

EXHIBIT D

IIG GENERAL TERMS AND CONDITIONS

GENERAL

1. Effective Date, Commencement of Work and Completion Dates

This Agreement is effective upon approval by the Department representative's signature on page one of the fully executed Standard Agreement, STD 213. The recipient represents and warrants that construction of the Capital Improvement Project was not commenced as of the deadline for submittal of applications set forth in the Phase II Solicitation. The Recipient agrees that the Work shall be completed as specified in this Agreement, subject to the termination date specified on page one, number two, of this Agreement, unless a written request for an extension is submitted and the Department grants approval in writing at least ninety (90) days prior to the termination or expiration date of this Agreement. Any extension to the termination or expiration date shall require 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 terms and/or special conditions of this Agreement, to include without limitation Section 49 of this Exhibit D. Unless otherwise approved in writing by the Department, upon termination or expiration of this Agreement, any unexpended funds received by the Recipient must be returned to the Department within fourteen (14) days of the written notice of termination.

3. Infill Infrastructure 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 execute and record a performance deed of trust ensuring the completion of Housing Development(s) or the Capital Improvement Project. Said performance deed of trust shall be recorded against the entire legal parcel underlying the Project, which it ensures is being constructed.

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EXHIBIT D**4. Covenant**

Prior to the disbursement of Program funds, the Recipient, and such other parties as the Department may reasonably require, shall execute a Covenant, which shall require the development and construction of the Housing Development(s) with the number of units and the number of bedrooms per unit, the affordability restrictions, the net density described in Exhibit E under Provision A-E.2, and having such other uses and amenities for which points were granted to the Application, or which were used to meet threshold requirements for funding. The Covenant shall be recorded against fee title of the parcel or parcels of real property on which each Housing Development is to be located and shall be binding on all successors, transferees, and assignees acquiring an interest in the Housing Development(s) as follows:

- A. For rental Housing Development(s), the Covenant shall require the continuation of the affordability of the Housing Development(s) for a period of not less than fifty-five (55) years from the date of the filing of a Notice of Completion for the Housing Development(s).
- B. For homeownership Housing Development(s), the Covenant shall require the continuation of the affordability for a period of not less than thirty (30) years from the date of the filing of a Notice of Completion for the Housing Development(s). Recipient must ensure the affordability of homeownership units through a resale restriction or equity sharing upon resale.
- C. In addition to the Covenant, the Department may request, and if requested, the Recipient shall execute and record a performance deed of trust ensuring the completion of the Housing Development(s) or the Capital Improvement Project. Said performance deed of trust shall be recorded against the entire legal parcel underlying the object, which it ensures is being constructed. Alternatively, the Department may require that the Covenant contain a power of sale clause, which may be exercised in the event that the Housing Development(s) or Capital Improvement Project are not timely completed, or in the event of an uncured breach of this Agreement.

5. Reliance on Developer(s)

If Recipient is relying on one or more Developers to develop, construct, own, and operate the Housing Development(s), Recipient is solely responsible for

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reviewing Developer's plans, specifications, contracts, and all other documents generated in connection with the Housing Development(s) and ensuring they are in compliance with Program Requirements and Performance Milestones

6. Site Control

- A. The Recipient and/or the Developer must have and maintain site control which complies with Sections 203 and 204 of the Phase II Solicitation, and which the Department determines to be sufficient, to ensure the timely commencement and completion of the Capital Improvement Project and the Housing Development(s). The Recipient shall also obtain all licenses, easements and rights-of-way or other interests required for completion of the Capital Improvement Project and the Housing Development(s) and provide evidence of such instruments prior to the first disbursement of Program funds.
- B. If the Recipient's or the Developer's site control is a leasehold, the lease must comply with 25 C.C.R. § 8316. Recipient must provide a copy of the ground lease for the Department's review and approval. The lessor and lessee will be required to sign the Department's standard lease rider which shall be recorded against the fee interest in the property subject to the leasehold.

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 Housing Development(s), 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 development of the Capital Improvement Project or the Housing Development(s), or both, as defined in state law, the Recipient shall provide a relocation plan conforming to the requirements of state law and regulations issued by the Department in Subchapter 1 (commencing with Section 6000) of Chapter 6 of Division 1 of Title 25 of the California Code of Regulations. The relocation plan shall be subject to the review and approval of the Department prior to the initial disbursement of Program funds. In addition to actions that satisfy the regulatory requirements, the relocation plan shall contain a line-item

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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.

9. Article XXXIV

The Recipient shall submit to the Department evidence satisfactory to the Department that the requirements of Article XXXIV of the California Constitution are inapplicable or have been satisfied as to the Housing Development(s).

10. Environmental Conditions

The Recipient shall, prior to initial distribution, 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 Housing Development(s), 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. All Mitigation requirements required as a result of the Final Environmental Impact Report (“EIR”) or a 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

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 Capital Improvement Project and Housing Development(s), the Recipient, its Contractors or Subcontractors, and any grant activity, including the requirements set forth in section 500 of the Phase II Solicitation.

12. Litigation

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- A. The provisions of this Agreement shall be severable. 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.
- 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 Department 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.

13. 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.

14. Change of Conditions

Notwithstanding the Department's obligations to provide payments pursuant to Exhibit B hereof, 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 that the Capital Improvement Project or Housing Development(s) is no longer financially feasible, the Department may terminate this Agreement and the grant commitment issued by the Department.

15. 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 Capital Improvement Project and Housing Development(s) with respect to which assistance is being provided under this Agreement. Recipient's contracts with such third parties must require that the Department be put on notice of any changes and delays which will put the project out of compliance with Performance Milestone deadlines. The Recipient shall comply with all lawful requirements of the Department necessary to ensure the completion, occupancy and use of the Capital Improvement Project and Housing Development(s) in accordance with this Agreement.

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EXHIBIT D**16. Waivers**

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The Department's failure 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 as a waiver of such provisions nor affect the validity of this Agreement or the right of the Department to enforce these provisions.

17. Identity of Interests

As a condition of disbursement, Recipient shall 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 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 to the extent necessary to ensure compliance with Program requirements and this Agreement.

DESIGN**18. Architect**

The Recipient shall utilize the services of an architect and/or an engineer to provide professional design and engineering services for the Capital Improvement Project and Housing Development(s). Recipient must ensure that an architect and/or an engineer 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 35, of this Exhibit D. At the request of the Department, Recipient shall submit all contracts for these services to the Department for its review and approval.

Additionally, after construction completion, but prior to conversion to permanent financing, the Recipient shall provide to the Department a certification of compliance with the accessibility requirements of Section 500(f) of the Phase II Solicitation, signed by the Recipient or Developer and the project architect as well as third party documentation confirming compliance by a Certified Access

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Specialist (CAsp) with demonstrated experience meeting federal accessibility standards, or by an architect with demonstrated experience meeting federal accessibility standards.

19. Plans and Specifications and Project Cost Estimates

At the request of the Department, the Recipient shall submit for the Department's review and approval all plans, specifications, and project cost estimates for the Capital Improvement Project and Housing Development(s). The Capital Improvement Project and Housing Development(s) 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.

20. Reasonable Development Costs

At the request of the Department, the Recipient shall provide evidence acceptable to the Department that the total costs of the Capital Improvement Project and Housing Development(s) are reasonable and necessary for the proposed improvements. To verify cost reasonableness, the Department may require qualified third-party verification of cost, or evidence of the competitive bidding of major cost components and appraisals.

21. Adaptability and Accessibility

The Capital Improvement Project and Housing Development(s) 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, including accessibility requirements set forth at Section 500(f) of the Phase II Solicitation.

22. Acoustics Report

Upon request, the Recipient shall provide the Department with an acoustics report for the Housing Development(s) in a form acceptable to the Department.

23. 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.

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EXHIBIT D**CONSTRUCTION****24. 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 work of the Capital Improvement Project and the Housing Development(s). 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 prior written approval of the Department.

25. Contractor's Assurance of Completion

The Contractor(s) shall 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 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 (100%) 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 shall be in an amount at least equal to 100 percent (100%) 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 Housing Development(s) and furnishing materials in connection with the Construction Contract. A Letter of Credit shall be in an amount equal to at least 20 percent (20%) 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.

26. Broadband

Recipient shall ensure that the Housing Development(s) is physically capable of accommodating broadband service with at least a speed of 25 megabits per second for downloading and 3 megabits per second for uploading. Internet Service and its ongoing fee are not required.

27. Prevailing Wages

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For the purposes of the State Prevailing Wage Law (Labor Code Sections 1720 – 1781), a grant under the Program shall be considered public funding for the construction, rehabilitation, demolition, relocation, preservation, or other physical improvement of the Capital Improvement Project and 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 Housing Development(s) unless such funding is otherwise considered public funding under the State Prevailing Wage Law. It is not the intent of the Department to subject Housing Development(s) 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 Housing Development(s) 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 shall prepare a plan for compliance with this section, which plan shall be subject to the review and approval of the Department.

28. Construction Phase Information

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

- A. 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 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 10 (ten) 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.
- B. 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 Housing Development(s) architect and other consultants, and information relative to the Housing Development(s) income, expenses, occupancy, relocation benefits and expenses, contracts, operations, and conditions of the Housing Development(s). Upon written notice to Recipient, the Department may require its advance written approval of all future change orders and modifications. Deviations

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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 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.

29. Signage and Photographs

Recipient shall place signs on the construction site for the Capital Improvement Project and Housing Development(s) 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 Exhibit E under provision D-E.1.

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 Department acknowledgement and logo shall also be displayed in a similar size and layout. A copy of the Department logo can be obtained by contacting the Department Contract Manager.

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 Capital Improvement Project and the Housing Development(s) 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

30. 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 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 Phase II Solicitation, the Department reserves the right to cancel its funding commitment and this Agreement.

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31. Capital Improvement Project and Housing Development(s) 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 Housing Development(s) to ensure that the construction is being and has been performed in accordance with the applicable Federal, State, and/or local requirements, the Phase II Solicitation 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.
- 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 Capital Improvement Project or the Housing Development(s) 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 Housing Development(s).

32. Audit/Retention and Inspection

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- 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 (4) years after recordation of the Notice of Completion of the Housing Development, 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 Capital Improvement Project or the Housing Development(s). 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, 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.

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COMPLETION OF CONSTRUCTION

33. 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.

34. Architect Certification

Where required by the Department, the Recipient shall cause the Capital Improvement Project and Housing Development(s) 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.

35. Cost Certification

At the request of the Department, the Recipient shall submit a Capital Improvement Project and Housing Development(s) 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 construction costs not representing work done under the Construction Contract and to make such records available for review by the Department.

36. Recorded Notice of Completion

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

37. “As-Built” Plans and Specifications

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

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HOUSING DEVELOPMENT(S) REQUIREMENTS

38. Confirmation of Permitted Housing Units

Conditions precedent to the first disbursement of Program funds shall include receipt of all required public agency entitlements. The housing units to be developed in the Housing Development(s) must be completed, as evidenced by receipt of a certificate of occupancy, within the period established in this Agreement.

39. Proximity to Amenities

To ensure the Recipient's Housing Development(s) meets or exceeds the proximity to amenities proposed in the Application, the Recipient shall submit evidence to the Department for approval prior to the final disbursement of funds that the amenities will be in service and located in distances consistent with representations in the Application when the Housing Development(s) is completed.

40. Access to Transit

To ensure the Recipient's Housing Development(s) meets or exceeds the access to transit distance proposed in the Application, the Recipient shall submit evidence to the Department for approval prior to the final disbursement of funds that the transit stations or major transit stops meet the definitions in Section 102 of the Phase II Solicitation. The evidence shall substantiate completion of the transit stations identified in the Application no more than five years from the deadline for submittal of applications set forth in the Phase II Solicitation, and pursuant to the definition of Transit Station as set forth in the Phase II Solicitation in Section 102.

41. Fiscal Integrity

If Recipient is relying on a Developer or Developers to own and operate the Housing Development(s), the contract between the Recipient and Developer(s) must require the Housing Developments to have, and continue to have, Fiscal Integrity (as that term is defined in the Phase II Solicitation) consistent with planned rents in the units subject to affordability restrictions imposed by this Agreement.

EXHIBIT D**42. Affirmatively Furthering Fair Housing**

Recipient must develop, own, and operate the Housing Development(s) in a manner which is consistent with Affirmatively Furthering Fair Housing as that term is defined in Section 102 of the Phase II Solicitation. If Recipient is relying on Developer(s) to develop, own, and operate the Housing Development(s), Recipient must contractually obligate the Developer(s) to do so in a manner which is consistent with Affirmatively Furthering Fair Housing.

REPORTING REQUIREMENTS**43. Reports on Capital Improvement Project**

Recipient shall submit, upon request of the Department, a periodic performance report regarding the construction of the Capital Improvement Project, including, but not limited to, substantiation of grant expenditures and housing outcomes, including levels of affordability as provided in the Application. The reports will be filed on forms provided by the Department.

44. Reports on Housing Development(s)

Recipient and all Developers 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 Housing Development(s). 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 Phase II Solicitation. The reports will be filed on forms provided by the Department.

45. Updated Information

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

46. Monitoring Requirements

The Department shall perform regular monitoring of the Housing Development(s) and/or fiscal monitoring of the grant pursuant to Section 702 of the Phase II Solicitation. The Recipient agrees to cooperate with any such monitoring and

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provide reasonable access to all Capital Improvement Project 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

47. Breach of this Agreement

In the event of a breach or violation by the Recipient of any of the provisions of this 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 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 Work for costs to be paid by Program funds as provided in Exhibit B 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 Capital Improvement Project in accordance with Program requirements.
- C. The Department may seek such other remedies as may be available under this Agreement or in law or equity.

48. Cancellation

This Agreement may be cancelled by the Department under any of the following conditions:

- A. An uncured breach or violation by Recipient of this Agreement or the Disbursement Agreement.
- B. The objectives and requirements of the Program cannot be met by continuing the commitment or this Agreement.
- C. Construction of the Capital Improvement Project or Housing Development(s) cannot proceed in a timely fashion in accordance with the Performance Milestones in Exhibit A of this Agreement.

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Phase II Application Solicitation: 03/15/2023, Amended 03/22/2023

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Prep. Date: [DATE INSERTED WHEN SA IS CREATED]

EXHIBIT D

D. Funding or disbursement conditions have not been or cannot be fulfilled within required periods.

49. 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 Housing Development(s) used as the basis for calculating the grant amount pursuant to Section 103 of the Phase II Solicitation has not received building permits within four (4) years from the date of the Program grant award. 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.