

CUSTODIAL AND DISBURSEMENT AGENT AGREEMENT

THIS CUSTODIAL AND DISBURSEMENT AGENT AGREEMENT (this “Agreement”) dated as of September 1, 2015, is made by and between Independent Cities Finance Authority, a Joint Powers Authority created under the laws of the State of California (Government Code Section 6500, et. seq.) (the “Authority”) and Wilmington Trust, N.A., a national banking association, as Custodian and Disbursement Agent hereunder (the “Agent”).

WHEREAS, the Authority has created the Independent Cities Finance Authority Market Rate Lease Purchase Homeownership Initiative, Series 2015 (“Initiative”);

WHEREAS, Agent provides custodial and trust services and is qualified as a depository of public agency funds in accordance with the requirements of Title 5, Division 2, Part 1, Chapter 4, Article 2 (commencing with Section 53630) of the Government Code of the State of California;

WHEREAS, the Authority desires to engage Agent to create and maintain separate custodial accounts for the Initiative and to hold, invest and disburse funds in such accounts in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Agent is willing to act as the Authority’s Agent upon the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Services to be Provided by the Agent. The Agent shall:
 - a. Open, maintain and hold, in the name of the Authority, the master account and sub-accounts which are described on Exhibit A attached hereto (“Accounts”), where it will hold all cash, cash equivalents and securities (and all certificates and instruments representing the same) deposited with, or otherwise delivered to, the Agent, and all interest, dividend, investment income, cash and other proceeds from time to time received in respect of any or all of the foregoing. The Authority shall deliver written notice to the Agent in advance of each deposit or delivery.
 - b. Invest all cash held in the Authority accounts in such investments that are approved by the Authority in writing from time to time, provided, however, that all investments of Authority funds must meet the following criteria: (i) all Authority funds must be available for use and disbursement within three (3) business days with no divestment penalty or fee; and (ii) the investment shall be limited to United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest or in Money Market Funds invested in securities set forth in this subsection ii. The Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Agreement. Subject to the requirements

of California law, the Agent is hereby authorized, in making or disposing of any investment permitted by this Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Agent or for any third person or dealing as principal for its own account. The Authority acknowledges that the Agent is not providing investment supervision, recommendations, or advice. Authority shall be responsible for determining whether any investments designated pursuant to this Section 1(b) comply with the applicable requirements of the Government Code of the State of California regarding the investment of Authority funds.

- c. Disburse cash and securities in the Accounts in accordance with (i) the written direction of an authorized person or officer of Authority; or (ii) in accordance with a court order. Furthermore, with respect to Accounts where cash allocations and disbursements will be made on a regular basis, Authority has provided instructions for such allocations and disbursements in Exhibit A. Agent will make allocations and disbursements in accordance with such instructions unless and until written notice of any changes to such instructions have been delivered by an authorized person or officer of Authority and acknowledged by the Agent. Authority may instruct Agent to make disbursements from Accounts directly to third parties, however, in no event will Agent have any duty or obligation to any such third party, it being understood that Agent's sole responsibility under this Agreement is to Authority
- d. Present for payment all maturing securities or any securities called for redemption and collect proceeds therefrom.
- e. All Accounts will be held in accordance with the requirements applicable to deposit accounts as set forth in Title 5, Division 2, Part 1, Chapter 4, Article 2 (commencing with Section 53630) of the Government Code of the State of California.

2. Powers of the Agent. The Agent is authorized and empowered to:

- a. Hold assets in its name, as Agent for Authority, in the name of a nominee selected by the Agent or at recognized securities depositories.
- b. Make disbursements from Accounts in accordance with Section 1(c).
- c. The Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Agent in accordance with the advice of counsel or other professionals retained or consulted by the Agent. The Agent shall be reimbursed as set forth in Section 4 for any and all compensation (fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals. The Agent may perform and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees.

- d. Make, execute, acknowledge and deliver any and all documents of transfer and conveyance and other instruments that may be necessary or appropriate to carry out its duties and powers.
3. Reports. The Agent shall furnish to the Authority a monthly statement of the Accounts reflecting all activity during the month, and an inventory of assets including their market value as of month end. The Agent will furnish such other reports as the Authority may reasonably request, including reports to the Authority's accountants or examiners, but no more frequently than monthly.
4. Fees. The Agent shall receive compensation from the Authority as set forth in Exhibit B attached to this Agreement, as amended from time to time by the parties. Agent may also be entitled to reimbursement of certain actual out-of-pocket expenses incurred by Agent as set forth in Exhibit B. The Agent is authorized and permitted to set off, recoup and/or otherwise deduct any such unpaid fees, unpaid expenses and/or unsatisfied indemnification rights from cash and other assets on deposit in the Accounts if not paid by the Authority within 30 days of the date due.
5. Authorized Persons. The Authority shall furnish a list to the Agent of persons authorized to act on behalf of the Authority for the purpose of transmitting instructions to the Agent concerning the assets in the Accounts (and shall update such list from time to time when there are changes therein). An initial list is attached hereto as Exhibit C. The Agent shall have no duty to confirm whether the information on Exhibit C is current. Unless and until written notice of any changes to Exhibit C shall be delivered to and acknowledged by the Agent, the Agent shall be entitled to assume that such information is current.
6. Amendment and Termination. This Agreement may be amended by written agreement of the Authority and the Agent at any time. This Agreement shall continue in effect until terminated by either party upon thirty (30) calendar days' prior written notice the other party. Upon termination, all cash and other assets held in the Accounts shall be delivered by the Agent to the Authority or to any other person in accordance with the Authority's written instruction. Any outstanding and unpaid fees and expenses owed to the Agent may be deducted by the Agent from the cash and other assets held in the Accounts prior to delivery to the Authority or as the Authority directs.
7. Indemnification and Limitation on Liability. The Authority agrees to indemnify, defend and hold the Agent and its agents, affiliates, successors and assigns harmless from and against any and all damages, claims, liabilities, losses, costs and expenses (including without limitation attorney's fees and expenses) ("Losses"), that may be imposed on, incurred by, or asserted against the Agent by reason of its acceptance of this account or the performance of its duties under this Agreement, including, but not limited to, damages, claims, liabilities, losses, costs and expenses, incurred by the Agent as a result of its efforts in following directions and/or any action or inaction of the Agent or of any other authorized parties, including third parties, regarding the Accounts, unless such Losses are finally adjudicated to have been directly caused by the gross negligence or

willful misconduct of the Agent. IN NO EVENT SHALL THE AGENT BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS) FROM ANY ACTION TAKEN OR OMITTED TO BE TAKEN BY IT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION. The foregoing indemnification shall survive any termination or assignment of this Agreement and any resignation or removal of the Agent.

8. Notices. All notices, instructions, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of service if delivered personally to the party to whom notice is to be given, (b) on the day of transmission if sent by facsimile transmission to the facsimile number given below, and written confirmation of receipt is obtained promptly after completion of transmission, (c) on the day after delivery to Federal Express, UPS or similar overnight courier service or the Express Mail service maintained by the United States Postal Service, postage prepaid, and properly addressed, to the party as follows:

Notices to the Authority shall be directed and mailed as follows:

Independent Cities Finance Authority
c/o Debbie Smith
PO Box 6740
Lancaster, California 93539-6740
Telephone: 877/906-0941
Facsimile: 877/xxx-xxxx
Email: debbie@icfauthority.org

Notices to the Agent shall be directed and mailed as follows:

Wilmington Trust, N.A.
15950 N. Dallas Parkway, Suite 550 Dallas, Texas 75248
Attention: Dayna Smith
Tel: 972/383-3154
Fax: 972/385-0844
Email: dlsmith@wilmingtontrust.com

Either party may change its address for purposes of the paragraph by giving the other party written notice of the new address in the manner set forth above.

9. Inspection Privileges. The books, records, documents, accounting procedures and practices of the Agent relevant to this Agreement are subject to examination by the Authority, or its designated independent public accountants, during normal business hours, upon at least two (2) business days' prior written notice to the Agent, and at the requesting party's expense.
10. Regarding the Agent.

(a) The Agent shall not be liable for any action taken or not taken under this Agreement so long as it shall have acted without gross negligence or willful misconduct.

(b) The rights and obligations of the Authority may not be assigned or delegated to any other person without the written consent of the Agent. Subject to the foregoing, the terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No other persons shall have any rights under this Agreement.

(c) The Agent is not a party to, is not bound by, and has no duty to inquire into any agreement other than this Agreement. The Agent shall have no implied duties, fiduciary or otherwise, beyond the express duties set forth herein.

(d) The Agent shall not be required to expend or risk its own funds or otherwise incur financial liability (other than expenses or liabilities otherwise required to be incurred by the express terms of this Agreement) in the performance of its duties hereunder if it believes that repayment of such funds, or adequate indemnity, is not assured to it.

(e) The Agent shall have the right, but not the obligation, to consult with counsel or other such professionals of the Agent's choice and shall not be liable for action taken or omitted to be taken by the Agent in accordance with the advice or counsel of such professionals.

(f) Any corporation or association into which the Agent is converted or merged, or with which it is consolidated, or to which it sells or transfers all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Agent is a party, shall be and become the successor to the Agent under this Agreement and shall have and succeed to all of the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any other act.

(g) The Agent may resign as such following the giving of thirty (30) calendar days' prior written notice to the Authority. The Authority may remove the Agent upon thirty (30) calendar days' prior written notice to the Agent. The duties of the Agent shall terminate (30) days after recipient's receipt of such notice (or as of such earlier date as may be mutually agreed by the Agent and the Authority). The Agent shall deliver the cash and other assets then in the Accounts to a successor Agent in accordance with the Authority's written direction. If the Authority fails to appoint a successor prior to the expiration of thirty (30) calendar day notice period, the Agent may, in its sole discretion, deliver the cash and other assets in the Accounts to the Authority, or may petition any court of competent jurisdiction for the appointment of a successor Agent.

(h) The Agent may assume the genuineness of, and may rely on, any written notice or communication from any person, without further verification, that the Agent believes is from the proper party and shall be protected in doing so by the Authority.

(i) Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes, fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes, acts of civil or military authority or governmental action; it being understood that the Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

(j) In the event that the Accounts, or any cash or assets contained therein, shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree, shall be made or entered by any court order affecting the property deposited or held under this Agreement, the Agent is hereby authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, and in the event that the Agent obeys or complies with any such writ, order or decree it shall not be liable to the Authority or any other person, firm or corporation, by reason of such compliance notwithstanding that such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

12. Electronic Mail Transmissions.

(a) The Agent is authorized to accept directions delivered to Agent via electronic mail (e-mail) by authorized representatives, including duly appointed third parties.

(b) The Agent is authorized to act on written instructions conveyed by e-mail, notwithstanding the fact that such instructions do not bear an original authorized signature, provided the instructions acted upon appear to be signed by a person(s) entitled to give binding instructions to the Agent.

(c) The Authority understands the risks associated with communicating time sensitive matters, such as trade directions, by e-mail and acknowledges that, if it elects to do so, the Agent will act within a reasonable time of receipt of the e-mail. The Authority further acknowledges that information or instructions provided by e-mail may be less confidential than information transmitted by other methods.

13. Tax Matters.

(a) Reporting of Income. The Authority shall report all income earned from the investment of any sum held in the Accounts, as and to the extent required under the provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"). The Authority shall furnish the Agent with a completed Form W-8 or Form W-9, as applicable.

- (b) Preparations and Filing of Tax Returns. The Authority assumes the obligation to prepare and file, to the extent applicable, any and all income or other tax returns applicable to the Accounts with the IRS and any state or local taxing authorities.
- (c) Payment of Taxes. Any taxes payable on income earned from the investment of any sums held in the Accounts shall be paid by the Authority, whether or not the income was distributed by the Agent during any particular year, to the extent required under the provisions of the Code or otherwise.
14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
15. Governing Law. This Agreement and all transactions hereunder shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of California.
16. Waiver of Trial by Jury. Each of the parties hereto expressly waives the right to trial by jury in resolving any claim or counterclaim relating to or arising out of this Agreement.
16. Entire Agreement. This Agreement is the final integration of the agreement of the parties with respect to the matters covered by it and supersedes any prior understanding or agreement, oral or written, with respect thereto.
17. Severability. The invalidity of any portion of this Agreement shall not affect the validity of the remainder hereof.
18. Waivers. The failure of any party to this Agreement at any time or times to require performance of any provision under the Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to the Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in the Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in the Agreement.
19. Merger or Consolidation. Any corporation or association into which the Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Agent is a party, shall be and become the successor agent under this Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.
20. Escheat. The Authority is aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state.

The Agent shall have no liability to the Authority, its respective legal representative, successors and assigns, or any other party, should any or all of the account assets escheat by operation of law.

[Signature page is attached.]

IN WITNESS WHEREOF, authorized officers of the parties have duly executed this Agreement as of the day and year first written above.

AUTHORITY:

INDEPENDENT CITIES FINANCE AUTHORITY
a California joint powers authority

By: _____
Name: _____
Title: _____

AGENT:

WILMINGTON TRUST, N.A.
a national banking association

By: _____
Name: _____
Title: _____

Exhibit A

ACCOUNTS

[TO BE ADDED]

Exhibit B

AGENT'S FEE SCHEDULE

Acceptance Fee: **\$0.00**

Initial Fees as they relate to Wilmington Trust, N.A. acting in the capacity of Agent - includes review of the Escrow Agreement; acceptance of the Agent appointment; setting up of Accounts(s) and accounting records; and coordination of receipt of funds for deposit to the Accounts(s).

Agent Annual Administration Fee: **\$5,000.00**

For ordinary administrative services by Agent - includes daily routine account management; investment transactions; cash transaction processing (including wire and check processing); monitoring claim notices pursuant to the agreement; disbursement of funds in accordance with the agreement; and mailing of trust account statements to all applicable parties. Float credit received by the bank for receiving funds that remain uninvested are deemed part of the Agent's compensation.

Tax reporting is included for up to Five (5) entities. Should additional reporting be necessary, a \$25 per reporting charge will be assessed.

Sub-Account Annual Administration Fee: **\$250.00 per account**

The Agent and Sub-Account fees are payable in advance, with the first year fee due upon opening of the account. The Annual Fee covers a full year or any part thereof, and therefore will not be prorated or refunded in the year of early termination.

Fee Schedule based upon the following assumptions:

- Number of Accounts to be established: One (1) master account
- Number of Sub-Accounts to be established: [4_____]
- Number of Deposits to Account: [25-30 annually_____]
- Number of Withdrawals from Accounts: [100-120 annually_____]
- Term of Escrow: Five Years
- **APPOINTMENT SUBJECT TO RECEIPT OF REQUESTED DUE DILIGENCE INFORMATION AS PER THE USA PATRIOT ACT**
- **THIS PROPOSAL ASSUMES THAT BALANCES IN THE ACCOUNT WILL BE INVESTED IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT**
- **ALL FUNDS WILL BE RECEIVED FROM OR DISTRIBUTED TO A DOMESTIC OR AN APPROVED FOREIGN ENTITY**
- **IF THE ACCOUNT(S) DOES NOT OPEN WITHIN THREE (3) MONTHS OF THE DATE SHOWN BELOW, THIS PROPOSAL WILL BE DEEMED TO BE NULL AND VOID**

Out-of Pocket Expenses: **At Cost**

Agent will charge for actual out-of-pocket expenses in response to specific tasks assigned by the client which are in addition to any responsibility of Agent pursuant to the Agreement. Possible expenses would be, but are not limited to, express mail and messenger charges, travel expenses to attend closing or other meetings. There are no charges for indirect out-of-pocket expenses.

This fee schedule is based upon the assumptions listed above which pertain to the responsibilities and risks involved in Wilmington Trust, N.A. undertaking the role of Agent. These assumptions are based on information provided to us as of the date of this fee schedule. Our fee schedule is subject to review and acceptance of the final documents. Should any of the assumptions, duties or responsibilities change, Agent reserves the right to affirm, modify or rescind our fee schedule. Extraordinary services (services other than the ordinary administration services of Agent described above) are not included in the annual Administration Fee and will be billed as incurred at the rates in effect from time to time.

August 2015

Exhibit B

DESIGNATED PERSONS OF THE AUTHORITY

Independent Cities Finance Authority, a public nonprofit instrumentality of government

<u>Name and Title</u>	<u>Signature</u>
1. Debbie Smith Authorized Representative	<hr/>
2. Authorized Representative	<hr/>
3.	<hr/>