

## EXHIBIT D

### GENERAL TERMS AND CONDITIONS

#### GENERAL

##### 1. Effective Date, Commencement of Work and Completion Dates

This Agreement is effective upon approval by the Department which is signified by the signature of the Department's representative on page one of the fully executed Standard Agreement, STD 213. Recipient represents that construction of the Capital Improvement Project has not 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, subject to the expiration date specified on page one, Section 2, of this Agreement unless a written request for an extension is submitted and written approval by the Department is provided within ninety (90) days prior to the expiration date of this Agreement. Any extension to the expiration date requires an amendment to this Agreement.

##### 2. Termination

The Department may terminate this Agreement at any time for cause by giving at least fourteen (14) days' notice in writing to the Recipient. Cause shall consist of violations by Recipient of any of the terms and conditions of the Disbursement Agreement, the Covenant, and/or or this Agreement, to include without limitation those set forth in Section 47 and Section 48 of this Exhibit D. Upon termination or expiration of this Agreement, unless otherwise approved in writing by the Department, any unexpended funds received by the Recipient must be returned to the Department within fourteen (14) days of the notice of termination of this Agreement.

##### 3. Consent

The parties agree that wherever the consent of, approval of, or acceptance by the Department or the Recipient is required under this Agreement, such consent, approval, or acceptance means prior express written consent, approval, or acceptance. The consent, approval, or acceptance of either party, where required, will not be unreasonably withheld, conditioned, or delayed, unless the same is specified as being in that party's sole and absolute discretion or other words of similar import.

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**EXHIBIT D****4. Infill infrastructure Grant Documents**

In addition to this Agreement, the Recipient must execute and enter into a Disbursement Agreement, which governs the terms, disbursement and use of the Program funds, the Covenant, and other additional agreements and documents as the Department may deem reasonable and necessary to meet the objectives of the Program and the terms and conditions of this Agreement. The Department may request, and if requested, the Recipient must agree to execute and record a performance deed of trust ensuring the completion of Rental Housing Development or the Capital Improvement Project. Said performance deed of trust shall be recorded against the entire fee interest in the legal parcel underlying the project, which it ensures is being constructed.

**5. Covenant Regarding Development of Affordable Housing**

- A. Prior to the disbursement of Program funds, the Recipient, and such other parties as the Department may reasonably require, must enter into a Covenant in favor of the Department, which shall require the development and construction of the Rental Housing Development with the number of units and the number of bedrooms per unit, the extent and depth of affordability, and the Net Density, as set forth in Exhibit A and Exhibit E to this Agreement, and other uses and amenities for which points were granted to the Application, or which were used to meet threshold requirements for funding.
- B. The Covenant must be recorded against the fee interest in the parcel or parcels of real property on which the Rental Housing Development is to be located, in a lien position which complies with UMR Section 8310 and UMR Section 8315, and shall be binding on all successors, transferees, and assignees acquiring an interest in the Rental Housing Development.
- C. The Covenant shall require the continuation of the affordability of the Rental Housing Development for a period of not less than fifty-five (55) years from the date of the filing of a Notice of Completion for the Rental Housing Development.
- D. In addition to the Covenant, the Department may request, and if requested, the Recipient must execute and record, a performance deed of trust ensuring the completion of the Rental Housing Development or the Capital Improvement Project. Said performance deed of trust shall be recorded against the entire fee interest in the legal parcel underlying the project, which it ensures is being constructed, in a lien position which complies with UMR Section 8310 and UMR Section 8315. Alternatively, the Department may require that the Covenant

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contain a power of sale clause, which may be exercised if the Rental Housing Development(s) and/or Capital Improvement Project are not timely completed, or in the event of an uncured breach of this Agreement.

### 6. **Site Control**

The Recipient must have and maintain site control which complies with Section 202(l) of the Guidelines, and which is sufficient, as determined by the Department, to ensure the timely construction commencement and completion of the Capital Improvement Project and the Rental Housing Development. The Recipient must also obtain all licenses, encroachment permits, easements, and rights-of-way or other interests required for completion of the Capital Improvement Project and the Rental Housing Development and must provide the Department with evidence of such instruments prior to the first disbursement of Program funds.

### 7. **Appraisals**

Recipient shall, at the request of the Department, provide an appraisal of the real property to be acquired as part of the Capital Improvement Project or the Rental Housing Development, prepared in a form, and by a qualified appraiser, acceptable to the Department.

### 8. **Relocation Plan**

If there is or will be any residential or commercial displacement directly or indirectly caused by the Capital Improvement Project or the Rental Housing Development, or both, as defined in state law, the Recipient must provide a relocation plan to the Department for review and approval prior to the initial disbursement of Program funds. The relocation plan must comply with the requirements of state law (Gov. Code, § 7260 et seq.) and the regulations adopted by the Department (Cal. Code Regs., tit. 25, § 6000 et seq.). If the Development will not cause any displacement, the Sponsor must submit to the Department an original fully executed Indemnification and Certification (prepared by the Department) prior to execution of the Standard Agreement along with corroborating documentation to the Department for review and approval providing that there are no relocation requirements. If there is federal funding of the Development, the Sponsor must comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) In addition to actions that satisfy all statutory and regulatory requirements, the relocation plan must contain a line-item budget. 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.

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### 9. **Article XXXIV**

Recipient must submit to the Department evidence compliant with Section 300(d) of the Guidelines, and satisfactory to the Department, that the requirements of Article XXXIV of the California Constitution are inapplicable or have been satisfied as to the Rental Housing Development.

### 10. **Environmental Conditions**

The Recipient must 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 Capital Improvement Project and the Rental Housing Development, in conformance with ASTM Standard Practice E 1527, evaluating whether the Capital Improvement Project is affected by any recognized environmental conditions.
- B. Documentation and/or a certification satisfactory to the Department that all Environmental Site Assessment Report recommendations including remediation and/or mitigation work have been completed.
- C. 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.

### 11. **Compliance with State and Federal Laws, Rules, Guidelines and Regulations**

Pursuant to Section 300 of the Guidelines, Recipient agrees to comply with all State and Federal laws, rules, regulations, and guidelines (including the Guidelines) that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Capital Improvement Project and Rental Housing Development, the Recipient, its Contractors or Subcontractors, and any grant activity.

### 12. **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.

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- B. Recipient must notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Department and must 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.

### 13. **Insurance**

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.

### 14. **Change of Conditions**

Regardless of the Department's obligations to provide payments pursuant to Exhibit B to this Agreement, the Department reserves the right to evaluate the Capital Improvement Project's need for Program funds based on new information or funding sources. If the Department determines that the Program funds, or a portion thereof, are no longer necessary to complete the Capital Improvement Project, the Department may reduce the amount of the grant accordingly. If the Department determines the Capital Improvement Project or Rental Housing Development is no longer financially feasible, the grant commitment issued by the Department and this Agreement may be terminated.

### 15. **Obligations of Recipient with Respect to Certain Third-Party Relationships**

Recipient shall remain fully obligated under the provisions of this Agreement, the Disbursement Agreement, and the Covenant, regardless of designation of any third party or parties for the undertaking of all or any part of the Work related to the Capital Improvement Project and Rental Housing Development. The Recipient must comply with all lawful requirements of the Department necessary to ensure the completion, occupancy and use of the Capital Improvement Project and Rental Housing Development in accordance with this Agreement, the Disbursement Agreement and the Covenant.

### 16. **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.

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### 17. **Identity of Interests**

As a condition of disbursement, Recipient must execute a Certification & Legal Status Form (“**Certificate**”) listing all relationships constituting an identity of interest with entities providing goods or services in connection with Recipient’s performance of the Scope of Work. The Certificate shall be in a form provided by the Department. At the Department’s request, Recipient must 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 to the extent necessary to ensure compliance with Program requirements and this Agreement.

### 18. **Construction**

Each party hereto acknowledges and agrees that each has had opportunity to have independent counsel review this Agreement and each hereby fully waives the application of any law, statute or rule of construction or interpretation, including without limitation California Civil Code Section 1654, to the effect that any ambiguities are to be construed against the drafting party.

### 19. **Governing Law**

This Agreement must be construed with and be governed by the laws of the State of California. All references to codes refer to the California Codes.

### 20. **Integration**

This Agreement, together with Exhibit A through Exhibit E attached hereto, incorporating references herein, and enclosures herewith, sets forth all of the promises, agreements and understandings to date among the parties hereto with respect to the Grant(s), and there are no promises, agreements, or understandings, oral or written, express or implied, other than as set forth or incorporated herein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto in accordance with Section 21 of this Exhibit D.

### 21. **Amendment of this Agreement**

No amendment or modification of this Agreement shall be valid unless set forth in an express writing and executed by authorized representatives of all of the parties. Any amendment or modification shall become effective as of the date of the authorized

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Department representative's signature thereto or as of the date specified in the amendment.

### **DESIGN**

#### **22. Architect**

Recipient must utilize the services of an architect and/or an engineer to provide professional design and engineering services for the Capital Improvement Project and Rental Housing Development. Recipient must ensure that an architect and/or an engineer shall 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 37 of this Exhibit D. At the request of the Department, Recipient must submit all contracts for these services to the Department for its review and approval.

Additionally, prior to loan closing but after construction completion, the Recipient or Sponsor shall provide a certification of compliance with the accessibility requirements as required by the applicable Guidelines, signed by the Borrower and the project architect as well as third party documentation confirming compliance by a Certified Access Specialist (CAsp) with demonstrated experience meeting federal accessibility standards, or by an architect with demonstrated experience meeting federal accessibility standards.

#### **23. Plans and Specifications and Project Cost Estimates**

At the request of the Department, the Recipient must submit plans, specifications, and project cost estimates for the Capital Improvement Project and Rental Housing Development to the Department for its review and approval. The Recipient must construct the Capital Improvement Project and Rental Housing Development in substantial compliance with the plans and specifications, subject to any change order(s) accepted by the Department in writing where such acceptance is required.

#### **24. Reasonable Development Costs**

At the request of the Department, the Recipient must provide evidence acceptable to the Department that the total costs of the Capital Improvement Project and Rental Housing Development are reasonable and necessary for the proposed improvements. To verify cost reasonableness, the Department may require qualified third-party

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verification of cost, evidence of the competitive bidding of major cost components and appraisals.

### 25. **Adaptability and Accessibility**

The Capital Improvement Project and Rental Housing Development must 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, including without limitation the requirements set forth Section 300(b) of the Guidelines.

### 26. **Acoustics Report**

Upon request, the Recipient must provide the Department with an acoustics report for the Rental Housing Development in a form acceptable to the Department.

### 27. **Approval by Public Works Department**

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

## **CONSTRUCTION**

### 28. **Construction Contract**

Except for work performed by its own employees, the Recipient must enter into a written construction contract or contracts ("**Construction Contract(s)**") with a duly licensed and insured contractor or contractors ("**Contractor(s)**") for the construction work of the Capital Improvement Project and the Rental Housing Development. The Construction Contract(s) must 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 approval of the Department.

### 29. **Contractor's Assurance of Completion**

The Contractor(s) must provide security to assure completion of the Capital Improvement Project 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

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Construction Contract(s), and which shall be in a form and from an issuer, which is acceptable to the Department. The Performance Bond must 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 twelve (12) months after completion. The Payment Bond must 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 Capital Improvement Project and Rental Housing Development(s) and furnishing materials in connection with the Construction Contract. A Letter of Credit must 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 must be named as an additional obligee in the Bonds or an additional beneficiary under the Letter of Credit.

### 30. Prevailing Wages

Pursuant to Section 300 of the Guidelines, for the purposes of the State Prevailing Wage Law (Labor Code Sections 1720 – 1781), a Capital Improvement Project shall be considered a public work that is paid for in whole or in part out of public funds and as such is subject to the provisions of the State Prevailing Wage Law. Program funding of a Capital Improvement Project shall not necessarily, in and of itself, be considered public funding of a Rental Housing Development unless such funding is otherwise considered public funding under the State Prevailing Wage Law. It is not the intent of the Department to subject Rental Housing Development to the State Prevailing Wage Law by reason of Program funding of the Capital Improvement Project in those circumstances where such public funding would not otherwise make the Rental Housing Development subject to the State Prevailing Wage Law. Although the use of Program funds does not require compliance with federal Davis-Bacon wages, other funding sources may require compliance with federal Davis-Bacon wages. The Recipient must prepare a plan for compliance with this section, which plan shall be subject to the review and approval of the Department.

### 31. Construction Phase Information

If requested by the Department, the Recipient must provide the Department:

- A. Capital Improvement Project: Information during the construction period including but not limited to all change orders and modifications to the construction documents and all inspection reports of the Capital Improvement Project. Upon written notice to Recipient, the Department may require its advance written approval of all future change orders and modifications. Deviations from the plans

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- 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 responded to in writing within ten (10) business days of receipt by the Department. Recipient must not authorize or approve any change orders rejected by the Department where the Department's approval is required.
- B. Rental Housing Development: 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 Rental Housing Development architect and other consultants, and information relative to the Rental Housing Development income, expenses, occupancy, relocation benefits and expenses, contracts, operations and conditions of the Rental 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 responded to in writing within ten (10) business days of receipt by the Department. Recipient must not authorize or approve any change orders rejected by the Department where the Department's approval is required.

### 32. **Signage and Photographs**

- A. Recipient must place signs on the construction site for the Capital Improvement Project and Rental Housing Development stating that the Department is providing financing through the Infill Infrastructure Grant Program in an appropriate location(s), typeface and size containing the message set forth in Section 1, Provision D-1 of Exhibit E to this Agreement.
- B. The sign must 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 Department acknowledgement and logo must also be displayed in a similar size, prominence, and layout. A copy of the Department logo can be obtained by contacting the Department Contract Manager.
- 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

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its request, with copies of any photographs that may be taken of the Capital Improvement Project and the Rental Housing Development by or on behalf of the Recipient or its 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**

#### **33. Site Inspection**

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

#### **34. Capital Improvement Project and Rental Housing Development 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 Capital Improvement Project and Rental Housing Development 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 and the Disbursement 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. 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.
- 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

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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 Capital Improvement Project or the Rental Housing Development 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 Capital Improvement Project and Rental Housing Development.

### 35. 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 must provide the Department or its delegatee with any relevant information requested and must 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 (4) 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 and the Covenant, the Department may perform or cause to be performed a financial audit of any and all phases of the Capital Improvement Project or the Rental Housing Development. At the Department's request, the Recipient must provide, at its own expense, a financial audit prepared by a certified public accountant.
- D. The audit must be performed by a qualified State, Department, local or independent auditor. The Agreement for audit must include a clause, which permits access by the Department to the independent auditor's working papers.
- E. If there are audit findings, the Recipient must submit a detailed response to the Department for each audit finding. The Department will review the response and,

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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 must cause all records, accounts, documentation, and all other materials relevant to this Agreement to be delivered to the Department as depository.

### **COMPLETION OF CONSTRUCTION**

#### **36. Relocation Plan Implementation Report**

The Recipient must 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.

#### **37. Architect Certification**

Where required by the Department, the Recipient must cause the Capital Improvement Project and Rental Housing Development architect(s) or other appropriate professional to certify to the Department, in a 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.

#### **38. Cost Certification**

At the request of the Department, the Recipient must submit a Capital Improvement Project and Rental Housing Development 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) must keep and maintain records of all construction costs not representing work done under the Construction Contract and make such records available for review by the Department.

#### **39. Recorded Notice of Completion**

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

### 40. “As-Built” Plans and Specifications

Upon completion, at the request of the Department, the Recipient must submit “as-built” plans and specifications for the Capital Improvement Project and Rental Housing Development acceptable to the Department.

## RENTAL HOUSING DEVELOPMENT REQUIREMENTS

### 41. Confirmation of Permitted Housing Units

- A. Conditions precedent to the first disbursement of Program funds shall be set forth in the Disbursement Agreement and must include:
- (i) receipt of all required public agency entitlements;
  - (ii) receipt of all required funding commitments for the Rental Housing Development;
  - (iii) acquisition of an executed encroachment permit for construction of any improvements or facilities within the public right of way or on public land;
  - (iv) where necessary, acquisition of a right of way or easement, which is either perpetual, or of sufficient duration to meet Program Requirements, and which allows the Recipient to access, improve, occupy, use, maintain, repair, and alter the property underlying the right of way or easement.
- B. Conditions precedent to the final disbursement of Program funds shall be set forth in the Disbursement Agreement and must include:
- (i) a certificate of occupancy within the period established in this Agreement; and
  - (ii) evidence, to the Department’s satisfaction, of the Rental Housing Development’s proximity to amenities and transit which meets or exceeds that for which points were awarded at the application stage.

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### 42. Recipient Control of Housing Development

Recipient shall maintain a controlling interest in the Rental Housing Development for the full term of the Covenant either directly or through control of a special purpose entity which complies with UMR 8313.2.

If Recipient is a Tribal Entity that is not federally recognized as an Indian Tribe under 25 USC Section 4103(13)(B), or a Tribally Designated Housing Entity under 25 USC Section 4103(22), it must either be listed in the Bureau of Indian Affairs Office of Federal Acknowledgment Petitioner List, pursuant to 25 CFR part 83.1, and has formed and controls a special purpose entity in compliance with UMR Section 8313.2; or be an Indian tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to Government Code Section 65352.3, and that has formed and controls a special purpose entity in compliance with UMR Section 8313.2.

## REPORTING REQUIREMENTS

### 43. Reports on Capital Improvement Project

Recipient must submit, upon request of the Department, a periodic performance report regarding the construction of the Capital Improvement Project. The reports will be filed on forms provided by the Department.

### 44. Reports on Rental Housing Development

Recipient must submit to the Department periodic reports, as required by the Department, but not less than annually, describing the development, construction and occupancy of the Rental Housing Development. The report must include, but is 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.

### 45. Updated Information

Recipient must provide the Department updated documentation for any substantial change in the information previously provided relating to the Capital Improvement Project and the Rental Housing Development and the conditions described above.

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### 46. Monitoring Requirements

The Department shall perform regular monitoring of the Rental Housing Development and/or fiscal monitoring of the Grant pursuant to Section 502 of the Guidelines. The Recipient agrees to cooperate with any such monitoring and provide to the Department, and its agents and representatives, reasonable access to all files, records, documents and other information maintained in connection with the Work. The Recipient must resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department.

## REPAYMENT OF GRANT FUNDS

### 47. Breach of this Agreement

In the event of a breach or violation by the Recipient of any of the provisions of this Agreement or the Disbursement Agreement, the Department may give written notice to the Recipient to cure the breach or violation within a period of not less than thirty (30) days. If the breach or violation is not cured to the satisfaction of the Department within the specified period, the Department, at its option, may declare a default of this Agreement and the Disbursement 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 Work remains unperformed or uncompleted for costs to be paid by Program funds as provided in Exhibit B to this Agreement. 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 Capital Improvement Project in accordance with Program Requirements.
- C. The Department may seek such other remedies as may be available under this Agreement, the Disbursement Agreement, or any law.
- D. The Department may assess negative points to the Recipient pursuant to the Department's Negative Points Policy set forth in the Departments Administrative Notice No. 2022-01, dated March 31, 2022 (Amended April 3, 2023), and as may be further amended from time to time.

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## EXHIBIT D

- E. This Agreement may be cancelled by the Department under any of the following conditions:
- (i) An uncured breach or violation by Recipient of this Agreement or the Disbursement Agreement.
  - (ii) The objectives and requirements of the Program cannot be met by continuing the commitment or this Agreement.
  - (iii) Construction of the Capital Improvement Project or Rental Housing Development cannot proceed in a timely fashion in accordance with the Performance Milestones, the deadlines in Section 403 of the Guidelines, and the deadlines in the Department's Disencumbrance Policy stated in the Department's Administrative Notice No. 2022-02, dated March 30, 2022 (Amended December 19, 2022), and as may be further amended from time to time.
  - (iv) Funding or disbursement conditions have not been or cannot be fulfilled within required periods.

### 48. **Repayment of Grant Funds for Failure to Develop Housing**

Recipients will be required to repay disbursed Program grant funds where construction of residential units in the Rental Housing Development used as the basis for calculating the grant amount pursuant to Section 205(a) of the Guidelines has not received building permits within two (2) years from the date of the Program award. The Department may extend these deadlines, for a term not to exceed seven (7) years, if the Recipient demonstrates, to the satisfaction of the Department, that it has complied with the Performance Milestones described in Exhibit E to this Agreement. The amount to be repaid shall be the same proportion to the total grant amount as the number of residential units where construction has not timely commenced to the total number of designated residential units.

Program: Multifamily Super NOFA

NOFA Date: 05/18/23

Approved Date: 1/24/2024

Prep Date: XX/XX/XXXX