one million three hundred fifty-one thousand three hundred fifty-two and 00/100 dollars (\$1,351,352.00) shall be funded to the Borrower by the Subrecipient with the Subrecipient acting as a pass-through entity.
4. **Agency Requirements.** The Subrecipient agrees to adhere to all Agency policies regarding environmental reviews and lead-based paint policies and procedures and shall defer to the Agency regarding income determinations, rehabilitation standards, and underwriting guidelines. These applicable policies are detailed in the Agency's policies and procedures.
5. **Program Income.** Agency shall administer all lending and thusly all program income resulting from recapture and repayment of funds. The Agency shall record the receipt of any program income within a period not to exceed thirty (30) days after receipt of any program income.
6. **Uniform Administrative Requirements.** The Subrecipient shall comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as set forth in 2 CFR Part 200, and any subsequent standards, guidance or circulars issued by OMB, as may be amended from time to time. The Subrecipient is a local unit of government, and as such, must also comply with the requirements of 2 CFR Part 225 (Cost Principles for State, Local and Indian Tribal Governments). A Subrecipient which expends an amount greater-than or equal-to \$750,000.00 in federal awards during its fiscal year shall be responsible for obtaining a single or program-specific audit, as applicable, prepared by an independent auditor which meets the general standards for auditors specified in GAGAS, in accordance with the requirements of Subpart F of 2 CFR Part 200.
7. **Affordability Period.** The Subrecipient shall defer to the Agency in all matters regarding the HOME Affordability Period for any specific Project. A Project's Affordability Period will be detailed within the Project's written agreement with the Agency. A Project's Affordability Period shall begin on the Project Completion Date, as defined within the Project's written agreement with the Agency.
8. **Property Standards.** The Agency will ensure that upon the Project Completion Date all units will meet applicable state and local building codes, ordinances and zoning requirements and will be decent, safe, sanitary and in a state of good repair sufficient to meet the physical condition standards set forth 24 CFR §92.251(b) (for rehabilitation), including the lead-based paint requirements of 24 CFR Part 35 for properties constructed prior to January 1, 1978, as specified in NDHFA's Lead Based Paint Policies and Procedures Manual.

The Agency shall also ensure that upon the Project Completion Date, all units will meet the NDHFA Minimum Rehab Standards. The Agency shall permit HUD or the Agency's contractors to inspect every HOME-Assisted property at reasonable times and at a reasonable frequency to monitor compliance with this section and shall promptly correct (or cause to be corrected) all deficiencies identified.

9. **Affirmative Marketing and MBE/WBE Outreach.** The Agency shall develop and implement an affirmative marketing strategy to ensure affirmative outreach and will inform all awardees of Fair Housing laws and the

non-discrimination provisions applicable to the HOME Program. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). In the event of subcontracting for services under this Agreement, the Subrecipient shall make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. The Subrecipient shall cooperate with the State in its minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the procurement of property and services including, without limitation, real estate firms, construction firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services.

10. **Beneficiary Demographics.** The Agency shall track and maintain a record of the race, ethnicity, gender, income and family size of all families and the gender of all heads of household for each initially occupied HOME-Assisted Unit.
11. **Requests for Disbursement of HOME Funds.** The Subrecipient may not request the disbursement of any HOME funds until the funds are needed for reimbursement of eligible costs. The amount of each request must be limited to the amount needed and may only be for costs incurred after the Effective Date, except as provided in 24 CFR §92.206(d)(1). No such request shall be processed by the Agency without the submission of proper invoices/receipts for paid or incurred costs, except for advances pre-approved by the Agency for eligible expenses, or Agency pre-approved administrative fees.
12. **Records and Recordkeeping.** The Subrecipient will permit the Agency, at its discretion, to audit the Subrecipient and its activities for compliance with the terms of this Agreement. The Subrecipient will maintain sufficient records to enable the Agency to determine whether the requirements of the HOME Program and the Plan are met and will make its records available to for inspection and copying by the Agency's at all reasonable times and in such places as may be requested by the Agency. The records include, at a minimum, those listed in the attached Exhibit A and they shall be maintained, at a minimum, for a period which is (a) five (5) years after the end of the Term or (b) the Project's Affordability Period. The Subrecipient shall also comply with the recordkeeping requirements in 2 CFR §200.334. Within five business (5) days after written request therefor, the Subrecipient shall furnish all reports and information required by the Agency or HUD in order to document compliance with the HOME Program and HOME Regulations and to assist the Agency in meeting its recordkeeping and reporting requirements.
13. **Applicable Federal Requirements.** In addition to the Uniform Administrative Requirements set forth in Section above, the Subrecipient shall comply with all other applicable federal requirements, including but not limited to, the requirements set forth in 24 CFR Part 5, subpart A; the provisions of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations; the National Environmental Policy Act and related laws and implementing regulations; the Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992; Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and implementing regulations; the Davis-Bacon Act and implementing regulations (if the property has 12 or more HOME-Assisted Units); the "Anti-Lobbying" disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations; the requirements for funding competitions established by the U. S. Department of Housing and Urban Development Reform Act of 1989; and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq) and implementing regulations. Further, the Subrecipient acknowledges that the regulations set forth in 2 CFR Part 2424 "Non-procurement Debarment and Suspension", are applicable.
14. **Non-Discrimination Covenant.** The Subrecipient shall not, in the selection of families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, age (except for any property or activity specifically designed for elderly occupants), national origin, handicap, or actual or perceived sexual orientation, gender identity, or marital or familial status except as provided by law. The Subrecipient shall comply with all requirements imposed by the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations; Title VI of the of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) and implementing regulations; Title VIII of the Civil Rights Act of 1968 (as amended by the

Fair Housing Amendments Act of 1988) and implementing regulations; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations; Title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*);

15. **Environmental Review.** The Subrecipient and the Agency each acknowledge that the environmental review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*) and 24 CFR Part 58 will be completed. In compliance with 58.22, the Subrecipient or Agency shall not commit or expend any funds on a project until clearance, except exempt activities under 58.34, including planning, inspection and design.
16. **Relocation.** The Agency shall work directly with any awardee to determine applicability, requirements and or allowable costs related to relocation benefits under 24 CFR Part 35 during rehabilitation as a project related cost.
17. **Labor Standards.** The Agency shall work directly with any awardee to determine the applicability and requirements of Federal labor standards.
18. **Lead-Based Paint.** All pre-1978 housing assisted with HOME funds must meet the lead-based paint requirements of 24 CFR Part 35.
19. **Conflicts of Interest.** The Subrecipient agrees that throughout the NDHFA Affordability Period:
 1. Pursuant to 24 CFR 92.356, no employee, agent, consultant, officer, or elected official or appointed official of the Agency or the Subrecipient, individually known as a "Covered Person," is eligible to have a financial interest in any contract, subcontract, or other agreement with respect to the HOME-funded activities contemplated in this Agreement. This provision shall also apply to both Covered Persons and those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a Covered Person. In the event an individual who is otherwise eligible applies to the program, Subrecipient will immediately notify the Agency. Agency, in its sole discretion, may pursue a waiver from HUD under the provisions of 24 CFR 92.356(d) to allow participation notwithstanding the conflict of interest. Only HUD may grant such a waiver; neither the Agency nor the Subrecipient may grant such a waiver on its own.
20. **Default.** Any of the following will be deemed an Event of Default by the Subrecipient:
 1. Subrecipient's failure, in any manner, to fully perform and carry out any of the terms, covenants, and conditions of this Agreement; or
 2. Subrecipient's refusal or failure to proceed with the work and tasks contemplated herein with such diligence as will ensure their completion within the time fixed by the schedule set forth in this Agreement; or
 3. Material noncompliance with any applicable HOME regulatory requirements; Agency-designated program guidelines; fair housing laws; or any other applicable federal requirements or applicable State or local law, regulation, ordinance, or requirement related to the program; or
 4. Subrecipient's dissolution or other termination of existence; insolvency; forfeiture of right to do business in the State of North Dakota or business failure; appointment of a receiver of any part of the Subrecipient's property; the calling of any meetings of, or the assignment for the benefit of, creditors of the Subrecipient; or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the Subrecipient which are not dismissed within 60 days.
21. **Remedies.** In the event of default by Subrecipient hereunder, which is not cured within 30 days of the mailing of written notice by the Agency, the Agency may seek any combination of the following remedies:
 1. Temporarily suspend payments under this Agreement pending the correction of a default or deficiency; or

2. Disallow, in whole or part, any project or cost hereunder which is not in compliance with this Agreement, the program guidelines, or HOME Regulations; or
3. Suspend, in whole or part, this Agreement pending correction; or, following any cure period provided by the Agency, terminate this Agreement for cause as provided in 2 CFR 200.339; or
4. Recommend to HUD that it initiate suspension or debarment proceedings as authorized under 2 CFR part 180; or
5. Take any other action available under 2 CFR 200.338; or
6. Require the repayment of previously disbursed HOME funds for questioned costs; or
7. Require Subrecipient to participate in training or technical assistance; or
8. Make use of any other remedies that may be legally available to the Agency.

22. **Termination for Convenience.** In addition to any termination for cause provided herein, this Agreement may be terminated for convenience by the Agency upon 30 days written notice. In the event of termination under this section, Subrecipient shall take steps not to take additional applications or provide additional assistance to buyers following receipt of such notice. Subrecipient shall further provide final reporting and a final request for reimbursement within 60 days of any termination under this section. Subrecipient will have no claim of payment or claim of benefit for any cancelled activities undertaken under this Agreement and shall not be entitled to, and hereby waives, all claims for lost profits and all other damages and expenses.

23. **Repayment or Recapture.** The Subrecipient acknowledges that a failure to comply with the terms of this Agreement during the NDHFA Affordability Period may cause all or part of the Grant to be subject to repayment or recapture by the Agency. If HOME funds are invested in housing that does not meet the HOME affordability requirements in 24 CFR §92.254(b), or if HOME funds are invested in a project that is terminated before completion, the HOME funds must be repaid to HUD or to the Agency in accordance with 24 CFR §92.503(b)(3). In the event that all or some portion of the Grant becomes subject to repayment or recapture, the entire amount of the HOME funds subject to repayment or recapture shall be immediately repayable in full. The Subrecipient is hereby notified and hereby acknowledges that any obligation for repayment or recapture shall be enforced by all available means against any assets of the Subrecipient or any person responsible for the noncompliance in the use of HOME funds.

24. **No Assignment.** This Agreement may not be assigned by the Subrecipient without the written consent of the Agency.

25. **Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions of this Agreement.

26. **Modification.** This Agreement may not be altered, modified, or amended except in writing signed by an authorized agent or representative of the Subrecipient and an Authorized Officer of the Agency, after approval by the CDD Review Team.

27. **Corrections.** In the event that any corrections or revisions to the provisions of this Agreement shall be required in order for this Agreement to fully comply with the terms and conditions of the HOME Program and the regulations applicable thereto, the Agency shall have the right to correct or revise this Agreement as necessary, and the Subrecipient expressly consents to the exercise of such right by the Agency, and the Subrecipient shall promptly execute any amendments to this Agreement as shall be needed in order to confirm any and all such corrections or revisions.

28. **Recitals Part of Agreement.** The recitals at the beginning of this Agreement are not mere recitals and the terms thereof and the exhibits referenced therein are made a part of this Agreement.

29. **Acceptance of Grant Agreement.** This Agreement may be executed in two or more counterparts, each of which shall be considered an original, and shall be binding when fully executed by both parties. The Subrecipient has reviewed and hereby accepts the terms of this Agreement and acknowledges that the

HOME Funds to be made available hereunder shall only be used for the purposes and activities set forth in this Agreement and/or the Plan.

Signature page(s) follow.
Remainder of this page left intentionally blank.

IN WITNESS WHEREOF, Agency has executed this Subrecipient Agreement on this ____ day of March, 2024.

Agency: **The Industrial Commission of North Dakota acting as the
North Dakota Housing Finance Agency**

By: David A Flohr
Its: Executive Director

IN WITNESS WHEREOF, Subrecipient has executed this Subrecipient Agreement on this ____ day of March, 2024.

Subrecipient: **City of Bismarck**
a North Dakota municipal corporation

By: Jason Tomanek
Its: City Administrator

EXHIBIT A

Recordkeeping

1. Records documenting compliance with the ten percent limitation on administrative and planning costs in accordance with 24 CFR §92.207; and
2. Records demonstrating adequate budget control and other records required by 2 CFR 200.302, including evidence of periodic account reconciliations; and
3. A full description of each project assisted with HOME funds, including the location (address of each unit), form of HOME assistance, and the units assisted with HOME funds; and
4. The source and application of funds for each project, including supporting documentation in accordance with 2 CFR §200.302; and records to document the eligibility and permissibility of the project costs; and
5. Records demonstrating that any pre-award costs reimbursed from the HOME Funds meet the requirements of 24 CFR §92.212; and
6. Records demonstrating compliance with the environmental review requirements of §92.352 and 24 CFR part 58, including flood insurance requirements; and
7. Records demonstrating compliance with the lead-based paint requirements of part 35; and
8. Records supporting exceptions to the conflict-of-interest prohibition pursuant to §92.356; and
9. Records demonstrating compliance with debarment and suspension requirements in 2 CFR part 2424; and
10. Documentation of actions undertaken to meet the requirements of 24 CFR part 75 which implements section 3 of the Housing Development Act of 1968, as amended.