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 9, 2022, 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 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 12 months of the date of approval of the application for subsidy funding the project, as determined in the Bank's sole discretion.

   (b) 24 month Performance Date: **December 9, 2024**
   The Bank will, at its sole discretion, determine whether to extend the time period allowed for expenditure of AHP funds 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 rescind the funds allocated thereto if an extension is not granted. All subsidy 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 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. *Funding of Subsidy.* The subsidy shall be used as set forth in the Application approved December 9, 2022. 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.

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. *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. *Cash back to household.* A Member may not provide cash back to a household at closing on the mortgage loan in an amount exceeding $250, except for reimbursement of eligible items paid outside of closing. "Cash back" includes reimbursement of down payment monies, deposits, or earnest money. "Cash back" also includes any loans, collections, judgments, or other financial obligations of the household paid to facilitate the home purchase that is not a typical closing cost. If the settlement statement or other closing documents show cash back to the homebuyer in an amount greater than $250, then the Member must provide documentation showing that the cash back was used to pay down the principal of the mortgage loan or as a credit toward the household's monthly payment on the mortgage loan.

9. *Remedies for Noncompliance*

(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 application. The project sponsor or owner shall make a reasonable effort to 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 written notice, the Bank may require

project modification in accordance with paragraph (ii) of this section or the repayment of 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.

10. *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.

11. *Subsidy not necessary.* To the extent not recovered and repaid to the Bank pursuant to paragraph 9 above, the project sponsor or owner 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. If delegated by the Bank, the member shall recover from the 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 paragraph 9 and 10 above.

12. *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.

13. *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 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 project sponsor 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 15 below.

14. *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.

15. *Owner-occupied units – required provisions for retention agreements.* The member shall ensure that where a household receives AHP subsidy for purchase, for purchase in conjunction with rehabilitation, or for construction 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 paragraph 15(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 very low, low-, or moderate-income household as determined by the Bank through proxy or actual income as set forth in the 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).

16. *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.

17. *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.

18. *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.

19. 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.

20. 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.

21. 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

_____ Mary Jo Vogl
Signature Printed Name

Homeownership 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, Authorized Sponsor Contact Printed Name

_____ Date Signed: _____
Title