



Affordable Housing Program Subsidy Agreement For Owner Occupied Project

The Federal Home Loan Bank of Des Moines ("Bank"), ("member"), and ("project sponsor") enter into this *Affordable Housing Program Subsidy Agreement For Owner Occupied Project* ("Agreement"), effective December 12, 2019, which sets forth the respective duties and obligations of the Bank, member and project sponsor 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 and the project sponsor 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:

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

Retention Period: 5 years from the date of closing for an AHP-assisted owner-occupied unit, excluding rehabilitation of a unit currently occupied by the owner.

Final approval of the grant award is subject to the following contingencies:

AHP Subsidy Draw Down, Use and Extensions:

- (a) 12 month Performance Date: **December 12, 2020**
The AHP subsidy must be likely to be drawn down by the project or used by the project to obtain other financing commitments within 12 months of the date of approval of the application for subsidy funding the project.
- (b) 24 month Performance Date: **December 12, 2021**
The Bank will, at its sole discretion, determine whether to extend the time period allowed for expenditure of AHP funds and project completion. Generally, to receive an extension beyond 24 months from approval of funding, the Bank will consider issues including but not limited to the percentage of the project completed to date, the timing of applications and requirements of other funding sources involved in the project, weather related construction problems, and natural disasters or local conditions that cause delay. 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 make the funds available to other eligible projects if an extension is not granted.

2. *Notification.* Member and project sponsor 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 and project sponsor 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. The subsidy shall be used as set forth in the Application approved December 12, 2019. In order to ensure that the approved level of subsidy from the Bank is still warranted at the actual funding date, in conformity with the requirements of the FHFA's applicable regulation, the Bank will evaluate the subsidy level and will only fund that portion of the subsidy deemed necessary by the Bank to fund the project. The Bank shall determine whether the project is feasible, in accordance with the Bank's project feasibility guidelines, based on factors including but not limited to, applicable financial ratios, geographic location, and other non-financial project characteristics. The approved subsidy must be necessary for the financial feasibility of the project, and the rate of interest, points, fees, and any other charges for all loans financing the project must not exceed a market rate of interest, points, fees and other charges for loans of similar maturity, terms and risk. In such evaluation the Bank will consider, among other factors, the following information:
 - (a) All sources of funds including estimates of funds from all other sources, whether actually committed or not;
 - (b) Project costs, as reflected in the project's budget, including whether such costs are reasonable and customary, in accordance with the Bank's project feasibility guidelines, in light of industry standards for the location of the project and the long-term financial needs of the project.
4. *AHP Subsidy pass-through.* The member shall pass on the full amount of the AHP Subsidy to the household 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, the requirements of the FHFA's applicable regulations, and the Bank's policies and procedures.
6. *Use of AHP Subsidy by the project sponsor.* The project sponsor agrees 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. Repayment of AHP subsidies in case of noncompliance:
 - (a) *Noncompliance by Member.* The member shall repay to the Bank the amount of any AHP Subsidy (plus interest, if appropriate) or any portion of the AHP Subsidy as may be required by the Bank consistent with applicable Bank policies and procedures, that, as a result of the member's actions or omissions, is not used in compliance with the commitments or terms of the member's AHP Application or applicable FHFA regulations; provided, however, that such repayment shall not be required if (i) the noncompliance is cured by the member within a reasonable period of time as determined by the Bank, or (ii) the circumstances of noncompliance are eliminated through a modification of the Application approved by the Bank in accordance with applicable FHFA regulations.
 - (b) *Noncompliance by Project Sponsor.* The member shall recover from the project

sponsor and repay to the Bank the amount of any AHP Subsidy (plus interest, if appropriate) or any portion of the AHP Subsidy as may be required by the Bank consistent with applicable Bank policies and procedures, that, as a result of the project sponsor's actions or omissions, is not used in compliance with the terms of the Application or applicable FHFA regulations; provided, however, that such repayment shall not be required if (i) the noncompliance is cured by the project sponsor within a reasonable period of time as determined by the Bank, (ii) the circumstances of noncompliance are eliminated through a modification of the Application approved by the Bank in accordance with applicable FHFA regulations, or (iii) the member is unable to collect the subsidy after making reasonable efforts to collect it.

- (c) *AHP Subsidy Not Necessary.* The member shall recover from the project sponsor and repay to the Bank that portion of the 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 shall not be required if the member is unable to collect the subsidy after making reasonable efforts to collect it.

8. Project Sponsor Repayment Obligations

- (a) *Noncompliance by Project Sponsor.* To the extent not recovered and repaid to the Bank pursuant to paragraph 7(b) above, the project sponsor shall repay directly to the Bank the amount of the AHP Subsidy (plus interest if appropriate) or any portion of the subsidy as may be required by the Bank consistent with applicable Bank policies and procedures, that, as a result of the project sponsor's actions or omissions, is not used in compliance with the terms of the Application or applicable FHFA regulations; provided, however, that such repayment shall not be required if (i) the noncompliance is cured by the project sponsor within a reasonable period of time as determined by the Bank, or (ii) the circumstances of are eliminated through a modification of the Application approved by the Bank in accordance with applicable FHFA regulations.
- (b) *Subsidy Not Necessary.* To the extent not recovered and repaid to the Bank pursuant to paragraph 7(c) above, the project sponsor shall repay directly to the Bank that portion of the subsidy that the Bank determines, based upon its periodic review or monitoring of the Project, is not, or was not, necessary for the Project.

- 9. *Project Monitoring.* The member and project sponsor shall comply with the applicable monitoring requirements as established by the Bank's policies and procedures pursuant to FHFA regulations.
- 10. 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 member must ensure the sponsor reports to the Bank, at least semi-annually, on the status of the project. Within one year of the disbursement to the project of the entire subsidy, the member must review the project documentation and certify to the Bank that (i) the subsidy has been used according to the commitments made in the Application, and (ii) the AHP-assisted units are subject to deed restrictions or other legally enforceable retention agreements or mechanisms as specified in paragraph 12 below.

11. *Transfer of AHP obligations:*

- (a) *To another member.* The member shall make best efforts to transfer its obligations under the Application 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 the subsidy.
- (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.

12. *Owner-occupied units – required provisions for retention agreements.* The member shall ensure that where a household receives AHP subsidy for purchase, purchase in conjunction with construction, or purchase in conjunction with rehabilitation, of an owner-occupied unit, the unit is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:
- (a) *Notice.* The Bank and member is to be given notice of any sale, transfer, assignment of title or deed, or refinancing of the unit by the household occurring during the AHP five-year retention period;
 - (b) *Repayment of subsidy; exceptions.* In the case of a sale, transfer, assignment of title or deed, or refinancing of the unit by the household during the retention period, the amount of the AHP subsidy calculated in accordance with Section 13(e) shall be repaid to the Bank, unless one of the following exceptions applies:
 - i. The unit was assisted with a permanent mortgage loan funded by an AHP subsidized advance;
 - ii. The subsequent purchaser, transferee, or assignee is a low- or moderate-income household as defined in the applicable Bank policies and procedures pursuant to FHFA regulations;
 - iii. The amount of the AHP Subsidy that would be required to be repaid is \$2,500 or less; or
 - iv. Following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable agreement or mechanism;
 - (c) *Subsidy repayments to the Bank.* In the case of direct subsidy, all repayment of AHP subsidy shall be made to the Bank.
 - (d) *Termination of subsidy repayment obligation.* The obligation to repay AHP subsidy to the Bank shall terminate after any event of foreclosure, transfer by deed-in-lieu of foreclosure, an assignment of a Federal Housing Administration first mortgage to HUD, or death of the AHP-assisted homeowner; and
 - (e) *Calculation of AHP subsidy repayment based on net proceeds and household's investment.* The Bank shall be repaid the lesser of:
 - i. The AHP Subsidy reduced on a pro rata basis per month until the unit is sold, transferred, or its title or deed transferred, or is refinanced, during the AHP five-year retention period; or
 - ii. Any net proceeds from the sale, transfer, or assignment of title or deed of the unit, or the refinancing, as applicable, minus the AHP-assisted household's investment.

The AHP retention period will end 5 years from closing for an AHP-assisted owner-occupied unit (excluding owner-occupied rehabilitation units).

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

14. *Reporting of material changes.* The member and project sponsor 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 subsidy in light of any such material changes and may make such modifications thereto, including the amount of subsidy, as it deems appropriate in its sole discretion.
15. 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.
16. 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 both 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.
17. This Agreement shall be governed by the Federal Home Loan Bank Act, the rules, regulations, guidelines, and statements of policy of the Federal Housing Finance Agency 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 for the County of Polk. 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 funding 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 funding 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

_____ Signature	Ryan Sullivan Printed Name
_____ Homeownership Manager Title	Date Signed: _____

Agreed to and Accepted (MEMBER BANK)

For:

_____ Signature, Authorized Member Bank Contact	_____ Printed Name
--	-----------------------

Title

Date Signed: _____

Agreed to and Accepted (SPONSOR)

For:

Signature, Authorized Sponsor Contact

Printed Name

Title

Date Signed: _____