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We Are Columbia

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Community Development Department

1225 Lady Street, Columbia, South Carolina 29203 • Phone: 803-545-3373 • Fax: 803-255-8912

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## INTEROFFICE MEMORANDUM

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**DATE:** February 4, 2014

**TO:** Teresa Wilson, City Manager  
Erika Moore, City Clerk

**CC:** Felicia Wilks, Sr. Loan Officer

**FROM:** Deborah J. Livingston, Community Development Director 

**SUBJECT:** Request for City Council Agenda: February 18, 2014 - Second Reading and Final Approval for Memorandum of Agreement with Federal Home Loan of Atlanta and the City of Columbia.

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Community Development requests inclusion on the February 18<sup>th</sup> City Council agenda for approval to execute a Memorandum of Agreement with Federal Home Loan Bank of Atlanta and the City of Columbia. This agreement would provide affordable housing financing and energy efficiency rehabilitation to eligible homeowners in the City Of Columbia s targeted neighborhoods.

The agreement has been approved by the City Legal Department.

The City will fund the program from CDBG account #508

Please contact me at 545-3766 or Felicia Wilks at 545-3046, if you have any questions regarding this item.

Thank you.

Attachment

## Memorandum of Agreement

This Memorandum of Agreement (“MOA”) is executed by Federal Home Loan Bank of Atlanta (“FHLBank Atlanta”) and the City of Columbia (COC) effective as of January 31, 2014, to establish a collaborative relationship between FHLBank Atlanta and the City of Columbia (collectively, the “Parties” and each individually, a “Party”) for the purpose of delivering affordable housing financing through a joint operational workflow utilizing FHLBank Atlanta’s Affordable Housing Program Homeownership Set-Aside Programs (“AHP Set-Aside”) and the General Assistance Program (GAP) Program.

### Recitals

**WHEREAS**, FHLBank Atlanta’s AHP Set-Aside programs are designed to assist in funding new construction, acquisition, and/or rehabilitation of ownership housing serving low and moderate income households; and

**WHEREAS**, COC’s GAP Program is designed to assist low to moderate income households in the purchase of homes in the cities identified as targeted communities by providing below-market rate financing and down payment grant funds as well as energy efficiency for existing homeowners; and

**WHEREAS**, FHLBank Atlanta’s AHP Set-Aside programs and the GAP program are complementary and share a common goal, both offering programs and products to increase affordable housing opportunities for low and moderate income households; and

**WHEREAS**, both Parties wish to enter into a collaborative relationship to facilitate a more streamlined and mutually beneficial process for FHLBank Atlanta shareholders to access rehabilitation grants and downpayment assistance to ultimately reduce mortgage principal and increase energy efficiency to low to moderate income homeowners.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants, and the agreements contained herein, the Parties hereby agree as follows:

1. **Purpose.** The Parties agree to work together to develop joint operational work flow procedures designed to streamline the application, processing, and funding requirements for FHLBank Atlanta shareholders to access both AHP Set-Aside and COC’s GAP Program funds for the purchase and rehabilitation of real estate properties located in the targeted communities (as identified in the COC’s Consolidated Plan) and the origination of first and second mortgages to low and moderate income households with downpayment assistance and/or energy efficiency for existing homeowners (the “Project”). The Parties agree to work together in good faith on the Project.
2. **Overview of Services.** The Project’s terms and conditions are more specifically described and set forth in the Project Plan, a copy of which is attached hereto as Schedule A, and by this reference made a part hereof (the “Project Plan”). To the extent any conflict exists between the MOA and the Project Plan, the terms of the Project Plan shall control.

3. **Term.** This MOA shall commence on January 31, 2014 and shall terminate on October 3, 2014, provided that either Party may terminate this MOA for any cause or without cause upon thirty (30) days' prior written notice to the other Party. Notwithstanding the foregoing, the Parties agree that any applications in connection with the Project must be received by FHLBank Atlanta on or before October 3, 2014 (the "Final Application Date"). After the Final Application Date, any unused funds associated with the Project shall be released and be made available for use as determined in the sole discretion of the Party contributing such funds.
4. **Guidelines.** FHLBank Atlanta and COC acknowledge and agree that each Party shall perform their respective responsibilities, duties and obligations in connection with the Project in accordance with this MOA. More detailed operating standards shall be jointly developed and documented as the Parties determine the specific processes, procedures and reporting related to each element of the Project, including, without limitation, the results of the Project (the "Project Results") as further detailed in the Project Plan.
5. **No Agency.** This MOA is not intended to directly or indirectly constitute, create, or give effect to or to otherwise imply a joint venture, corporation, partnership, or any form of formal business Entity, other than the collaborative relationship set forth herein. Each Entity signing this MOA is acting independently. Neither Party to this MOA is intended to have, or is granted by the other Party, any authority or control over the other Party nor shall either Party have the power to bind the other Party. Nothing contained in this MOA is intended to be construed as providing for the sharing of profits or losses arising from the efforts of either of the Parties, and each Party will be responsible for bearing the costs incurred by it in performing any activity contemplated hereunder.
6. **Compliance.**
  - (a) Each Party represents to the other Party that the performance of its responsibilities in connection with the Project will be performed in a diligent and workmanlike manner in accordance with industry standards and best practices, and in compliance with all requirements of applicable law, including all rules, regulations, ordinances, statutes and guidelines promulgated by any applicable federal, state, or local governmental or quasi-governmental authorities, agencies or organizations, including, but not limited to, laws related to privacy, confidentiality of financial information, and debt collection, and will be performed by individuals of requisite training and skill.
  - (b) Each Party represents to the other Party that it has, and will maintain, all licenses, franchises, permits, and other authorizations and approvals necessary for the lawful conduct of its operations and the performance hereunder.
  - (c) COC agrees, for purposes of the Project, to act in compliance with (i) the Affordable Housing Program ("AHP") regulations (12 C.F.R. Part 1291) and policies of the Federal Housing Finance Agency ("FHFA") as may be in effect from time to time, or the regulations in effect from time to time of any successor in interest to the FHFA and (ii) the AHP policies and procedures promulgated by FHLBank Atlanta, including, but not limited to, FHLBank Atlanta's AHP Implementation Plan (the "Implementation Plan"), and to comply in all material respects with all other applicable federal, state, and local

laws, rules, regulations, ordinances, and codes relating to participation in AHP. To the extent the FHFA's regulations are inconsistent with any term or provision of this MOA, such regulations shall govern the conduct and obligations of the Parties. In the event there is a conflict between the Implementation Plan and this MOA, the terms of the Implementation Plan in effect at the time of the conflict will control.

- (d) Each Party hereby represents and warrants to the other Party that:
  - (i) it has performed, or caused to be performed, appropriate background checks of each individual:
    - (a) who is an employee of such Party, or a subcontractor of such Party; and
    - (b) who will provide services in connection with the Project;
  - (ii) No such individual has been convicted of any crime related to fraud, theft or moral turpitude;
  - (iii) No such individual has been debarred or otherwise prohibited from the performance of services to any financial institution, any federal agency or instrumentality, or any public company.
  
- (e) Each Party agrees to practice the principles of equal employment opportunity and non-discrimination in all its business activities. To the extent that either Party contracts with any third party to acquire goods or services to be provided in connection with the Project, that Party will include in any such contract a clause requiring the third party to practice equal employment opportunity and non-discrimination in all its business activities.

## **7. Confidentiality.**

- (a) The Parties agree that any information and documents which are furnished by any Party in connection with this MOA or which are produced or are otherwise furnished to or come to the attention of any Party are proprietary and shall be used only for the purposes delineated in this MOA for the purposes of this Project. This information, except for information subject to any applicable FOIA statute, (collectively, the "Confidential Information") includes, without limitation: the terms of this MOA, technical specifications and operating manuals, descriptions and information concerning current, future, or proposed products and services; financial information; information related to mergers or acquisitions; passwords and security procedures; computer programs, software, and software documentation; customer and/or prospective client lists, secured or unsecured loan or account files, and all other information relating in any way to customers and/or prospective clients; printouts; records; policies, practices and procedures; and any and all other information, data and materials relating to the operations, trade secrets and technology of each Party, its customers, clients, affiliates

and subsidiaries, any “nonpublic personal information” about the “customers” and “consumers” (as those terms are defined in Title V of the Gramm-Leach-Bliley Act and the privacy regulations adopted thereunder, all as currently or hereafter amended) of any Party; and any information subject to Section 628 of the Fair Credit Reporting Act and any regulations or guidelines adopted thereunder, all as currently or hereafter amended. Regardless of which Party owns any portions of the Confidential Information, the Parties agree that each Party shall have access to and the ability to retain any and all portions of the Confidential Information relating to the Project’s operations, statistics and data, including, without limitation, any and all secured or unsecured loan data, operating manuals, bank account information, any and all other financial information, secured or unsecured files, and reports generated and obtained through the operation of the Project in order to research, analyze and determine the interim and final Project Results.

- (b) Each Party shall maintain the Confidential Information in confidence, using the same care and discretion to avoid disclosure of Confidential Information as it uses to protect its own confidential information, but in no event less than a reasonable standard of care. Each Party agrees to take all reasonable measures (including, without limitation, such measures as it takes to safeguard its own confidential information) to ensure the security and confidentiality of all Confidential Information, to protect against anticipated threats or hazards to the security or integrity of such Confidential Information, and to protect against unauthorized access to or use of such Confidential Information, including, without limitation, the proper disposal of such Confidential Information. Each Party specifically agrees that it shall not use non-public personal information about any other Party’s customers or clients in any manner prohibited by the Gramm-Leach-Bliley Act, as currently or hereafter amended. Each Party further agrees (i) to restrict disclosure of Confidential Information solely to persons who need to know the Confidential Information in order to perform under this MOA, (ii) not to disclose any Confidential Information to any third party unless subject to the applicable FOIA statute and not to copy Confidential Information without the prior written consent of the other Party, except that with respect to FHLBank Atlanta’s primary federal regulator, the FHFA, FHLBank Atlanta may disclose without written consent or notice to COC, and (iii) promptly upon a Party’s becoming aware that any third party has received Confidential Information due to such Party’s act or omission, to inform such third party of the confidential nature thereof and to obtain such third party’s written agreement to abide by the obligations set forth herein, except with respect to the FHFA, as set forth in the preceding provision (ii).
- (c) The obligations imposed under this MOA shall be subject to legally compelled disclosure as provided below and shall not apply to Confidential Information that is (i) made public by the Party which owns such Confidential Information, (ii) generally available to the public other than by a breach of this MOA, or (iii) rightfully received from a third party having the legal right to disclose the Confidential Information free of any obligation of confidentiality. Regardless of which Party may own any or all of the information, statistics, and data contained in the Project Results, no Party shall publish the Project Results or any information related to this Project in any written publication without the prior written consent of the other Party. However, the previous sentence shall not limit any Party from sharing the existence of this Project and the benefits thereof (including,

without limitation, the results on a macro level) with other parties interested in conducting projects similar to the Project, provided that the identity of the Parties is not disclosed. In the event that any Party becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil or criminal investigative demand, or similar process or by any other judicial, administrative, or governmental order having the force of law) to disclose any Confidential Information, such Party shall provide prompt prior notice to the Party which owns such Confidential Information so that such owning Party may seek injunctive relief, protective order, or other appropriate remedy. In the event that such injunctive relief, protective order, or other remedy is not obtained, or that the Party which owns such Confidential Information waives compliance with the provisions of this Paragraph 7, the disclosing Party shall furnish only that portion of the Confidential Information which, in the judgment of its legal counsel, is legally required and shall exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information. Violation of this Paragraph 7 by any Party shall be a basis for termination of this MOA by the other Party immediately upon such other Party's giving notice of such violation and termination therefore to the violating Party. Neither Party shall have access to any portions of the other Party's network or processing system through any direct means.

8. **Subcontracts and Assignment.** Neither Party shall assign, in whole or in part, any of its respective rights under this MOA without the other Party's prior written consent. The Parties shall neither subcontract, nor allow any third party to assume, any portion of their respective obligations under this MOA without the other Party's prior written consent. Notwithstanding the preceding sentence, the Bank acknowledges and agrees that COC may engage third parties to perform certain services with respect to the rehabilitation of residential units in connection with the Project. COC shall be solely responsible for the selection, engagement and management of any third parties that perform work in connection with rehabilitation of residential units, and COC shall ensure that such work is fully performed as set forth in the agreed upon scope of work and in accordance with all applicable laws, regulations, building codes and generally accepted industry standards.
9. **Governing Law.** This MOA shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of South Carolina, without regard to its conflicts of law rules.
10. **Amendments/Modifications.** No amendment to, or change, waiver or discharge of, any provision of this MOA shall be valid unless made in writing and signed by an authorized representative of each of the Parties.
11. **Severability.** If any provision of this MOA is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this MOA, if capable of substantial performance, shall remain in full force and effect.
12. **Use of Name.** Neither Party shall use the other Party's name, trademarks and/or logos for advertising or any other similar purpose including, without limitation, brochures, advertisements, press releases, testimonials, websites, customer reference lists or other implied or expressed endorsements, without the prior written consent of such other Party, which consent may be withheld in the sole discretion of such other Party.

13. **Notices.** All notices shall be sufficient if in writing and sent to the respective addresses set forth below (or as hereafter modified by notice given by a Party in accordance with this Paragraph 14) and shall be deemed to have been given (a) when delivered by private carrier or reputable overnight carrier with package-tracing capability or (b) on the third business day after mailing, if by registered or certified mail, postage prepaid, return receipt requested.

**IF TO FHLBANK OF ATLANTA:**

FHLB Atlanta  
1475 Peachtree St. NE  
Atlanta, GA. 30309

ATTN: Arthur Fleming, Director of  
Community Investment Services

**IF TO COC:**

City of Columbia  
c/o Community Development Department  
1225 Lady Street, Suite 102  
Columbia, SC 29201

ATTN: Director of Community Development

14. **Entire Agreement.** This MOA along with the Schedule A Project Plan constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written representations, understandings or agreements between the Parties with respect to such subject matter (collectively, "Prior Understandings"); and if there is a conflict between this MOA and any Prior Understandings, this MOA shall be the final expression of the Parties' intent and shall prevail over any inconsistent terms set forth in any Prior Understandings.
15. **Execution in Counterparts.** This MOA may be executed in separate counterparts by the Parties, and all counterparts when taken together shall constitute one fully executed MOA between the Parties.

ACCEPTED AND AGREED TO:

**FHLBank Atlanta:**  
**Federal Home Loan Bank of Atlanta**

By: \_\_\_\_\_

Name: Arthur Fleming

Title: Senior Vice President, Director of Community Investment Services

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Entity:**  
**City of Columbia**

By: \_\_\_\_\_

Name: Teresa Wilson

Title: City Manager

Date: \_\_\_\_\_

APPROVED BY  
CITY OF COLUMBIA  
LEGAL DEPT.  




## SCHEDULE A

### PROJECT PLAN

## COC-GENERAL ASSISTANCE PROGRAM

### TERMS AND CONDITIONS

This COC-General Assistance Program Terms and Conditions by and between the City of Columbia (“COC”) and the Federal Home Loan Bank of Atlanta (“FHLBank Atlanta” or the “Bank”) constitutes the “Project Plan” as contemplated by that certain Memorandum of Understanding of even date herewith executed by COC and FHLBank Atlanta (the “MOU”), and the terms of that MOU are incorporated by reference herein.

#### **Description**

COC and the FHLBank Atlanta agree to collaborate on an affordable housing finance initiative to advance the mutual strategic objectives of the parties. The collaborative initiative will focus on General Assistance Program. GAP will be funded through an allocation of funds from the COC and the Bank under its Structured Partnership Product (SPP) of the AHP Set-aside Program. The eligibility, intake, processing, approval, funding, and post-funding requirements of the collaboration between COC and the Bank will proceed as per the following terms and conditions:

- 1. Parties**
  - A. City of Columbia
  - B. Federal Home Loan Bank of Atlanta
  
- 2. Eligible Borrowers**

Households at or below 80% of the HUD Area Median Income (AMI)
  
- 3. Eligible Properties**
  - A. Homes for sale in the City’s Targeted & NRSA Communities
  - B. COC Properties in its inventory or in the inventory of its Development Corporations
  - C. Existing homeowners within the City’s Targeted & NRSA Communities in need of energy efficiency measures
  
- 4. Funding Sources, Uses, and Allocation**
  - A. COC, funding to provide below-market rate, subordinate financing for the purchase and rehabilitation of eligible units in the Targeted & NRSA areas
    - i. The principal amount available in below market rate financing shall be at a minimum of \$600,000
    - ii. The below market rate financing is estimated to be \$250,000 in subsidy compared to current market rate financing



- B. FHLBank Atlanta AHP Set-aside grants to support the purchase of eligible units and grants for the energy efficiency rehabilitation of existing homeowner occupied units. All eligible units shall be in the City's Targeted and NRSA areas.
  - i. The total amount of grants for both the purchase and rehabilitation activities shall not exceed a total of \$300,000
    - o The total amount of grants for rehabilitation activities shall not exceed a total of \$150,000

**5. Maximum Funding per Unit and Lien Positions**

- A. COC, second mortgage below market financing, rate reduced by a minimum 1.5% below the rate of the primary lend institution for 20% of the purchase price less \$5,000
  - a. 360 month term and amortization
- B. COC, third mortgage for \$5,000 priced at zero percent interest
  - i. 361 month term, no amortization with full principal due at maturity or sale of the property
- C. FHLBank Atlanta, fourth mortgage securing purchase assistance
  - i. Up to \$10,000 per eligible homebuyer
  - ii. 60 month term and amortization
    - No interest or principal payment
- D. FHLBank Atlanta, fourth lien securing the rehabilitation assistance
  - i. Up to \$10,000 per eligible homeowner
  - ii. 60 month term and amortization
    - No interest or principal payment

**6. Eligible First Mortgage Loans**

- A. Conventional
- B. FHA
- C. VA
- D. USDA

**7. Borrower's Funds**

- A. First Mortgage, Originating shareholder first mortgage
  - i. As per first mortgage lender requirements
- B. Second Mortgage, COC
  - i. None required
- C. Third Mortgage, COC balloon mortgage, down payment assistance
  - i. None required



- D. Fourth Mortgage, FHLBank Atlanta securing purchase assistance
- i. Borrower contribution must be a minimum of \$1,000
  - ii. 4 to 1 ratio, borrower funds to FHLBank Atlanta Funds.

There is no borrower contribution required by FHLBank Atlanta for rehabilitation transactions.

- |   |   |
|---|---|
| <b>8. Start Date of MOU</b>                           | February 4, 2014  |
| <b>9. Application Acceptance Period</b>               | February 10, 2014, start of application acceptance period and October 3, 2014, date by which all applications must be received by FHLBank Atlanta   |
| <b>10. Product Specific Application Documentation</b> | Issuance of COC Approval to the FHLBank Atlanta   |
| <b>11. Pre-Disbursement Documentation</b>             | Standard FHLBank Atlanta documentation as detailed in the AHP Set-aside Products Documentation Requirements and AHP Income Documentation Requirements as published on the FHLBank Atlanta website   |
| <b>12. Post-Disbursement Documentation</b>            | Standard FHLBank Atlanta documentation as detailed in the AHP Set-aside Products Documentation Requirements as published on the FHLBank Atlanta website   |
| <b>13. Fee Schedule</b>                               | <p>Please refer to the hard cost limitations as defined in SPP-City of Columbia Cost Certification (Exhibit C).</p> <p>Soft costs of up to 15% of hard costs are allowed with the following limitations:</p> <ol style="list-style-type: none"><li>A. City of Columbia Fees<ol style="list-style-type: none"><li>i. For Rehab transactions, the total COC fees may not exceed 4% of the total hard costs excluding inspector fees and third party fees.</li></ol></li><li>B. City Inspector Fee<ol style="list-style-type: none"><li>i. May assess a maximum of \$150 per rehabilitation application</li></ol></li><li>C. FHLBank Atlanta Shareholder</li></ol> |



- i. For Rehab transactions, the total Shareholder fees may not exceed 3% of the total hard cost excluding third party fees such as recording and attorney fees, etc.

D. FHLBank Atlanta

- i. No fee will assessed

**14. Lender Rotation and Participation**

- A. As outlined in Exhibit A and Exhibit B, COC will submit unified application to FHLBank Atlanta shareholders on a predefined rotation, unless otherwise requested by homeowner.
- B. If a FHLBank Atlanta shareholder is interested in being included in the rotation, the shareholder shall send a notification to the Director of Community Development and the FHLBank Atlanta indicating their interest.