

EXHIBIT D

LOCAL GOVERNMENT MATCHING GRANTS (LGMG) PROGRAM **GENERAL TERMS AND CONDITIONS**

1. Effective Date, Term of Agreement, Timing, and Deadlines

- A. This Agreement, when fully executed by the Department and the Awardee, is effective upon the date of the Department representative's signature on the STD 213, Standard Agreement (such date, the "**Effective Date**").
- B. This Agreement shall terminate five (5) years after the Effective Date, as stated in Paragraph 2 of the STD 213, Standard Agreement (such date, the "**Expiration Date**").
- C. Awardee will receive the disbursement of Program funds after satisfying all conditions precedent to such disbursement, as set forth under Paragraph 2 of Exhibit B and, as necessary and applicable, under Paragraph 3 of Exhibit B and/or Paragraph 1.E – Additional Conditions Precedent to Disbursement of Exhibit E.
- D. Any expenses incurred after June 30, 2028, the Expenditure Deadline, respectively and as applicable, are not eligible for payment under the Program, unless an alternate arrangement is legally permissible and has been approved by the Department in advance and in writing.
- E. Program funds that have not been expended by the applicable Expenditure Deadline shall revert to the Department in the absence of an alternate arrangement that has been approved by the Department in advance and in writing and complies with all applicable laws and statutes.

2. Termination for Cause

The Department may terminate this Agreement for cause at any time by giving at least fourteen (14) calendar days' advance written notice to the Awardee. Upon such termination, Awardee shall return any unexpended funds to the Department within thirty (30) calendar days of the date on the Department's written notice of termination, unless the Department has approved an alternate arrangement in advance and in writing, as provided below. Such termination will not limit any other remedies that may be available to the Department under this Agreement, at law, or in equity. Cause shall consist of Awardee's breach of, or failure to satisfy, any of the terms or conditions of this Agreement. Cause includes but is not limited to the following:

- A. Awardee's failure to satisfy the conditions precedent to disbursement or to expend Program funds, as specified.

EXHIBIT D

- B. Awardee's failure to timely satisfy any of the conditions set forth in these Program General Terms and Conditions, the Selected Project-Specific Provisions and Special Terms and Conditions set forth at Exhibit E of this Agreement (including any one of the Performance Milestones), or the Award Letter.
- C. Awardee's violation of any of the Program Requirements.
- D. The Department's determination of the following:
 - 1) Any material fact or representation, made or furnished to the Department by the Awardee in connection with the Application or the Award Letter, shall have been untrue or misleading at the time that such fact or representation was made known to the Department, or subsequently becomes untrue or misleading; or
 - 2) Awardee has concealed any material fact from the Department related to the Application or the Selected Project.
- E. The Department's determination that the objectives and requirements of the Program cannot be met in accordance with applicable timeframes, as memorialized by this Agreement.

In the event of this or any other breach, violation, or default by the Awardee, the Department may give written notice to the Awardee to cure the breach, violation, or default. If the breach, violation, or default is not cured to the Department's satisfaction within a reasonable time, as determined by the Department in its sole and absolute discretion, then the Department may declare a default under this Agreement and seek any and all remedies that are available under this Agreement, at law, or in equity.

3. Cancellation

- A. It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of funds to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. In the event of funds not being available or the Awardee's failure to comply with the requirements of this Agreement, including, but not limited to the Performance Milestones in Exhibit E, the Department may, upon written notice to the Awardee, cancel this Agreement.
- B. To cancel this Agreement pursuant to this section, the Department shall give thirty (30) calendar days' advance written notice to the Awardee. The Awardee shall return any undisbursed portion of its Program award to the Department within thirty (30) calendar days from the date on the Department's written notice

EXHIBIT D

of cancellation, unless **1)** the parties have agreed upon an alternate arrangement in advance and in writing; or **2)** an alternate arrangement is necessary for one or both parties to remain in compliance with AB 140, SB 197, AB 129, or other applicable law.

4. **Eligible Activities**

Program funds awarded to the Awardee shall be applied to the Eligible Uses set forth at Exhibit A and described in greater detail at Exhibit E. 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.

5. **Performance Milestones**

Awardee shall timely satisfy and complete all Performance Milestones, as identified at Exhibit E of this Agreement.

6. **Article XXXIV**

All Selected Projects subject to Article XXXIV shall comply with Article XXXIV, Section 1 of the California Constitution, as clarified by the Public Housing Election Implementation Law (HSC Section 37000 - 37002). Article XXXIV documentation for loans underwritten by the Department shall be subject to review and approval by the Department.

Article XXXIV requires local voter approval before any state public body can develop, construct, or acquire a low-rent housing project in any manner. However, the Public Housing Election Implementation Law (HSC Section 37000 – 37002) provides clarification as to when Article XXXIV is applicable. HSC Section 37001, for example, lists a number of project types that are not considered “low-rent housing projects.”

7. **Land Donation**

Awardee shall, at the request of the Department, provide an appraisal of any real property or any interest in real property that is acquired through the transfer of title in fee from a Local Government to the State of California for activities related to development of the Selected Project. The value of the Land Donation will be the current appraised value of the property as supported by an independent third-party appraisal prepared by a Member Appraisal Institute-qualified appraiser within one year prior to the application deadline or DGS valuation.

8. **Compliance with Prevailing Wage Law**

EXHIBIT D

Awardee's project is subject to state and federal prevailing wage law. Awardee is urged to seek professional legal advice about prevailing wage law requirements and Awardee's potential obligations thereunder. Prior to disbursing the Program funds, the Department will require a certification of compliance with California's prevailing wage law, as well as all applicable federal prevailing wage law. The certification must verify that prevailing wages have been or will be paid if such payment is required by law, and that labor records will be maintained and made available to any enforcement agency upon request. The certification must be signed by Awardee and its general contractor(s).

9. Environmental Conditions

Awardee shall provide a Phase I Environmental Site Assessment ("ESA") for the project, in conformance with ASTM Standard Practice E 1527, evaluating whether the Selected Project is affected by any recognized environmental conditions. If the Phase I ESA discloses evidence of recognized environmental conditions and Awardee desires to proceed with the project, the Awardee shall provide the Department with a Phase II ESA report and any additional reports as required by the Department and in a form acceptable to the Department. Any remediation work shall be subject to Department approval. Awardee shall also provide an asbestos assessment and a lead-based paint report for the Department's approval if the Selected Project involves rehabilitation or demolition of existing improvements.

10. Insurance

Awardee shall obtain the insurance coverages listed below, as well as any additional coverages identified in UMR Section 8303 (b)(5). Awardee shall maintain such insurance coverages for either the term of this Agreement or the term of any required restrictive covenant or Regulatory Agreement ("**Regulatory Agreement**"), whichever applicable term is longer. This coverage period requirement does not apply to Builder's Risk coverage, which is only required during the performance of construction activities (including site preparations, utility improvements, early works, etc.) at the Selected Project. Awardee shall name the State of California and the Department, as well as their respective appointees, officers, agents, and employees, as additional insureds on all such policies. Such policies shall provide for notice to the Department in the event of any lapse of coverage or insurance claim thereunder. Prior to disbursement of any Program funds, Awardee shall provide evidence satisfactory to the Department of its compliance with these insurance requirements.

If Awardee is self-insured, in whole or in part, as to any of the required types and levels of coverage, the Awardee shall provide the Department with a written acknowledgment of its self-insured status prior to disbursement of any Program funds. If the Awardee abandons its self-insured status at any time after execution of this Agreement, the

EXHIBIT D

Awardee shall immediately notify the Department, and shall promptly comply with the insurance coverage requirements under the Program.

Required Insurance Coverages:

- A. Commercial General Liability Insurance
- B. Worker's Compensation and Employer's Liability Insurance
- C. Builder's Risk Insurance
 - 1) Builder's Risk coverage is only required during construction of the Selected Project

11. **Relocation**

Awardee must comply with applicable Relocation Law, which is detailed pursuant to Government Code Section 7260 et seq., the California Code of Regulations, title 25, Section 6000 et seq., and if federal law is applicable (depending on project financing), 49 Code of Federal Regulations Part 24 of the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (the "URA") (collectively referred to herein forth as "Relocation" or "Relocation Law").

Relocation Law provides important protections and assistance for displaced persons and entities affected by the acquisition, rehabilitation, or demolition of real property for government funded projects. Relocation Law ensures that those displaced individuals and entities whose real property is acquired, or who move (even if temporarily), as a direct result of projects receiving government funds, are treated fairly and equitably and receive assistance in moving from the property they occupy. The Department seeks to ensure that displaced persons, which includes tenants, businesses and homeowners, do not suffer disproportionately as a result of programs designed for the benefit of the public as a whole.

To ensure that displaced persons and entities do not suffer a disproportionate impact as a result of projects which benefit the public, all notices to vacate and relocation services must be provided to them in accordance with applicable law. In addition, before the LGMG award will be disbursed, Awardee must have either:

- A. A Department-approved relocation plan; or
- B. A Department-issued Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement, which has been duly executed by the Awardee and approved by the Department.

EXHIBIT D

12. **Site Control**

Unless and except as otherwise expressly approved in writing by the Department or provided at Exhibit E to this Agreement, the Awardee shall have control of the property at all times during the Agreement term. The status and nature of the Awardee's title and interest in the property must be acceptable to the Department, to include the Department's form lease rider.

13. **Adaptability and Accessibility**

The Selected Project shall comply with all applicable federal, state and local laws regarding adaptability and accessibility, including, without limitation, the requirements set forth in Chapter 11a & 11b of the California Building Code.

14. **Title Status and Reports**

Awardee shall provide a current title report for the real property on which the Selected Project is located. If Awardee's interest in the property is a leasehold, then Awardee shall provide a current title report for the leasehold interest and the fee interest. As set forth and specified at Exhibit B of this Agreement, Awardee shall provide such title report or documentation of title status prior to disbursement of any Program funds.

15. **Title Insurance**

Upon construction close or at initial disbursement, whichever comes later, Awardee shall provide evidence of title insurance and an ALTA As-Built Survey that are acceptable to the Department. The condition of title, the insurer, the liability amount, the form of policy, and the endorsements shall be subject to Department approval. The policy shall insure that Awardee holds good and marketable title.

16. **Community Engagement Plan**

Awardee shall submit a community engagement plan to the Department for its review and approval. Such community engagement plan shall incorporate strategies to identify key stakeholders and community residents, engagement activities, and dissemination of information.

17. **Affirmative Fair Housing Marketing Plan and Fair Housing Compliance**

Awardee shall develop and implement an affirmative fair housing marketing plan that is satisfactory to the Department. Appropriate aspects of the initial plan shall be incorporated into the ongoing management plan to ensure positive outreach and informational efforts to those who are least likely to know about and apply for housing. Awardee is encouraged to refer to the guidelines for Affirmative Fair Housing Marketing

EXHIBIT D

Plans issued by the U.S. Department of Housing and Urban Development. Awardee shall comply with all applicable state and federal fair housing laws.

18. **Compliance with Title VI of the Civil Rights Act of 1964**

Awardee and any of its contractors, subcontractors, successors, transferees, and assignees shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the U.S. Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the U.S. Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.

19. **Nondiscrimination**

Statutes and regulations prohibiting discrimination are applicable to this Agreement and include, without limitation, the following:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and the U.S. Department of the Treasury's implementing regulations at 31 CFR Part 22;
- B. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.);
- C. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
- D. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.);
- E. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.); and
- F. The State of California nondiscrimination statutes, regulations, and standards set forth in Exhibit D of this Agreement.

Awardee shall adopt a written nondiscrimination policy requiring that no person shall, on the grounds of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition, genetic information, citizenship, primary language, immigration status (except where explicitly prohibited by federal law),

EXHIBIT D

arbitrary characteristics, and all other classes of individuals protected from discrimination under federal or state housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with Program funds.

20. **Awardee Acknowledgment of the Pet Friendly Housing Act of 2017**

By executing this Agreement, Awardee acknowledges that the Pet Friendly Housing Act of 2017 (Health & Safety Code, § 50466) requires each housing development, if it is financed on or after January 1, 2018 pursuant to Division 31 of the Health and Safety Code, to authorize a resident of the housing development to own or otherwise maintain one or more common household pets within the resident's dwelling unit, subject to applicable state laws and local governmental ordinances related to public health, animal control, and animal anticruelty.

21. **Final Certificate of Occupancy**

Awardee shall provide a final certificate of occupancy (or an equivalent form of occupancy certification or approval) issued by the agency having jurisdiction over such certificates.

22. **Occupancy**

The Assisted Units shall be occupied by residents who meet the Program's rent and/or occupancy restrictions that are subject to a California Tax Credit Allocation Committee ("TCAC") Regulatory Agreement, and all units subject to similar long-term, income-or occupancy-based restrictions imposed by other public agencies, and such units shall be in decent, safe, and sanitary condition at the time of their occupancy.

23. **Restrictive Covenants and Regulatory Agreements**

A restrictive covenant, Regulatory Agreement, or similar use restriction shall be recorded against the Selected Project real property, depending on the Selected Project type for a period of ninety-nine (99) years.

All use restrictions shall require integration of the Assisted Units within all entrances, common areas, and buildings that comprise the Selected Project.

All use restrictions shall include occupancy and rent restrictions that maintain the Selected Project's accessibility to the Assisted Units over the full term of the use restriction.

EXHIBIT D

All use restrictions are subject to the advance written approval of the Department, and shall be acceptable to the Department in form, substance, and priority. Project-specific requirements and deadlines are set forth at Exhibit E of this Agreement.

24. Restrictions on Sales, Transfers, and Encumbrances

Awardee shall not, for the duration of this Agreement, sell, assign, transfer, or convey the Selected Project, or any interest therein or portion thereof, without the express prior written approval of the Department.

25. Retention, Inspection, and Audit of Records

Awardee is responsible for maintaining records which fully disclose the activities funded by the Program. Awardee shall retain all records for a period of three (3) years after the expiration of this Agreement, unless a longer retention period is stipulated. If any litigation, claim, negotiation, audit, monitoring, inspection or other action commences during this required retention period, all records must be retained until a full and final resolution of the action.

The Department, as well as its appointees, employees, agents, and delegates, shall have the right to review, obtain, and copy all records pertaining to performance under this Agreement. Awardee shall provide any relevant information requested, and shall permit access to its premises, upon reasonable notice and during normal business hours, for the purpose of interviewing employees and inspecting and copying books, records, accounts, and other relevant material.

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 Selected Project. At the Department's request, the Awardee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The audit shall be performed by a qualified state, local, independent, or Department auditor. Where an independent auditor is engaged, the audit services agreement shall include a clause which permits the Department to have access to the independent auditor's relevant papers, records, and work product.

If there are audit findings, the Awardee shall submit a detailed response to the Department for each audit finding. The Department will review the response. If the Department determines, in its sole and absolute discretion, that the response is satisfactory, the Department will conclude the audit process and notify the Awardee in writing. If the Department determines, in its sole and absolute discretion, that the response is not satisfactory, the Department will contact the Awardee, in writing, and explain the action required to cure any audit deficiencies. Such action could include the repayment of ineligible costs or other remediation.

EXHIBIT D

If so directed by the Department upon the termination or expiration of this Agreement, the Awardee shall deliver all records, accounts, documentation, and other materials that are relevant to this Agreement to the Department as depository.

26. **Site Inspection**

The Department reserves the right, upon reasonable notice, to inspect the Selected Project to determine whether it meets the Program Requirements. If the Department reasonably determines that the site is not acceptable for the Selected Project in accordance with the Program Requirements, the Department reserves the right to rescind the award and the Program. Nothing in this paragraph is intended to create or imply any obligation of the Department to inspect the Selected Project.

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

Awardee agrees to comply with all state and federal laws, rules, guidelines, and regulations that are applicable to the Selected Project, including those that pertain to construction, health and safety, labor, fair employment practices, and equal opportunity.

28. **Updated Information**

If there is any change in the information that has been provided to the Department, Awardee shall promptly provide the Department with updated documentation (e.g., updated sources and uses). All changes shall be subject to Department approval. In addition, Awardee shall promptly notify the Department, in writing, of any changes in Awardee or co-awardee organization, authorization, or capacity.

29. **Survival of Obligations**

The obligations of the Awardee, as set forth in this Agreement, shall survive the termination or expiration of this Agreement.

30. **Litigation**

Awardee shall 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 shall take such action with respect to the claim or action as is consistent with the terms of this Agreement, the Program Requirements, the interests of the Department, and the objectives of the Program.

31. **Entire Agreement; Severability**

EXHIBIT D

This Agreement constitutes the entire agreement between the Awardee and the Department. All prior representations, statements, negotiations and undertakings with regard to the subject matter hereof are superseded hereby. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

32. **Modification or Waiver under AB 1010**

The Department reserves the right to waive or modify any requirement under this Agreement, or any Program Requirement, as authorized by and in accordance with Assembly Bill No. 1010 (Chapter 660, Statutes of 2019) (“**AB 1010**”), which is codified at Health and Safety Code section 50406, subdivision (p).

33. **Waivers**

No waiver of any breach, violation, or default under this Agreement shall be held to be a waiver of any other or subsequent breach or violation thereof or default thereunder. The Department’s failure, at any time, to enforce the provisions of this Agreement or to require the Awardee’s performance under this Agreement shall in no way be construed as a waiver of such provisions or performance, and it shall not affect the validity of this Agreement or the Department’s right to enforce this Agreement.

34. **Single Audit Requirements**

Awardee is responsible for complying, as necessary, with the Single Audit Act and its implementing regulation at 2 Code of Federal Regulations part 200, subpart F regarding audit requirements.

35. **Disputes**

In the event of any conflict between this Agreement and any Awardee documents or side agreements, this Agreement and the Program Requirements shall prevail, are applicable, and shall be enforceable by the Department even if the Department provided review or approval of such documents and side agreements.

36. **Consent**

The parties agree that wherever the consent or approval of the Department or Awardee is required under this Agreement, such consent or approval shall not be unreasonably

EXHIBIT D

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.

37. **Awardee Liability**

Awardee shall remain liable to the Department for performance under this Standard Agreement and compliance with all Program Requirements regardless of any Department-approved transfer or assignment of interest, or of any designation of a third party for the undertaking of all or any part of the Scope of Work. Likewise, each co-awardee shall remain jointly and severally liable to the Department for performance under this Agreement and compliance with all Program Requirements regardless of any Department-approved transfer or assignment of interest; any designation of a third party for the undertaking of all or any part of the Scope of Work.

38. **Defense and Indemnification**

Awardee agrees to defend, indemnify, and hold harmless the Department, and its appointees, agents, employees, and officers, from any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), which may arise in connection with Awardee's use of the Program funds and performance under this Agreement. If any attorney, including the California Attorney General, is engaged by the Department to enforce, construe, or defend any provision of this paragraph, with or without the filing of any legal action or proceeding, Awardee shall, individually or jointly, pay to the Department, immediately upon demand, the amount of all attorneys' fees and costs incurred by the Department in connection therewith.

39. **Time Is of the Essence**

Time is of the essence under this Agreement, and in the performance of every term, covenant, and obligation contained herein.