Affordable Housing Program Subsidy Agreement For Rental Project

The Federal Home Loan Bank of Des Moines ("Bank"), ("member"), ("project sponsor"), and ("project owner") enter into this *Affordable Housing Program Subsidy Agreement For Rental Project* ("Agreement"), effective December 9, 2022 which sets forth the respective duties and obligations of the Bank, member, project sponsor and project owner with regard to the approval and funding of the member's Affordable Housing Program ("AHP") Application ("Application") by the Bank. Throughout this Agreement, the term "AHP Subsidy" or "subsidy" means the funds awarded by the Bank under this Agreement.

This Agreement shall be binding upon the parties and upon any successor in interest to the parties.

1. The member, the project sponsor and the project owner shall be bound by the terms and conditions governing the approval and funding of the Application, including any and all representations made in said Application. Certain of the Application's features are as follows:

   Project Name:
   Project Number:
   Member Number:
   Amount of AHP Subsidy:
   Total Units:
   Targeting Units:

xxx	Units below 50 percent median income
xxx	Units between 51 to 60 percent median income
xxx	Units between 61 to 80 percent median income
xxx	Units above 80 percent median income

   Retention Period: 15 years from the date of project completion.

   Final approval of the AHP Subsidy is subject to the following condition(s):

   AHP Subsidy Draw Down, Use and Extensions:

   (a) 12-month Performance Date: **December 9, 2023**
   The AHP Subsidy must be likely to be drawn down by the project or used by the project to obtain other financing commitments within twelve (12) months of the date of the Bank's approval of the Application, as determined at the Bank's sole discretion.

   (b) 36-month Performance Date: **December 9, 2025**
   The Bank will, at its sole discretion, determine whether to extend the time period allowed for expenditure of the AHP Subsidy and project completion. Any extension granted will be limited to the time period necessary to address the specific project contingency. The Bank shall cancel its approval of the project and cancel the subsidy if an extension is not granted. All subsidies already advanced at the time of the Bank's cancelation of project approval shall be returned to the Bank.

2. *Notification of Applicable Laws and Regulations.* Member, project sponsor and project owner acknowledge that they have been notified of and agree to be bound by (i) the Federal Home Loan Bank Act, the rules, regulations, guidelines and statements of policies of the Federal

Housing Finance Agency ("FHFA") as may be in effect from time to time, or the regulations in effect from time to time of any successor in interest to the FHFA, as such Act and rules and regulations are incorporated into this agreement pursuant to 12 CFR§ 1291.15(c), and (ii) the AHP guidelines and requirements of the Bank or any successor in interest to the Bank as may be in effect from time to time. Member, project sponsor and project owner agree that no modifications will be made to the project's specifications, as set forth in the Application, without the prior written approval of the Bank. To the extent the FHFA's applicable regulations are inconsistent with any term or provision of this Agreement; said regulations shall govern the conduct and obligations of the parties.

3. *Funding of AHP Subsidy*. The AHP Subsidy shall be used as set forth in the Application approved December 9, 2022. Before funding, throughout the construction period and one (1) year thereafter, the Bank shall determine whether the project is operationally feasible, in accordance with the Bank's project feasibility guidelines. In order to ensure that the approved level of AHP Subsidy from the Bank is still warranted at the actual funding date, and one (1) year thereafter, in conformity with the requirements of the FHFA's applicable regulation, the Bank will evaluate the AHP Subsidy level and will only fund that portion of the AHP Subsidy deemed necessary by the Bank to fund the project.

4. *AHP Subsidy pass-through.* The member shall pass on the full amount of the AHP Subsidy to the project for which the subsidy was approved.

5. *Use of AHP Subsidy by the member.* The member shall use the AHP Subsidy in accordance with the terms of the member's approved Application for the subsidy (including, for a period of one (1) year after the completion of construction, verifying that all services committed to and credited for scoring purposes have been continued), the requirements of the FHFA's applicable regulations, and the Bank's policies and procedures.

6. *Use of AHP Subsidy by the project.* The project sponsor and project owner agree to use the AHP Subsidy in accordance with the terms of the member's approved Application for the subsidy, the requirements of the FHFA's applicable regulations, and the Bank's policies and procedures.

7. *Project sponsor qualifications.* The project sponsor must certify at application, disbursement, and Project Completion Reporting that it meets the project sponsor qualifications criteria established by the Bank's policies and procedures and that it has not engaged in, and is not engaging in, covered misconduct as defined by in FHFA's Suspended Counterparty Program regulation (12 CFR part 1227).

8. *Remedies for Noncompliance with AHP Application Commitments*

   (a) *Elimination of project noncompliance –*

      i. *Cure.* The Bank shall notify the project sponsor in writing of project noncompliance with the commitments set forth in the project's AHP Application. The project sponsor or owner may cure the noncompliance within the time to cure specified in the written notice of noncompliance. If the project sponsor or owner fails to cure the noncompliance to the satisfaction of the Bank, in its sole discretion, within the time set forth in the notice, the Bank may require project modification in accordance with paragraph (ii) of this section or the repayment of AHP Subsidy to the Bank, if project modification is not feasible.

      ii. *Project modification.* The Bank shall determine, in its sole discretion, whether the circumstances of the project noncompliance can be eliminated through a modification of the terms of the AHP Application pursuant to FHFA regulations and AHP program requirements. Upon notice from the Bank of the need for project modification, the project sponsor or owner agree to modify the project as required by the Bank within the time specified by the Bank.

9. *Recovery of subsidy for member noncompliance.* The member shall repay to the Bank the amount of any AHP Subsidy (plus interest, if appropriate) not used in compliance with the commitments or terms in the member's AHP application or applicable FHFA regulations as a result of the actions or omissions of the member.

10. *AHP Subsidy not necessary.* To the extent not recovered and repaid to the Bank pursuant to paragraph 8 above, the project owner or project sponsor shall repay directly to the Bank that portion of the AHP Subsidy that the Bank determines, based upon its periodic review or monitoring of the project, is not, or was not, necessary for the project. If delegated by the Bank, the member shall recover from the project owner or project sponsor, as appropriate, and repay to the Bank that portion of the AHP Subsidy that the Bank determines, based upon its periodic review or monitoring of the project, is not, or was not, necessary for the project; provided, however, that such repayment is pursuant to paragraphs 8 and 9 above.

11. *Project monitoring.* The member, project sponsor and project owner shall comply with the applicable monitoring requirements as established by the Bank's policies and procedures pursuant to FHFA regulations.

12. *Satisfactory progress.* During the period of construction or rehabilitation of the project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion of the project. The project sponsor and project owner must report to the Bank, at least semi-annually, on the status of the project. The project owner, project sponsor and the member agree to fully cooperate with the Bank in effectuating off-site and on-site reviews of the project and in providing to the Bank any project documentation periodically required under the applicable FHFA regulations and this Agreement.

13. Within one-hundred fifty (150) days after the first anniversary of the project completion date, the project owner must:

    (a) Certify to the member and the Bank that the services and activities committed to in the Application have been provided in connection with the project;

    (b) Provide a list of actual tenant rents and incomes to the member and the Bank and certify that the tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the Application and in compliance with the applicable FHFA Regulations as amended from time to time.

    (c) Maintain documentation regarding tenant rents and incomes for review by the member or the Bank, to support such certifications.

    (d) Provide the Bank with acceptable documentation, as determined in the Bank's sole discretion, that the:

        i. AHP Subsidy was used for eligible and approved purposes;
        ii. Project's actual costs were reasonable and customary in accordance with the Bank's feasibility guidelines; and
        iii. AHP Subsidy was necessary for the financial feasibility of the project as currently structured.

14. In the second year after completion of the project and annually thereafter until the end of the project's retention period, the project owner must:

    (a) Certify to the Bank that the:

        i. Project remains habitable and suitable for occupancy;
        ii. Tenant rents and incomes are in compliance with the rent and Income Targeting commitments made in the AHP application;

iii. Project remains financially feasible, does not have excess vacancy, and is current on debt payments, taxes and insurance;
iv. Project ownership has not changed;
v. Project has not been sold or refinanced;
vi. Project is in compliance with its commitments to other funding sources; and
vii. Any other information that adversely affect the ongoing operations of the project.

(b) Maintain documentation regarding tenant rents and incomes for review by the Bank, to support such certifications.

15. *Transfer of AHP obligations:*

(a) *To another member.* The member shall make best efforts to transfer its obligations under the approved Application for AHP Subsidy and this Agreement to another member in the event of its loss of membership in the Bank, prior to the Bank's final disbursement of AHP subsidies.

(b) *To a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP Subsidy, and where the member received an AHP subsidized advance, the nonmember assumes such obligations until prepayment or orderly liquidation by the nonmember of the subsidized advance.

16. *Rental projects – required provisions for retention agreements.* The member shall ensure that an AHP-assisted rental project is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(a) *Income and rent commitments.* The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the approved AHP Application for the duration of the AHP 15-year retention period;

(b) *Notice.* The Bank and member shall be given notice of any sale, transfer, assignment of title or deed, or refinancing of the project by the project owner occurring during the retention period;

(c) *Repayment of subsidy; exceptions.* In the case of a sale, transfer, assignment of title or deed, or refinancing of the project by the project owner during the retention period, the full amount of the AHP Subsidy received by the project owner shall be repaid to the Bank, unless one of the following exceptions applies:

i. The project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP Application for the duration of the AHP 15-year retention period, or

ii. If authorized by the Bank, in its discretion, the households are relocated, due to exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP Application for the remainder of the AHP 15-year retention period; and

(d) *Termination of income and rent restrictions.* The income-eligibility and affordability restrictions applicable to the project shall terminate after foreclosure or upon transfer in lieu of foreclosure.

The AHP retention period will end 15 years after the date of project completion.

17. *Lending of AHP direct subsidies.* If a member, project sponsor or project owner lends AHP direct subsidy to a project, any repayments of principal, payments of interest, or repayments of the AHP Subsidy received by the member, project sponsor or project owner must be paid forthwith to the Bank.

18. *Reporting of material changes.* The member, project sponsor and project owner agree to promptly report to the Bank any material changes in the financial structure of the project, including but not limited to, any new sources of funds, failure to receive other project-related funds and compensated tax credit utilization, or any other material changes in the project's scope and terms. The Bank retains the right to re-evaluate the need for the AHP Subsidy in light of any such material changes and may make such modifications thereto, including the amount of AHP Subsidy, as it deems appropriate in its sole discretion.

19. *LIHTC noncompliance notice.* The member, project sponsor and project owner shall comply with the applicable monitoring requirements as established by the Low Income Housing Tax Credit. The member, project sponsor and project owner shall provide prompt written notice to the Bank if the project also received LIHTC and the project is in material and unresolved noncompliance with the LIHTC income targeting or rent requirements at any time during the AHP 15-year retention period.

20. *Special provisions where members obtain AHP subsidized advances:*

(a) *Term of AHP subsidized advance.* The member shall set a term for the loan to the project funded by the AHP subsidized advance that is the same length as or no longer than the term of the AHP subsidized advance.

(b) *Repayment schedule.* At least once in every 12-month period, the member shall make a principal repayment to the Bank equal to the amount of principal scheduled to be repaid by the project to the member on its loan to the project during the same period.

(c) *Prepayment fees.* The member shall pay a prepayment fee calculated by the Bank upon a prepayment of an AHP subsidized advance. The prepayment fee shall not exceed the actual amount of economic loss the Bank suffers as a result of the prepayment.

(d) *Treatment of loan prepayment by project.* If all or a portion of the loan or loans financed by an AHP subsidized advance are prepaid by the project to the member, the member may, at its option, either:

i. Repay to the Bank that portion of the advance used to make the loan or loans to the project, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any economic loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance; or

ii. Continue to maintain the advance outstanding, subject to the Bank resettling the interest rate on that portion of the advance used to make the loan or loans to the project to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance.

21. The failure by the Bank to exercise any right or privilege granted to it under this Agreement

shall not operate as a waiver of that right or privilege.

22. This Agreement and all matters incorporated herein by reference constitute the entire Agreement and understanding between the parties hereto relating to the subject matter hereof and supersedes all prior discussions, understandings and agreements, written or oral, between the parties that relate to such subject matter. Any modifications to this Agreement shall not be valid unless it is in writing and signed by all parties hereto. Words used in this Agreement shall be interpreted according to their ordinary and usual meaning, despite and excluding any trade, custom, or usage to the contrary.

23. This Agreement shall be governed by the Federal Home Loan Bank Act, the rules, regulations, guidelines, and statements of policy of the FHFA and, except to the extent inconsistent therewith, the laws of the State of Iowa without giving effect to the choice of law principles therein included. The parties expressly agree that any action or proceeding with respect to the performance or non-performance of any term or condition contained herein which is brought by or against the Bank shall be resolved by the United States District court for the Southern District of Iowa or, if such action or proceeding may not be brought and maintained in said court, by an appropriate district court of the State of Iowa located in Polk County.

24. Should any provision of this Agreement be held invalid or unenforceable, the remainder of this Agreement shall remain in effect.

The parties accept the terms and conditions of the AHP Subsidy as set forth herein by executing this Agreement in the space set forth below. In indicating their acceptance of the terms and conditions of the AHP Subsidy set forth herein, the parties also represent and warrant that they have full corporate power and authority and have received all corporate and governmental authorizations and approvals as may be required to enter into and perform their obligations under this Agreement and that at all times they will adhere to the terms and conditions set forth herein.

Agreed to and Accepted (FHLB)

For: Federal Home Loan Bank of Des Moines

_____ Renee Marrs
Signature Printed Name

Rental Housing Manager Date Signed: _____
Title

Agreed to and Accepted (MEMBER BANK)

For:

_____ _____
Signature, Authorized Member Bank Contact Printed Name

_____ Date Signed: _____
Title

Agreed to and Accepted (SPONSOR)

For:

_____ _____

Signature, Project Sponsor Contact

Printed Name

_____

Date Signed: _____

Title

Agreed to and Accepted (OWNER)

For**:**

_____

Signature, Project Owner Contact

_____

Printed Name

_____

Date Signed: _____

Title