

**2021 AGREEMENT TO USE AMERICAN RESCUE PLAN ACT FUNDS TO
ADMINISTER THE NEVADA HOMEOWNER ASSISTANCE FUND BY
NEVADA AFFORDABLE HOUSING ASSISTANCE CORPORATION**

This 2021 AGREEMENT TO USE AMERICAN RESCUE PLAN ACT FUNDS (“Agreement”) is made and entered into by and between Nevada Affordable Housing Assistance Corporation (“NAHAC”) and the State of Nevada, Department of Business and Industry, Nevada Housing Division (“Division”), collectively the (“Parties”).

WHEREAS, Title III of the American Rescue Plan Act (“Act”) appropriated \$21,550,000,000 to provide funds to state, local, and tribal governments to provide to, amongst other activities, homeowner assistance eligible households impacted by the Coronavirus Disease 2019 (“COVID-19”) through the Homeowner Assistance Fund; and

WHEREAS, the State of Nevada will receive approximately \$2,700,000,000 in funds from the Act a portion of which are from the Homeowner Assistance Fund (“Funds”); and

WHEREAS, the Governor of the State of Nevada has determined that providing assistance to eligible homeowners affected by the COVID-19 pandemic is necessary to prevent the foreclosure of households struggling financially and has made funding available to the Division for the purpose of providing eligible homeowners with financial assistance to prevent foreclosure of their homes (“Program”); and

WHEREAS, NAHAC is a Nevada nonprofit corporation that provides foreclosure assistance and other types of housing assistance to households in this State; and

WHEREAS, the Division desires to assist NAHAC for the purpose of providing eligible homeowners with financial assistance to prevent foreclosure of their homes by providing a portion of the Funds to assist with the Program; and

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt of which is hereby acknowledged subject to rights and responsibilities of the Parties, and the following conditions and limitations:

I. Scope of Services.

A. The Division will provide NAHAC Funds not to exceed the total of \$12,000,000 to assist eligible residential households in this State with preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacement of homeowners experiencing a financial hardship. Within 30 days from the execution of this Agreement by both Parties, the Division will advance to NAHAC the sum of Three Million Dollars (\$3,000,000) which may be used for upfront expenses, including, without limitation, administrative expenses as set forth in Article III. **All Funds must be expended or obligated between May 1, 2021, and September 30, 2025, (“Expenditure Date”).**

Funds may be used on the following activities (collectively the “Services”):

1. Mortgage payment assistance;
2. Financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing related costs related to a period of forbearance, delinquency, or default.
3. Principal reduction;
4. Facilitating interest rate reductions;
5. Payment assistance for utilities, internet services, homeowners insurance, flood insurance, mortgage insurance, and homeowners association fees or common charges;
6. Any other assistance to promote housing stability for homeowners, including preventing mortgage delinquency, default, foreclosure, post-foreclosure eviction of a homeowner, or the loss of utility or home energy services.; and
7. Administration of the Program. (collectively “Services”).

B. NAHAC agrees that any costs, unless otherwise specified, exceeding the \$12,000,000 provided by the Division pursuant to this Agreement, will be the responsibility of NAHAC. An amount not to exceed fifty percent (50%) of the Funds conveyed pursuant to this Agreement may be used for administrative expenses. Any ongoing costs, such as maintenance and operations, not otherwise allowed as eligible costs pursuant to Section 3206 of the Act or 2 C.F.R. §200, shall be the sole responsibility of NAHAC but in any event not that of the Division. Program costs incurred by NAHAC not having prior written approval by Division Administrator will not be considered eligible under this Program.

C. NAHAC agrees that all families receiving assistance must have incomes at or below 150% of the area median income or 100% of the median income for the United States, whichever is greater. Priority will be given to households at or below 100% of the area median income or equal to or less than 100% of the median income for the United States, whichever is greater, as set forth by the United States Department of Treasury Homeowner Assistance Fund Guidance and Section 3206 of the Act. To the extent this Paragraph C is in conflict to the United States Department of Treasury Homeowner Assistance Fund Guidance, the Guidance shall control.

D. Changes in the Scope of Services as outlined herein must be made by written amendment to this Agreement and approved by both Parties.

II. Division General Conditions.

A. NAHAC has requested the financial support of the Division that is provided for in this Agreement to enable NAHAC to provide the Services. Other than oversight and governance provided by members of the Division as set forth by NAHAC’s Bylaws, or as otherwise provided herein, the Division shall have no relationship whatsoever with the services provided, except the provision of financial support, monitoring, and the receipt of such reports as are provided for herein. To the extent, if at all, that any relationship to such services on the part of the Division may be claimed or found to exist, NAHAC shall be an independent contractor only.

B. NAHAC agrees to abide by all applicable federal, state, and local codes, regulations, statutes, ordinances, and laws and regulatory guidance applicable to the Services rendered.

C. NAHAC will provide the Division with reports on a quarterly basis during the period of this Agreement in the format provided by the Division. Quarterly reports will be provided via electronic mail to the designated Division employee no later than 30 days after the end of the previous quarter. These records will contain, but are not limited to data as set forth by the Division.

D. NAHAC will not use any portion of the allocated Funds for costs not expressly authorized by its approved budget, this Agreement or considered allowable under the Uniform Guidelines in 2 C.F.R. §200.

E. If Funds are expended on costs subsequently determined to be unallowable by the Division under Section 3206 of the Act or the Uniform Guidelines in 2 C.F.R. §200, NAHAC shall, upon the request of Division, repay to the Division, without interest, the amount of Funds expended on the ineligible cost. If the Division determines that NAHAC has expended Funds on an ineligible household or other costs subsequently determined to be unallowable, NAHAC may, within 20 days of notice of the ineligible expenditure, remit any documents to support that the cost was an allowable cost. The Division will review any documents submitted to support the eligibility of the cost, and consult with Treasury if requested by NAHAC, and submit a response within 20 days of submission of the documents. Treasury's determination shall be binding on the Parties.

F. NAHAC may not assign or delegate any of its rights, interests, or duties under this Agreement without the prior written consent of the Division. Any such assignment or delegation made without the required consent shall be voidable by the Division, and may, at the option of the Division, result in the forfeiture of all financial support provided herein. Notwithstanding the foregoing to the contrary, NAHAC may engage qualified vendors to assist NAHAC to perform its Services. NAHAC shall be responsible for the supervision and management of any contractor it engages to assist in the performance of the Services or any obligation under this Agreement. NAHAC shall remove and replace any contractor that it deems as failing to perform. NAHAC shall ensure that all of its contractors comply with the terms and provisions of this Agreement.

G. Additional NAHAC considerations:

1. The following are considered debts owed to the Federal Government:
 - a) Any funds paid to NAHAC that are determined by the Treasury Office of Inspector General to have been unallowable pursuant to Section 3206 of the Act, the Uniform Guidelines in 2 C.F.R. §200; or that are not repaid by NAHAC as may be required by Treasury shall constitute a debt to the federal government.
 - b) Any debts determined to be owed the federal government must be paid promptly by NAHAC. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made. Interest, penalties, and administrative charges shall be charged on delinquent debts in accordance

with 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Treasury will refer any debt that is more than 180 days delinquent to Treasury's Bureau of the Fiscal Service for debt collection services.

- c) Penalties on any debts shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by law. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by Treasury.
 - d) Funds for payment of a debt must not come from other federally sponsored programs.
2. Pursuant to Executive Order 13043, 62 FR 19217 (April 8, 1997), NAHAC should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
 3. Pursuant to Executive Order 13513, NAHAC should encourage its employees, and contractors to adopt and enforce policies that ban text messaging while driving, and NAHAC should establish workplace safety policies to decrease accidents caused by distracted drivers.
 4. In accordance with 41 U.S.C. § 4712, NAHAC may not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to any of the list of persons or entities provided below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. NAHAC shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce. The list of persons and entities referenced in the paragraph above includes the following:
 - a) A member of Congress or a representative of a committee of Congress;
 - b) An Inspector General;
 - c) The Government Accountability Office;
 - d) A Treasury employee responsible for contract or grant oversight or management;
 - e) An authorized official of the Department of Justice or other law enforcement agency;
 - f) A court or grand jury; and/or
 - g) A management official or other employee of NAHAC, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

H. NAHAC shall allow duly authorized representatives of the Division to conduct such periodic reviews, audits and on-site monitoring of NAHAC as the Division deems to be appropriate in order to determine:

1. Whether the objectives of the program are being achieved;

2. Whether the program is being conducted in an efficient and effective manner;
3. Whether management control systems and internal procedures have been established;
4. Whether the financial operations of the program are being conducted properly;
5. Whether the periodic reports to the Division contain accurate and reliable information; and
6. Whether the activities of the program are conducted in compliance with the provisions of Federal and State laws and regulations and this Agreement.

I. Visits by the Division shall be announced in advance of those visits and shall occur during normal operating hours. Absent exigent circumstances, the NAHAC shall be given 48 hours advance written notice of said visits. The representatives of Division may request, and, if such a request is made, shall be granted, access to all of the records of NAHAC which relate to this Agreement. The representatives of the Division may, from time to time, interview recipients of assistance who volunteer to be interviewed.

J. At any time during normal business hours, NAHAC's records with respect to this Agreement shall be made available for audit, upon 48 hours advance written notice of the inspection and the documents and records to be examined, by the Division, the Attorney General's Office, contracted independent auditors, the Inspector General of the Department of the Treasury, the Comptroller General of the United States, or any combination thereof.

K. NAHAC will protect, defend, indemnify, and save and hold harmless the Division from and against any and all liability, damages, demands, claims, suits, liens, and judgments of whatever nature including but not limited to claims for contribution or indemnification for injuries to or death of any person or persons, caused by the negligence, gross negligence or intentional act of NAHAC or its agents pursuant to this Agreement.

L. NAHAC will only use any funds or resources, which are supplied by the Division, in accordance with Uniform Guidelines in 2 C.F.R. Part 200 in litigation against any person, natural or otherwise, or in its own defense in any such litigation and also agrees to notify the Division of any legal action which is filed by or against it.

M. This Agreement will commence upon its approval and signature by all parties.

N. Any Funds not expended or obligated by September 30, 2025, must be returned to the Division. As used in this Paragraph N, "obligated" means Funds which have been committed for an allowable cost in accordance with Section 3206 of the Act, or the Uniform Guidelines in 2 C.F.R. Part 200.

O. NAHAC agrees that no officer or employee of NAHAC may seek or accept any gifts, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in that position to depart from the faithful and impartial discharge of the duties of that position.

P. NAHAC agrees that no officer or employee of NAHAC may use his or her position to secure

or grant any unwarranted privilege, preference, exemption or advantage for himself or herself, any member of his or her household, any business entity in which he or she has a financial interest or any other person.

Q. NAHAC agrees that no officer or employee of NAHAC may participate as an agent of NAHAC in the negotiation or execution of any contract between NAHAC and any private business in which he or she has a financial interest.

R. NAHAC agrees that no officer or employee of NAHAC may suppress any report or other document because it might tend to affect unfavorably his or her private financial interests.

S. NAHAC shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required by any county ordinance or state or federal statute.

T. No officer, employee or agent of the Division shall have any interest, direct or indirect, financial or otherwise, in any contract or subcontract or the proceeds thereof, for any of the work to be performed pursuant to the project during the period of service of such officer, employee or agent, for one year thereafter.

U. Upon the revocation of this Agreement or the expiration of its terms, NAHAC shall transfer to the Division the remaining balance of the Funds that have not been obligated at the time of expiration or revocation and any accounts receivable attributable to the use of Funds, less amounts required to fully complete the administrative functions necessary to close out/wind down NAHAC.

III. Financial Management.

A. Within 30 days from the execution of this Agreement by both Parties, the Division will advance to NAHAC \$3,000,000 of the total \$12,000,000 which may be used for administrative expenses. Thereafter, to obtain additional Funds from the remaining \$9,000,000, NAHAC shall present to the Division a capital draw request not less than 10 business days before the date the capital draw is requested to be paid, in an amount not less than 2% or more than 20% of the remaining Funds available, with a budget detailing the administrative expenses necessary to carry out the Services ("Permitted Expenses"). NAHAC shall not use Funds for administrative expenses in excess of the total amount of Permitted Expenses (reasonable variances between line items permitted) without prior approval of the Division. Additionally, all administrative expenses paid with Funds shall be accounted for and are subject to 2 C.F.R. Part 200.

B. NAHAC agrees that excerpts or transcripts of all checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents related to this Agreement will be provided upon request to the Division upon 48 hours written notice, or provided to the Division upon written request within a reasonable period of time determined by the scope of the request.

C. NAHAC shall comply with the Single Audit Act and 2 C.F.R. Part 200 and shall provide the Division with a copy of the complete audit report. When complying with the Single Audit Act and 2 C.F.R. Part 200, Subpart F, the audit must include funds that were distributed from the Account.

IV. Modification or Revocation of Agreement.

- A. The Division and NAHAC may amend or otherwise revise this Agreement should such modification necessary.
- B. In the event that any of the Funds for any reason are terminated or withheld from the Division or otherwise are not forthcoming to the Division, the Division may revoke this Agreement.
- C. The Division may suspend or terminate this Agreement if NAHAC fails to comply with any of its terms as set forth in Article V.
- D. This Agreement constitutes the entire Agreement between the Parties and may only be modified by a written amendment signed by the Parties, or as otherwise set forth in the terms of the Agreement. is not intended for the benefit of any third parties.

V. Defaults, Acts of Bad Faith and Early Termination; Remedies for and Effects of Defaults, Acts of Bad Faith and Early Termination.

- A. The following constitute events of default by NAHAC under this Agreement (each, an "Event of Default" and, collectively, the "Events of Default"):
 - 1. NAHAC breaches a covenant under this Agreement or fails to perform or comply with any of its obligations under this Agreement in any material respect;
 - 2. NAHAC is dissolved or its legal existence is terminated (unless NAHAC's duties, responsibilities and obligations under this Agreement, are transferred to and assumed by a successor entity approved by the Division).
 - 3. NAHAC: (a) ceases to do business as a going concern; (b) makes a general assignment for the benefit of, or enters into any arrangement with creditors in lieu thereof; (c) admits in writing its inability to pay its debts as they become due; (d) files a voluntary petition under any bankruptcy or insolvency law or files a voluntary petition under the reorganization or arrangement provisions of the laws of the United States or any other jurisdiction; (e) authorizes, applies for or consents to the appointment of a trustee or liquidator of all or substantially all of its assets; (f) has any substantial part of its property subjected to a levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) enters into an agreement or resolution to take any of the foregoing actions.
 - 4. NAHAC or any employee or contractor of NAHAC, commits a grossly negligent or reckless act, or willful or intentional misconduct (including, but not limited to, misrepresentation or fraud) in connection with the performance of the Services or this Agreement.
 - 5. An evaluation of performance that includes any specific findings by Treasury or the Division that NAHAC's performance under any written performance is insufficient.
- B. The Division, in its sole discretion, may take any or all of the following actions upon the

occurrence of an Event of Default:

1. Obtain repayment of prior payments made to NAHAC to the extent that such funds have not been expended or irrevocably committed by NAHAC;
2. Require NAHAC to submit to additional administrative oversight, including, but not limited to, additional compliance controls and quality control reviews;
3. Terminate this Agreement and cease its performance hereunder.
4. Require NAHAC to submit to additional information and reporting requirements with respect to its financial condition and ability to continue to meet its obligations under this Agreement.

C. In addition to the termination rights set forth above, the Division may terminate this Agreement immediately upon 45 days written notice to NAHAC:

1. Upon a determination by the Division that NAHAC has material breached the terms of this Agreement or upon material adverse performance findings by Treasury or the Special Inspector General of the Department of the Treasury prior to September 30, 2025. The Division may, at its sole discretion, commence actions to reallocate any remaining, unexpended and unobligated amount of the Participation Funds to another entity for continuation of the Program. NAHAC agrees it will not obligate any further Funds, except for Permitted Expenses incurred to wind down the operations of NAHAC.
2. In the event of a merger, acquisition, sale of substantially all assets or other change of control of NAHAC;
3. In the event that a material term of this Agreement is determined to be prohibited or unenforceable.

D. In the event that this Agreement is terminated in connection with an Event of Default by NAHAC no additional Funds will be paid to NAHAC subsequent to termination.

E. The Division may reduce the amounts payable to NAHAC under Article III, or obtain repayment of Funds, in connection with: (a) an evaluation of NAHAC's performance that includes any specific findings that NAHAC's performance under any written performance criteria is materially insufficient, or (b) any failure by NAHAC to comply materially with any directive issued by the Division or Treasury with respect to documents or data requested, findings made, or remedies established, by the Division or Treasury in conjunction with such performance criteria or other Program requirements; provided, however, the Division will seek to obtain repayment of prior Capital Draws made under Article III only with respect to Services that are determined by the Division or Treasury to have been impacted by, or that the Division or Treasury believes may have been, or may be, impacted by, the findings giving rise to this remedy. The Division may initially avail itself of this remedy in lieu of a specific declaration of an Event of Default; provided, however, that doing so shall not preclude the Division from later declaring an Event of Default or exercising any other rights or remedies otherwise available to it under this Section, or at law or in equity, in connection with the event giving rise to this remedy, or any future events giving rise to this remedy.

F. In the event of the expiration or termination of this Agreement or any Service implemented under this Agreement under any circumstances, NAHAC and the Division agree to cooperate with one another on an ongoing basis to ensure an effective and orderly wind-down of the Services, including the provision of any information, reporting, records, and data required hereunder by the Division or Treasury.

VI. Construction.

A. Each Party has cooperated in the drafting and preparation of this Agreement and, therefore, the Agreement shall not be construed against either Party as its drafter.

VII. Enforceability.

A. This Agreement will commence upon its approval, signature and delivery by all parties and shall constitute the legal, valid and binding obligation of such Party, enforceable against each party in accordance with its terms.

VIII. Headings.

A. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

IX. Pronouns.

A. All references to the singular shall include the plural and all references to gender shall include the masculine, feminine, as well as the neuter, and vice versa, as the context requires.

X. Attorney Fees.

A. In connection with any litigation, including appellate proceedings arising under this Agreement or any related agreement contemplated herein, the prevailing party or parties in such litigation shall be entitled to recover reasonable attorney fees and other legal costs and expenses from the non-prevailing party or parties.

XI. Counterparts.

A. This Agreement may be signed by the Parties hereto in counterparts with the same effect as if the signatories to each counterpart signed as a single instrument. All counterparts (when taken together) shall constitute an original of this Agreement.

XII. Representations and Warranties.

Each Party represents and warrants to the other Party that:

A. It has the full right, power and authority to enter into this Agreement, to grant any rights and licenses hereunder and to perform its obligation hereunder;

B. The execution of this Agreement by its representative whose signatures are set forth at the end hereof has been duly authorized by all methods or corporate action of the Parties; and

C. Execution and delivery by such Party of this Agreement shall constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

XIII. Waiver of Jury Trial.

A. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury and respect any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound.

Nevada Housing Division

Steve Aichroth, Administrator

Date: _____

Nevada Affordable Housing Assistance Corporation

Timothy Whitright, Chairman of the Board

Date: _____