

**EXHIBIT D****AHSC PROGRAM TERMS AND CONDITIONS****GENERAL****1. Effective Date, Commencement of Work and Completion Dates**

This Agreement is effective upon approval by all parties and the Department, which is evidenced by the date signed by the Department on page one, Standard Agreement, STD 213 (the "Effective Date"). The Recipient agrees that neither the construction of the Development nor the Work has commenced as of the deadline for submittal of applications set forth in the NOFA. The Recipient agrees that the Work shall be completed as specified in this Agreement, and as set forth in the Project Report, subject to the Agreement expiration date specified on page 1, number 2, of this Agreement (STD 213), and in Exhibit B, unless a written request for an extension is submitted and written approval by the Department is provided at least 90 days prior to the expiration date of the Agreement. Any extension to the expiration date shall require an amendment to this Agreement.

**2. Termination**

Notwithstanding any other provision of this Agreement, the Department may terminate this Agreement at any time for cause by giving at least 14 days' notice in writing to the Recipient. Cause shall consist of violations by Recipient of any General or Special Terms and Conditions of this Agreement. Upon termination of this Agreement, unless otherwise approved in writing by the Department, any Grant funds received by the Recipient shall be returned to the Department within 14 days of the Notice of Termination. In the event of withdrawal of the Department's expenditure authority, all obligations of the Department to continue funding any amounts, whether for the benefit of Recipient or any other persons, shall fully and immediately cease and terminate, and the Department shall thereafter have no duty or obligation to undertake or perform any act that is not legally required. Department makes no representation or warranty, express or implied, to Recipient or any other persons that all or any portion of the Program Grant Documents described in section 3, below, will be enforceable after the withdrawal of the Department's funding authority. Examples of cause for termination include, but are not limited to:

- A. Failure of the Work to meet the deadlines set forth in Section 4 of Exhibit B.
- B. Determination by the Department that: (a) any material fact or representation made or furnished to the Department by the Recipient in connection with the Application, or the Award Letter shall have been untrue or misleading at the time

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**

that such fact or representation was made known to the Department, or subsequently becomes untrue, or (b) the Recipient shall have concealed any material fact from the Department related to the Application or the Development.

- C. Filing a petition by Recipient, or any affiliate or general partner of Recipient, for relief under the Bankruptcy Code; the filing of any pleading or an answer by Recipient, or any general partner of Recipient, in any involuntary proceeding under the Bankruptcy Code; a general assignment by Recipient, or any affiliate or general partner of Recipient, for the benefit of creditors; or the filing of an application for the appointment of a receiver, trustee, custodian or liquidator of Recipient or any of its property, or any affiliate or general partner of Recipient or any of its property.
- D. Failure of Recipient, or any general partner of Recipient, to effect a full dismissal of any involuntary petition under the Bankruptcy Code that is filed against Recipient, or any general partner of Recipient, or that in any way restrains or limits Recipient, or any general partner of Recipient, or the Department regarding the Program Loan or the Development, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or 30 days after the date of filing of such involuntary petition.
- E. Attachment, levy, execution, or other judicial seizure of any portion of the Development, or any substantial portion of the other assets of Recipient, or any general partner of Recipient, that is not released, expunged, bonded, discharged, or dismissed within 30 days after the attachment, levy, execution, or seizure.
- F. Pendency of any proceeding challenging the legal existence or authority of Recipient, or any general partner of Recipient, or any proceeding challenging the legality of the Development.

3. Disputes

Applicable law, including the Department's and the Program's statutes, rules, regulations, and Guidelines shall apply and be enforced in the event of any conflict that becomes apparent to the Department at any time, notwithstanding the Department's preliminary prior review of Project documentation at the time of construction loan closing.

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**4. Consent

The parties agree that wherever the consent or approval of the Department or the Sponsor is required under this Agreement, such consent or approval will not be unreasonably withheld or delayed, unless the same is specified as being in that party's sole discretion or other words of similar import.

5. Program Grant Documents

In addition to this Agreement, the Recipient shall execute and enter into a Disbursement Agreement which shall govern the terms, disbursement and use of the Program funds, the Covenant described below, and other additional agreements and documents, as the Department may deem reasonable and necessary to meet the requirements of the Program and the terms and conditions of this Agreement. The Department may request, and if requested, the Recipient shall agree to and record a performance deed of trust ensuring the completion of the Work. Said performance deed of trust shall be recorded against the entire legal parcel underlying the object which it ensures is being constructed.

6. Covenant Regarding the Development

Prior to the disbursement of Program funds, the Recipient shall enter into a written Covenant Regarding the Affordable Housing Development ("Covenant") with the Department, and including such other parties as the Department may reasonably require, which shall require the development and construction of the Development with, the number of units and the number of bedrooms per unit, the extent and depth of affordability, as set forth in the Project Report and Exhibit A and Exhibit E, and other uses and amenities for which points were granted to the Application. The Covenant shall be recorded against the fee interest parcel or parcels of real property on which the Development is to be located and shall be binding on all successors, transferees, and assignees acquiring an interest in the Development. The Covenant shall require the continuation of the affordability for a period of no less than 30 years from the date of a filing of a Notice of Completion for the Development. The affordability will be ensured through a resale restriction for the term of the Covenant.

7. Site Control

The Recipient shall ensure that Site Control of the real property associated with the Work is sufficient to meet the requirements of the Program. This shall include, but not be limited to, sufficient control to ensure the timely commencement and completion of

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**

the Work as determined by the Department. Site control of the real property on which the Work will occur may be evidenced by one of the following:

- A. Fee title;
- B. An enforceable option to purchase which shall extend through the anticipated date of the Program award as specified in the NOFA;
- C. An executed disposition and development agreement, right of way, or irrevocable offer of dedication to a Public Agency;
- D. An executed encroachment permit for construction of improvements or facilities within the public right of way or on public land;
- E. An executed agreement with a public agency that gives the applicant exclusive rights to negotiate with the agency for the acquisition of the site, provided that the major terms of the acquisition have been agreed to by all parties; or
- F. A land sales contract or enforceable agreement for acquisition of the property.

The Recipient shall also obtain all licenses, easements and rights-of-way or other interests required for completion of the Work and provide evidence of such instruments prior to the first disbursement of Program funds.

8. Title Report

The Recipient shall provide a current title report for the real property on which the Development is located.

9. Development Budget

Unless otherwise approved in writing by the Department, prior to the close of any construction financing, the Recipient shall provide to the Department for its review and approval, a copy of the construction lender's (or lenders') approved development budget.

10. Special Purpose Entities

If the Guidelines permit Recipient to form a Special Purpose Entity to act as a Payee of the Grant funds, the Recipient shall maintain control of the Special Purpose Entity, in

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**

accordance with UMR Section 8313.2, for the full term of both this Agreement and the Covenant.

11. Non-Department Financing

The Recipient shall qualify for and obtain the financial assistance, loans and grants described in the Application for both the construction and permanent periods. Final terms and conditions of the non-Department financing must substantially conform to the terms and conditions of the Recipient's loan application. The terms and conditions of all financing shall be subject to the Department's review and approval.

12. Senior Loan Terms and Disclosures

The terms of loans in a lien position senior to the Covenant must comply with all the underwriting standards of UMR Sections 8310 and 8315.

13. Appraisals

Recipient shall, at the request of the Department, provide an appraisal of the real property to be acquired as part of the Work, prepared in a form, and by a qualified appraiser, acceptable to the Department.

14. Relocation Plan

If there is, or will be any residential or commercial displacement directly or indirectly caused by the Work, as defined in state law, the Recipient shall provide a relocation plan conforming to the requirements of state law and the regulations adopted by the Department in California Code of Regulations, Title 25, section 6000 et seq. The project and/or the development budget shall contain sufficient funds to pay all costs of relocation benefits and assistance as set forth in the relocation plan accepted by the Department. Should a relocation plan not be required, Recipient must provide documentation for Department approval that there are no relocation requirements and execute the Department's certification of no relocation form without amendment.

15. Environmental Conditions

The Recipient shall provide to the Department the following:

- A. All Environmental Site Assessment ("ESA") Reports (to include Phase I, II, III, supplemental or update assessments and reports) for the Work, in conformance
- B.

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**

with ASTM Standard Practice E 1527, evaluating whether the Work is affected by any recognized environmental conditions.

- C. Documentation and/or a certification satisfactory to the Department that all ESA Report recommendations including remediation and/or mitigation work have been completed.
- D. Mitigation requirements required as a result of the Final Environmental Impact Report ("EIR") or Mitigated Negative Declaration if applicable and evidence satisfactory to the Department that all mitigation requirements have been satisfied.

16. Compliance with State and Federal Laws, Rules, Guidelines and Regulations

The Recipient agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Work, the Recipient, it's Contractors or Subcontractors, and any Grant activity.

17. Litigation

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Recipient shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Development or the Work and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

18. Milestones

Recipient shall ensure the completion of the Performance Milestones set forth in the Project Report and referenced in Section 5 of Exhibit A of this Agreement, and as further set forth in the Disbursement Agreement by the Milestone Completion Dates. Recipient shall timely inform the Department when a milestone is missed or at risk of being missed, provide an update of these timelines, and provide assurances from the

**EXHIBIT D**

Recipient for timely completion of the remaining Milestones. Failure to timely notify the Department shall be considered a default under this Agreement.

19. Insurance

The Recipient shall have and maintain in full force and effect forms of insurance, at such levels and for such periods, in accordance with the Disbursement Agreement.

20. Change of Conditions

Notwithstanding the Department's obligation to provide payments pursuant to Exhibit B hereof, the Department reserves the right to evaluate the Recipient's need for Program funds based on new information or funding sources associated with the Work. If the Department determines that the Program funds, or a portion thereof, are no longer necessary to complete the Work, the Department may reduce the amount of the Grant accordingly. In the event the Department determines the Work is no longer financially feasible, any Grant commitment issued by the Department and this Agreement may be terminated.

21. Obligations of Recipient with Respect to Certain Third-Party Relationships

The Recipient shall remain fully obligated under the provisions of this Agreement, notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Work with respect to which assistance is being provided under this Agreement. The Recipient shall comply with all lawful requirements of the Department necessary to ensure the completion, occupancy, and use of the Work in accordance with this Agreement.

22. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Recipient of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

23. Identity of Interests

As a condition of disbursement, Recipient shall execute a Certificate of Identity of Interest ("Certificate") listing all relationships constituting an identity of interest with entities providing goods or services in connection with Recipient's performance of the

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**



**EXHIBIT D**

Work. The Certificate shall be in a form provided by the Department. At the Department's request, Recipient shall submit contracts, instruments, documents, correspondence, or other writings relating to Recipient's relationship with entities listed in the Certificate. The existence and nature of such relationships shall be subject to the review and approval of the Department and to the extent necessary to ensure compliance with Program requirements and this Agreement.

**DESIGN REQUIREMENTS****24. Architect**

The Recipient shall utilize the services of an architect and/or an engineer to provide professional design and engineering services for the Work. The contract shall require an architect and/or an engineer to supervise the construction work, conduct periodic site visits, prepare periodic inspection reports, verify the validity of the construction contractor's payment requests, prepare or review change orders, and, upon completion of construction, provide the certification described in section 39 of these Program Terms and Conditions. At the request of the Department, Recipient shall submit any and all contracts for these services to the Department for its review and approval.

**25. Plans and Specifications and Project Cost Estimates**

At the request of the Department, the Recipient shall submit plans and specifications and project cost estimates for the Work to the Department for its review and approval. The Work shall be constructed in substantial compliance with the plans and specifications, subject to any change order(s) accepted by the Department where such acceptance is required.

**26. Reasonable Development Costs**

At the request of the Department, the Recipient shall provide evidence acceptable to the Department that the total costs of the Work are reasonable and necessary for the proposed improvements. To verify cost reasonableness, the Department may require qualified third-party verification of cost, evidence of the competitive bidding of major cost components and appraisals.

**27. Adaptability and Accessibility**

The Work shall comply with all applicable federal, state and local laws regarding adaptability and accessibility for persons with disabilities in the design, construction and rehabilitation of projects.

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**



**EXHIBIT D****28. Approval by Public Works Department**

Where approval by a local public works department, or its equivalent, is required for the Work, the Recipient must submit, prior to the disbursement of Grant funds, a statement from that department, or other documentation acceptable to the Department, indicating that the Work has been approved by that department.

**CONSTRUCTION REQUIREMENTS****29. Construction Contract**

Except for work performed by its own employees, the Recipient shall enter into a written construction contract or contracts ("Construction Contract(s)") with a duly licensed contractor or contractors ("Contractor(s)") for the construction activities of the Work. The Construction Contract(s) shall require, where applicable, prevailing wages be paid in conformance with Labor Code section 1720 et seq. and applicable provisions of this Agreement. The Construction Contract(s) and any amendments thereto shall be subject to the prior approval of the Department.

**30. Contractor's Assurance of Completion**

The Contractor(s) shall provide security to assure completion of the Work by furnishing the Recipient with Performance and Payment Bonds, or a Letter of Credit, which shall remain in effect during the entire term of the Construction Contract(s), and which shall be in a form and from an issuer which is acceptable to the Department. The Performance Bond shall be in an amount at least equal to 100 percent of the approved construction costs included in the Construction Contract(s) to provide security for the faithful performance of the Construction Contract(s) including a warranty period of at least 12 months after completion. The Payment Bond shall be in an amount at least equal to 100 percent of the approved construction costs included in the Construction Contract(s) to provide security for the payment of all persons performing labor on the Work and furnishing materials in connection with the Construction Contract. A Letter of Credit shall be in an amount equal to at least 20 percent of the approved construction costs included in the Construction Contract(s), in the form of an unconditional irrevocable, stand-by letter of credit. The Department shall be named as an additional obligee in the Bonds or an additional beneficiary under the Letter of Credit.

**31. Prevailing Wages**

Pursuant to Section 113 of the Guidelines, Recipient will ensure compliance with State Prevailing Wage Law (Labor Code Sections 1720-1781). As a condition to payment of

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**

the final draw request, the Department may require a certificate signed by the Recipient, certifying compliance with Labor Code Section 1720 et seq., and that labor records shall be maintained and made available to any enforcement agency upon request

32. Construction Phase Information

If requested by the Department, the Recipient shall provide the Department information during the construction period including but not limited to all change orders and modifications to the construction documents, all inspection reports prepared by the Development architect and other consultants, and information relative to the Development income, expenses, occupancy, relocation benefits and expenses, contracts, operations, and conditions of the Housing Development. Upon written notice to Recipient, the Department may require its advance written approval of all future change orders and modifications. Deviations from the plans and specifications which have the effect of reducing the quality, life or utility of a specified item or system must receive the prior written approval of the Department. Should change orders be submitted to the Department for its approval, they shall be deemed accepted if not rejected in writing within 10 business days of receipt by the Department. Recipient shall not authorize or approve any change orders rejected by the Department where the Department's approval is required.

33. Signage

- A. Recipient shall place signs on the construction site for the Work stating that the Department is providing financing through the Program in an appropriate location(s), typeface and size containing the message set forth in provision D.1 of Exhibit E of this Agreement.
- B. The sign shall be maintained in a prominent location visible and legible to the public through construction completion. If the job sign includes the acknowledgment and/or logo of one or more other public lenders or grantors, the acknowledgment and logos required by this Section 28 shall also be displayed in a similar size and layout. Copies of the Department, SGC and California Climate Investments ("CCI") logos can be obtained by contacting the HCD Contract Coordinator.
- C. Upon installation of the sign, the Recipient shall submit a digital photograph thereof to the Department. The Recipient will also provide the Department, upon its request, with copies of any photographs that may be taken of the Work by or on behalf of the Recipient or its architect. The Recipient will provide an

**EXHIBIT D**

acceptable written consent and release agreement authorizing use of said photographs, all at no expense to the Department.

**34. Photographs**

The Recipient will provide the Department, upon request, with copies of any photographs that may be taken of the Development by or on behalf of the Recipient or the Development's architect. The Recipient will provide an acceptable written consent and release agreement authorizing use of said photographs, all at no expense to the Department

**INSPECTION OF GRANT ACTIVITIES****35. Site Inspection**

The Department reserves the right, upon reasonable notice, to inspect the Work site and any structures or other improvements thereon to determine whether the Work site meets the requirements of Program and this Agreement. If the Department reasonably determines that the site is not acceptable for the proposed Work in accordance with the Guidelines, the Department reserves the right to cancel its funding commitment and this Agreement.

**36. Work Inspection**

- A. The Department and any authorized representative of the Department shall have the right, during construction and thereafter, to enter upon and inspect the construction of the Work to ensure that the construction is being and has been performed in accordance with the applicable Federal, State, and /or local requirements, the Guidelines, and the terms of this Agreement. Such right to inspect shall include, but shall not be limited to, the right to inspect all work done, all materials and equipment used or to be used, and all books and records, including payroll records, maintained in connection with the construction work. Such right of inspection shall be exercised in a reasonable manner.
- B. The Recipient shall be required to correct all circumstances found by such inspections not to conform to the applicable Program requirements, and to withhold payment to the Contractor and/or Subcontractor(s) until action(s) to correct the non-conforming circumstances is/are corrected by the Recipient and approved by the Department.

**EXHIBIT D**

- C. The Department reserves the right to withhold payment for any costs found not to conform to applicable Program requirements until such actions have been taken to correct the non-conforming circumstances and such corrective actions have been approved by the Department.
- D. The Department shall have no affirmative duty to inspect the Work and shall incur no liability for failing to do so. Once having undertaken any inspection, neither the Department, nor any representative of the Department shall incur any liability for failing to make any such inspection properly, or for failing to complete any such inspection. The fact that such inspection may or may not have occurred shall not relieve the Recipient, the contractor, the construction lender, the architect, the structural engineer, the locality, or anyone else of any obligation to inspect the Work.

**37. Audit/Retention and Inspection**

- A. The Department, its representatives or employees, or its delegatee shall have the right to review, obtain, and copy all records pertaining to performance of the Agreement. Recipient shall provide the Department or its delegatee with any relevant information requested and shall permit the Department or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material. Recipient further agrees to maintain such records for a minimum period of four years after final payment under the Agreement unless a longer period of records retention is stipulated.
- B. Payment for any cost which is not authorized by this Agreement, or which cannot be adequately documented, shall be disallowed, and must be reimbursed to the Department or its designee by the Recipient.
- C. At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Work. At the Department's request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.
- D. The audit shall be performed by a qualified State, Department, local or independent auditor. The Agreement for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
- E. If there are audit findings, the Recipient shall submit a detailed response to the Department for each audit finding. The Department will review the response and,

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**

if it agrees with the response, the audit process ends, and the Department will notify the Recipient in writing. If the Department is not in agreement, the Recipient will be contacted in writing and will be informed as to the corrective actions required to cure any audit deficiencies. This action could include the repayment of disallowed costs or other remediation.

- F. If so, directed by the Department upon termination of this Agreement, the Recipient shall cause all records, accounts, documentation and all other materials relevant to this Agreement to be delivered to the Department as depository.

**COMPLETION OF CONSTRUCTION**

The Department shall not be obligated to disburse the final draw request, including any retainage, unless Recipient has complied with and satisfied all the terms and conditions of the Guidelines, the NOFA, this Agreement, representations made in the Application and the criteria set forth in the Project Report, all in a manner satisfactory to the Department in its sole discretion, on or before conversion to permanent financing, or such earlier time as may be indicated herein.

38. **Relocation Plan Implementation Report**

The Recipient shall provide a report, in a form acceptable to the Department, summarizing the actions taken and identifying all recipients of relocation assistance and benefits, and the amounts paid, and benefits provided, to or on behalf of each recipient.

39. **Architect Certification**

Where required by the Department, the Recipient shall cause the Work architect(s) or other appropriate professional to certify to the Department, in form acceptable to the Department, that all construction is completed in accordance with the "as-built" Plans and Specifications and in compliance with all applicable federal, state, and local laws relating to disabled accessibility.

40. **Cost Certification**

At the request of the Department, the Recipient shall submit a Work cost certification that shall have been audited by an independent certified public accountant in accordance with the requirements of the Department and the California Tax Credit Allocation Committee, if applicable. The Recipient (and the developer or builder if there is an identity of interest with the Recipient) shall keep and maintain records of all

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**

construction costs not representing work done under the construction contract and to make such records available for review by the Department.

41. Recorded Notice of Completion

The Recipient shall provide to the Department a certified copy of any Notice of Completion for the Development recorded in the county in which the Development is located.

42. "As-Built" Plans and Specifications

Upon completion, at the request of the Department, the Recipient shall submit "as-built" plans and specifications for the Work and Development acceptable to the Department.

43. Confirmation of Permitted Housing Units

Conditions precedent to the first disbursement of Program funds shall include receipt of all required public agency entitlements and all required funding commitments for the Development. The housing units to be developed in the Development must be completed, as evidenced by receipt of a certificate of occupancy, within the time period established in the Project Milestones.

44. Certificate(s) of Occupancy

The Recipient shall provide to the Department a copy of a final certificate of occupancy for the Development, or final certificates of occupancy for each housing unit which comprises the Development (or an equivalent form of occupancy certification or approval) issued by the local agency having jurisdiction over such certificates.

45. Environmental Conditions Remedial Work

All remedial work on recognized environmental conditions shall be completed prior to conversion to permanent financing. The Recipient shall provide the Department with an environmental update/operations and maintenance plan if remedial work was required with evidence of lead-based paint and/or asbestos-containing materials remediation if applicable.

**EXHIBIT D****REPORTING REQUIREMENTS****46. Reports on California Climate Investments**

Upon Department's request, Recipient shall provide to the Department any and all necessary data that it is legally and factually able to provide that is required to be reported pursuant to the most recently adopted Funding Guidelines for California Climate Investments published by the California Air Resources Board.

**47. Reports on Affordable Housing Development**

Recipient shall submit to the Department periodic reports, as required by the Department, but not less than annually, describing the development, construction and occupancy of the Development and the housing designated in the Application. The report shall include, but not limited to, information regarding unit affordability and occupancy, construction, and permanent financing evidenced by commitment letters, and a construction and completion schedule demonstrating compliance with this Agreement and the Guidelines. The reports will be filed on forms provided by the Department.

**48. Updated Information**

Recipient shall provide the Department updated documentation for any substantial change in the information previously provided relating to the Work and the conditions described above.

**49. Monitoring Requirements**

The Department may perform program compliance and/or fiscal monitoring of the Grant. The Recipient agrees to cooperate with any such monitoring and provide reasonable access to all Work files, records, documents and other information to employees or representatives of the Department. The Recipient shall resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department.

**REPAYMENT OF GRANT FUNDS****50. Breach of this Agreement**

In the event of a breach or violation by the Recipient of any of the provisions of this Agreement, including without limitation, the times for commencement and completion of the construction of the Development designated in the Application as set forth in this

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**



**EXHIBIT D**

Agreement, the Department may give written notice to the Recipient to cure the breach or violation within a period of not less than 30 days. If the breach or violation is not cured to the satisfaction of the Department within the specified time, the Department, at its option, may declare a default of the Agreement and may seek remedies for the default, including the following:

- A. The Department may terminate this Agreement and demand repayment of the Program funds to the extent that Program funds have been disbursed to pay for eligible costs of work which remains unperformed or uncompleted. Recipient shall be liable for all costs to complete all such uncompleted or unperformed work.
- B. The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the Work in accordance with Program requirements.
- C. The Department may seek such other remedies as may be available under this Agreement or any law or in equity.
- D. This Agreement may be canceled by the Department under any of the following conditions:
  - 1) An uncured breach or violation by Recipient of this Agreement or the Disbursement Agreement;
  - 2) The objectives and requirements of the Program cannot be met by continuing the commitment or this Agreement;
  - 3) Construction of the Development or other components which comprise the Project cannot proceed in a timely fashion in accordance with the Performance Milestones referenced in Exhibit A of this Agreement; and,
  - 4) Funding or disbursement conditions have not been or cannot be fulfilled within required time periods.

51. AHSC Cross-Default Provision

- A. This award was based on the total points awarded the Recipient's Application, during a highly competitive process. The Application proposed an integrated combination of some or all of the following Project components:

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**

Homeownership AHD (AHD);  
Housing-Related Infrastructure (HRI);  
Sustainable Transportation Infrastructure (STI);  
Program (PGM)

The Application's point score was based, in part, on the Project's total projected reduction of greenhouse gas (GHG) emissions. The Project components (AHD, HRI, STI, and PGM) that were proposed in the Application and approved by the Department must be completed in order to achieve this projected reduction of GHG emissions.

- B. By executing this Agreement, the Recipient acknowledges and agrees, that in the event the AHD component is not timely completed pursuant to Program requirements, that the Recipient will no longer qualify for the Grant award. In that event, all disbursements of Grant funds will cease, and the Recipient will be responsible for repayment of all disbursed Grant funds.
- C. The Department recognizes that the Recipient may enter into a separate side agreement to address each individual Recipient entity's responsibilities with respect to each other and with regard to the Program funds; provided, however, in no event shall any such agreement alter or amend the respective obligations of the Recipients to the Department under the applicable Program Grant Documents, including the joint and several nature thereof.

52. Departmental Cross-Default Provision

In the event the Project or Development is or has been awarded any other Departmental grant or loan funding in addition to the Program Grant contemplated by the Award Letter from the Department to Recipient (each such funding, including the Program Grant referenced in the Award Letter, being a "Departmental Funding"), then each Departmental Funding will be cross-defaulted to the other Departmental Funding so that:

- A. the compliance by the obligated party(ies) under the Department's documentation relating to one Departmental Funding shall be a condition precedent to the funding and disbursement of the funds to be provided under all of the other Departmental Fundings; and
- B. a default under one Departmental Funding shall constitute a default under all of the other Departmental Fundings.

**EXHIBIT D**

The loan and grant documentation for each Departmental Funding shall reflect the cross-defaulted nature of all such fundings.

**53. Departmental Policies**

- a. Not less than 60 days prior to construction loan closing, the Sponsor shall provide updated financial documents including, but not limited to the development budget, development sources and uses, schedule of rents and unit mix, operating budget and 15-year cash-flow analysis, which are acceptable to the Department and demonstrate compliance with all applicable Program regulations or guidelines and the Uniform Multifamily Regulations (UMR). All proposed changes to the project, including but not limited to project financing, rents and unit mix, scope of work to be performed or Borrower's organizational structure must be submitted to and approved by the Department in writing.
- b. The Sponsor who garnered the experience points at the application stage must be the Sponsor who controls the borrowing entity at construction, through permanent close of escrow, and into management and operation of the project. Organizational documents demonstrating that the experienced Sponsor has the authority to exercise control of the borrowing entity in compliance with Section 8301(s) of the Uniform Multifamily Regulations (UMR) must be submitted to the Department for review and approved by the Department prior to execution of the Standard Agreement.
- c. Sponsor(s) and Borrower are acknowledging the Project as submitted and approved is the Project that is to be funded and built. Any bifurcation would make that award null and void, as the awarded Project is no longer feasible as originally submitted and approved. Any Department awarded funds are unable to be assumed or assigned.
- d. The Department retains the right and discretion to disencumber awards where awardees have failed to make sufficient progress in meeting applicable milestones and deadlines subject to Administrative Notice 2022-02 dated March 30, 2022 ("Notice 2022-02"), and any future amendments. Such determination will be on a case-by-case basis and may use the enumerated criteria set forth in Notice 2022-02 when making such decisions. The disencumbrance policy is applicable to HCD state funded multifamily housing programs. For awards made prior to July 1, 2022, the 24-month period shall begin on July 1, 2022. For awards made on or after July 1, 2022, the 24-month period will begin as of the date of the initial program funding awarded to the project, unless changed by amendment to Notice 2022-02.

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**

- e. The Department will assess Negative Points, as applicable, to Sponsor(s)/Applicant(s)/Recipient(s) subject to Administrative Notice 2022-01, dated March 31, 2022 ("Notice 2022-01"), and any future amendments. The Negative Points policy is applicable to all HCD state and federal funding programs – loans and grants, administered by HCD's Divisions of State and Federal Financial Assistance. Negative points will be calculated based on the criteria outlined in Notice 2022-01 and will be applicable to all Notices of Funding Availability issued on or after the original date of Notice 2022-01 for the previous 5-year period, except when noted or amended. Such determination will be on a case-by-case basis and may use the enumerated criteria set forth in Notice 2022-01 when making such decisions. In addition, the Department reserves the right, in its sole discretion, to revoke an entity's eligible Sponsor/Applicant/Recipient status at any time based on documented serious issues with the operation, maintenance or implementation of project or program funds.
- f. Administrative Notice 23-01 ("Notice 23-01") sets forth and establishes the Department's Pooled Transition Reserve Fund Policy ("Transition Reserve Policy" or "Policy") applicable to all HCD state and federal multifamily loan programs, except in cases where this Policy conflicts with federal requirements, implementing statutory changes made under SB 948 (Chapter 667, Statutes 2002) applicable to Health and Safety Code Section 60468. Notice 23-01 takes effect as of January 1, 2023, and amends any active program guidelines and Notices of Funding Availability. Notice 23-01 applies to all HCD-awarded rental housing projects which have federally originated rental assistance or operating subsidies, or rental subsidies operated by the City and County of San Francisco and the City of Los Angeles which will close permanent financing on or after January 1, 2023. Prior to permanent loan conversion, the Sponsor shall provide updated financial documents including, but not limited to the development budget, development sources and uses, Project Based Rental Vouchers or Subsidies, Operating Subsidy, operating budget and 15-year cash-flow analysis, which are acceptable to the Department and demonstrate compliance with the Policy.
- g. No loans requiring a balloon payment prior to full amortization are allowed unless permitted by regulation, in which case the Department's affordability provisions must be in a senior lien position to the lender's deed of trust. The terms of senior loans must comply with all the underwriting standards of UMR 8310.
- h. Pursuant to Section 7305(a)(2) of the Multifamily Housing Program Final Guidelines effective March 30, 2022, as may be amended from time to time, any land lease payments shall not exceed the fair market rental value of comparable property and

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

Approved Date: 04/04/2025

Prep. Date: **TO BE ADDED**

**EXHIBIT D**

any funds set aside, borrowed, or applied to cover future land lease payments shall be discounted to the present value of these payments.

- i. Prior to permanent loan closing, the Applicant shall provide documentation, satisfactory to the Department that verifies the Project is constructed to accommodate broadband service with at least a speed of 100 megabits per second for downloading and 20 megabits per second for uploading (100/20).
- j. Prior to demolition of the structures currently present on the site, all lead-based paint shall be removed or encapsulated as required to comply with federal lead safety regulations. In addition, all asbestos-containing material shall be removed or encapsulated in compliance with federal and State regulations.
- k. No greater than 60 days after award, Applicant to provide an executed agreement with the Locality or Transit Agency that has jurisdiction of the proposed offsite infill components. The agreement should include confirmation that the offsite work will adhere to all applicable rules, regulations, codes, policies and plans enforced or implemented by the Locality or Transit Agency.
- l. No later than construction loan closing, the Applicant shall provide documentation evidencing the Recipient has the right of way or easement of sufficient duration to meet Program requirements. If the STI is within the public right of way or on public land, the Recipient shall provide an executed encroachment permit for construction of any improvements or facilities. Documentation provided is subject to Department review and approval prior to the execution of the Department grant documents, including but not limited to the Covenant.
- m. Commercial Leases. All commercial leases are subject to the Department's approval. One Hundred percent of the commercial income from the end user must flow through the project. Project leases must be at fair market value except for project service providers as approved by the Department. Borrower must fully identify the use of leased space and the tenants thereof. No HCD funds may be used to finance commercial space. For clarity, "fair market value", as that term is used in this Condition means: "The price that a willing lessor would accept on the open market and that a willing lessee would pay on the open market, to lease the property, in the absence of compulsion or inside dealing, and assuming that both the lessor and the lessee are reasonably knowledgeable about the property in question."

Affordable Housing and Sustainable Communities (AHSC) Program

Round 9 - Grant (Homeownership AHD)

NOFA Date: 03/25/2025

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