



## REQUEST FOR APPLICATIONS

### Notice to Prospective Applicants

You are invited to review and respond to this Request for Applications ("RFA"), entitled

**Foreclosure Intervention Housing Preservation Program (FIHPP) FUND MANAGEMENT RFA - RFA 21-20-014**

Released March 8, 2022

Amended March 24, 2023

You are invited to review and respond to this Request for Applications (RFA), entitled FIHPP Fund Management RFA. In submitting your application, you must comply with the instructions found herein.

In submitting an application, applicants agree that they have read, understood, and will comply with the instructions found herein. Failure to comply with any of the requirements may result in rejection of an applicant's application. By submitting an application, applicants agree to the terms and conditions stated in this RFA and any resulting agreement.

All agreements entered into with the State of California will include by reference the state's General Terms and Conditions that may be viewed and downloaded at: <https://www.dgs.ca.gov/-/media/Divisions/OLS/Resources/GTC-April-2017-FINAL.pdf?la=en&hash=18A8A88034FCB8A5307FB64B20B33CF485F4C0D8>.

The Department of Housing and Community Development (HCD or Department) reserves the right, in its sole discretion, to suspend, amend, or modify the provisions of this RFA at any time. If the Department amends or modifies this RFA, the Department will post all such amendments and modifications to the FIHPP website (<https://www.hcd.ca.gov/grants-and-funding/programs-active/foreclosure-intervention-housing-preservation-program>) and will notify all interested parties via email. To receive email updates on FIHPP, including any revisions to this RFA, please email [FIHPP\\_RFA@hcd.ca.gov](mailto:FIHPP_RFA@hcd.ca.gov).

In the opinion of the Department, this RFA is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, please contact [FIHPP\\_RFA@hcd.ca.gov](mailto:FIHPP_RFA@hcd.ca.gov). HCD cannot guarantee a response to questions received less than two weeks before the application submittal deadline.

**The Department is amending the previously issued March 8, 2023 RFA to make the following changes:**

1. Correct RFA release date
2. Correct section references in subsection (k) of section C.3, Technical Application Requirements
3. Add clarifying language to subsection (k) of section C.3, Technical Application Requirements

HCD's Mission is to promote safe, affordable homes and vibrant, inclusive, sustainable communities for all Californians. The Department of Housing and Community Development values diversity at all levels of the organization and is committed to fostering an environment in which employees and partners from a variety of backgrounds, cultures, and personal experiences are welcomed and can thrive. We believe the diversity of our employees and our partners bring their unique ideas and perspectives that inspire innovative solutions to further our mission.

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## Section A – Purpose and Description of Services

### 1. Purpose

This RFA is intended to identify a team of fund managers to implement the Foreclosure Intervention Housing Preservation Program, as described in Health and Safety Code sections 50720 – 50720.12, inclusive, and in the Foreclosure Intervention Housing Preservation Program Final Guidelines located here: [Foreclosure Intervention Housing Preservation Program | California Department of Housing and Community Development](#) dated January 4, 2023 (FIHPP Guidelines) (Attachment 14).

The Foreclosure Intervention Housing Preservation Program (FIHPP) will provide funds for nonprofit organizations and other eligible entities to acquire and rehabilitate 1-25 unit buildings that are at risk of foreclosure or in the foreclosure process and maintain those properties as affordable housing.

HCD seeks a team of fund managers to manage approximately \$485 million to implement FIHPP. The team of fund managers will include one Administering Fund Manager (AFM) and multiple Implementing Fund Managers (IFMs). The AFM may also serve as an IFM if the AFM meets all AFM and IFM requirements and qualifications. Collectively, the team of IFMs must be able to serve nonprofits and other eligible entities across all California geographies.

### 2. Program Background

In order to receive FIHPP funds, eligible entities must apply to become an Eligible Sponsor pursuant to the FIHPP Guidelines. The qualification process will be managed by the FIHPP Fund Managers, as described in the FIHPP Guidelines. Once qualified, Eligible Sponsors are eligible to receive predevelopment funding from an IFM before the Eligible Sponsor has identified a specific project to pursue.

When an Eligible Sponsor identifies a property to pursue, they can apply to an IFM within the Eligible Sponsor's geographic service area for acquisition and Rehabilitation funding. The Fund Manager team must create an application and approval process for acquisition and Rehabilitation funding that results in an expedient deployment of funds so Eligible Sponsors can compete with market-based investors to acquire properties quickly. The Eligible Sponsor and IFM will work closely together on the acquisition and Rehabilitation budget for the property.

If the Eligible Sponsor discovers additional Rehabilitation needs after property acquisition that could not have reasonably been known before acquisition, the Eligible Sponsor may apply to the IFM for additional FIHPP funds for the additional Rehabilitation.

As the project approaches stabilization (meaning Rehabilitation is complete, income levels of current tenants have been identified if needed, conversion to cooperative ownership is complete, if applicable, and the project is ready to refinance or sell to a low-income homebuyer, if applicable), the Eligible Sponsor and IFM will work closely to identify how much (if any) hard debt/financing the project can/will secure from other sources. The remainder of the initial FIHPP funding after any other financing is obtained will convert to long-term gap financing. IFMs will be responsible for managing any FIHPP fund repayments and conversions of loans into grants, if applicable, when projects achieve stabilization. All repayments of Program funds to fund managers and earned interest, shall be deposited into the separately maintained Fund Monitoring and Reuse Accounts held by Fund Managers for purposes of the FIHPP Program, pursuant to Section 406.2 of the FIHPP Guidelines.

Multi-family Rental Housing Developments serving households with an average Area Median Income (AMI) of 50 percent of AMI or less are also eligible for a Capitalized Operating Subsidy Reserve (COSR) for up to 20 years of operating subsidy if there is a demonstrated financial need, as determined by the IFM. The AFM, or one or more entities under subcontract with the AFM, is responsible for managing all COSRs.

The AFM is responsible for ensuring compliance with loan or grant terms and conditions for the duration of the affordability period for the project (in general 55 years); the AFM may subcontract out the long-term compliance monitoring duties for some or all Projects.

### 3. Standard Agreement Term & Attachments

a. Standard Agreement term:

The initial term of the Standard Agreement between HCD and the AFM will be effective upon HCD approval through June 30, 2026. The Standard Agreement may be amended past June 30, 2026, if funds are available and if deemed appropriate by HCD. HCD and the AFM will also enter into a Monitoring Agreement which will be attached as an exhibit to the Standard Agreement.

The term of the Monitoring Agreement (Exhibit F to the Standard Agreement) shall commence upon mutual execution of that Agreement and shall terminate upon the 55<sup>th</sup> anniversary of the affordability term for the last Project which receives funding under the Program.

b. Attachments:

The Applicant acknowledges that attached hereto as Attachments are copies of a draft Standard Agreement, Monitoring Agreement, and Program Guidelines (collectively, "Program Governing Documents"). In submitting its response to this RFA, the Applicant, if selected as the successful party, acknowledges that, in order to accept its selection as the successful party, must enter into and be bound by the terms of final versions of the Program Governing Documents, which, although substantially similar, may materially differ from the attached draft copies excepting that any such change will not change the Scope of Work. Whether the final versions of the attached draft Program Governing Documents are substantially similar to the final versions of the same shall be determined in the sole but reasonable discretion of the Department. Notwithstanding the foregoing, if the Applicant disagrees with the Department's aforementioned determination, the Applicant shall not be obligated to accept its selection as the successful Party, but acknowledges that if it does so, the Department may select the next highest scoring applicant.

### Section B – Minimum Qualifications for the Applicant:

Failure to meet the Minimum Qualifications will result in the application not being scored. All documents not included elsewhere in the application package should be included with Minimum Qualifications in your application.

1. Applicant must certify that each proposed Fund Manager (the AFM and each IFM) is a nonprofit lender with experience making real estate loans in the State of California, or a housing trust fund operated by a city, a county, a city and county, or a joint powers authority as described in Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code operated for the purpose of funding the development, acquisition, rehabilitation, or preservation of affordable housing for low- or moderate-income residents, and that Applicant has experience managing large pools of funds and managing multiple lenders as subcontractors.
2. Applicant must submit all required documents as outlined in the [Attachment 1: Required Attachment Checklist](#).

3. Applicant must certify that each proposed IFM has legal counsel available to review the FIHPP legal agreements with Eligible Sponsors, including grant and loan agreements and use restrictions.
4. Applicant must submit applicable references using the form in [Attachment 4: Applicant's References](#):
  - a. Applicant must provide three (3) references from customers for whom the applicant has provided services of the same nature and type as those outlined in this RFA (affordable housing program management). References are only required for the Administering Fund Manager, not the Implementing Fund Managers. References submitted must be for services provided in the past ten (10) years (from the date of this RFA). At least one reference must be from a governmental entity, and if the applicant has provided similar services to HCD during this timeframe, one of the references MUST be from a HCD contract manager. The remaining references may include one reference from an organization who received one or more loans or grants from the applicant. The references must be able to provide sufficient information (i.e., specific times and locations where the applicant was observed while providing services) in order to verify the applicant's experience. Each reference must be someone who had direct experience with the provision of services by the applicant and be able to address each of the following:
    - i. Applicant's ability to provide services as compared to their agreed upon contract;
    - ii. Customer's overall assessment of the applicant's performance; and
    - iii. Each reference must also:

Provide the name, address, title, company, and phone number of the qualifying employer/company.
  - b. HCD reserves the right to use these references in determining whether an applicant is a responsible entity.
  - c. HCD will attempt to contact each reference by phone twice within a 72-hour time period during the Application Evaluation Period listed in Section C, Time Schedule, below. If HCD does not receive a response from a reference and contact is not made, the applicant will receive 0 of the 10 maximum possible points for that reference. It is the applicant's responsibility to notify all listed references that HCD shall contact them in regard to this application.
5. Each proposed Fund Manager (AFM and IFMs) must have originated and serviced loans to develop, maintain, improve, or acquire affordable housing, including at least five million dollars (\$5,000,000) in acquisition loans. Details of the required format for providing this information are in Section C.3 Technical Application Requirements.
6. The review, approval, and disbursement process described by the AFM in their application in response to Section C.3.j of this RFA must be completed in a timeframe sufficient to deploy loans necessary to purchase real property in trustee's sales pursuant to the time constraints described in Civil Code section 2924m. Details of the required format for providing this information are in Section C.3 Technical Application Requirements.
7. Each proposed IFM must certify its ability to process loans and grants for property acquisitions using the review, approval, and disbursement process described by the AFM in its application in response to Section C.3.j of this RFA.
8. Each proposed Fund Manager must certify that it will maintain an account for the FIHPP funds that is segregated from its other accounts; there must be no commingling among accounts.
9. Applicant must certify that it will meet and maintain the insurance requirements included in Exhibit D of the Standard Agreement.

## Section C – Application Requirements and Information:

### 1. Key Action Dates

All applicants are hereby advised of the following schedule and will be expected to adhere to the required dates and times. If the State finds it necessary to change any of these dates, it shall be accomplished via an amendment to this RFA. Any dates that follow the final date for application submission are only approximate and may be adjusted as conditions indicate without amendments to this RFA.

Event:	Date:	Time:
RFA Available to Prospective Applicants <sup>1</sup>	<b>3/8/2023</b> <b>Amended 3/24/2023</b>	<b>3:00pm</b>
Request Access to Vendor RFA Uploads Portal	<b>5/3/2023</b>	<b>2:00pm</b>
Final Date for Application Submission	<b>5/12/2023</b>	<b>3:00pm</b>
Tentative Award Announcement Date	<b>July 2023</b>	

<sup>1</sup> RFA is available to prospective applicants on the FIHPP website ([Foreclosure Intervention Housing Preservation Program | California Department of Housing and Community Development](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Foreclosure-Intervention-Housing-Preservation-Program-California-Department-of-Housing-and-Community-Development.aspx)).

### 2. Written Questions

Applicants may request clarification of the intent, content, or procedural matters regarding the RFA process or the Department’s advertising and public awareness campaigns by **submitting written questions electronically via e-mail to [FIHPP\\_RFA@hcd.ca.gov](mailto:FIHPP_RFA@hcd.ca.gov)**. HCD cannot guarantee a response to questions received less than two weeks before the final date for application submission deadline. Question and answer sets will be provided without identifying the submitters. **ALL QUESTIONS MUST BE SUBMITTED IN WRITING.**

Applicants should notify HCD immediately electronically via e-mail to [FIHPP\\_RFA@hcd.ca.gov](mailto:FIHPP_RFA@hcd.ca.gov) if they need clarification about the services being sought or have questions about the RFA. **Note: it is the responsibility of the applicant to review all documents provided. HCD will not be held responsible for inaccurate applications due to an applicant’s oversight in reviewing any and all information.**

### 3. Technical Application Requirements

Each Technical Application must contain the following:

Technical Application Requirement Outline
a. Cover Letter/Introduction (no more than two (2) pages)
b. Table of Contents, with information organized as presented in this checklist, and this format followed.
c. Applications must clearly identify which organization will serve as the AFM, which organizations the AFM will subcontract with as IFMs and the geographic service area in which each IFM will provide FIHPP funding. If the Fund Manager team has any geographic areas where the AFM is the only lender, the AFM must explain what it did to investigate other potential lending partners in the area and why the AFM believes its proposed structure is the best structure. Any change in IFMs after contract award must be approved in writing by HCD.

<b>For Administering Fund Managers, provide:</b>
<p>d. A description of their experience managing large pools of funds, ideally greater than \$40 million, including a list of funds managed, length of time managing the funds, the dollar amount in each relevant fund, the geographies served by the funds (including the proportion of projects in California), a description of the extent to which each fund financed acquisition and rehabilitation of buildings which were not subject to any affordability regulations, a description of the metrics for successful deployment for each fund and whether those metrics were met.</p>
<p>e. A description of their experience managing multiple organizations as subcontractors, including descriptions of each relevant project, lists of subcontractors for each project, and whether the project involved subcontractors making loans and/or grants for affordable housing.</p>
<p>f. A description of their experience working collaboratively with other nonprofit lenders, including descriptions of each relevant project, lists of collaborators in each project, and the nature of the collaboration.</p>
<p>g. A plan for how the team of IFMs will serve nonprofits across all California geographies, including which IFMs will serve each geography.</p>
<p>h. A proposed budget in the form outlined in Attachment 5. The budget should recognize that IFMs may be spending significant time on projects with small budgets and ensure that IFMs are compensated appropriately.</p>
<p>i. A narrative describing whether they will leverage any additional long-term (ideally 55 years; at least roughly 30 years) capital and, if so, how that capital will be brought into the project in a way that will not slow down the speed of acquisition, which FIHPP-funded projects will be able to access that leveraged capital (e.g. for-sale projects, rental projects, or both), what the sources and terms (length and interest rate) of that leveraged capital will be and how much capital they expect to be able to leverage. Leveraged capital is not a requirement to become the AFM. However, extra points will be awarded to prospective AFMs based on their ability to leverage additional long-term capital.</p>
<p>j. A detailed step-by-step description of the Fund Manager team’s proposed FIHPP funding application review, approval, and fund disbursement process that is sufficient to deploy funds necessary to purchase real property in trustee’s sales pursuant to the time constraints described in Civil Code section 2924m. The plan must include:</p> <ul style="list-style-type: none"> <li>i. what documentation and due diligence reports will be required from applicants and when,</li> <li>ii. what internal approval steps will be needed (including any different steps needed for loans vs. grants),</li> <li>iii. how long the process will take (in days) from the date an Eligible Sponsor identifies a property to pursue for acquisition until the date funds are received by the Eligible Sponsor. The timeline must include estimates for how long it will take Applicants to complete any required documentation and due diligence reports as well as how long the internal approval steps will take. If the time needed differs for loans vs. grants, provide an explanation for both funding types.</li> </ul>

<p>k. A work plan for completing all the deliverables listed in <b>Table 8.1 of Exhibit A of the proposed Standard Agreement attached to RFA</b>. The work plan must include:</p> <ul style="list-style-type: none"> <li>i. Dates by which the following programmatic milestones will be achieved: <ul style="list-style-type: none"> <li>a) Organizations can start submitting applications to the AFM to become Eligible Sponsors</li> <li>b) Eligible Sponsors can start submitting applications to IFMs for funding. <b>Ideally this milestone would be achieved within six months or less from execution of the Standard Agreement, but that timeframe is not a firm requirement.</b></li> </ul> </li> <li>ii. Detailed timelines for the completion of each deliverable listed in <b>Table 8.1 of Exhibit A of the proposed Standard Agreement</b>. <b>For timelines, build in 10 business days total for HCD’s review and approval of each deliverable except the use restriction. For the use restriction, build in 20 business days. Deliverables that are not necessary to reach the milestones listed in subsection (i) above may be completed after the milestone dates.</b></li> </ul> <p>Dates should be listed as relative to the date the Standard Agreement is fully executed (e.g. “four months after execution of the Standard Agreement”).</p>
<p>l. A plan for how and when FIHPP funds will be disbursed from the AFM to the IFMs.</p>
<p><b>For the Administering Fund Manager and each Implementing Fund Manager, provide:</b></p>
<p>m. A narrative description of the entity’s commitment to acquisition and rehabilitation of small properties, including why the entity values this work, articulation of the unique needs of these types of projects, and a description of the entity’s experience with these types of projects (e.g. percentage of portfolio which consists of housing preservation projects, percentage of preservation projects that are 1-25 units, percentage of projects in California).</p>
<p>n. A description of the entity’s impact measurement methodology, including any metrics around racial equity.</p>
<p>o. A spreadsheet that provides a list of loans or grants showing that the entity has originated and serviced loans or grants to develop, maintain, improve, or acquire affordable housing, including at least five million dollars (\$5,000,000) cumulatively in acquisition loans or grants (to acquire existing buildings, not vacant land). The spreadsheet must include:</p> <ul style="list-style-type: none"> <li>i. The names of the loan or grant recipients</li> <li>ii. Number of units in the funded project</li> <li>iii. State in which the project is located</li> <li>iv. Dates of the loans or grants</li> <li>v. Total amounts of the loans or grants</li> <li>vi. Amounts of the loans or grants that were used to develop, maintain, improve, or acquire real property</li> <li>vii. Of this, show amount of loans or grants for acquisition of existing buildings only</li> </ul>
<p>p. A list of potential California-based Eligible Sponsors who do acquisition and rehabilitation of small properties with whom the entity has worked, particularly entities that match the likely project sponsor types for FIHPP (e.g. community land trusts, Habitat for Humanity affiliates, and community development corporations) and that are deeply connected to residents in neighborhoods and communities, with an emphasis on historic communities of color.</p>
<p>q. A brief description of how the entity worked with each potential Eligible Sponsor listed above, including number and types of projects funded (if relevant) and whether projects were acquisition/rehab projects and/or properties facing foreclosure. The description should address whether that work included engaging with the potential Eligible Sponsors on project budgets for acquisition/rehab projects.</p>
<p><b>For each Implementing Fund Manager, provide:</b></p>



- r. A description of the entity's experience being creative and innovative to provide funding for property acquisitions in an expedient manner, including the number and types of projects funded (e.g. size of project, project sponsor) and how quickly funding was provided.

#### 4. Proposed Budget

Use [Attachment 5, Proposed Budget](#), to submit your budget.

#### 5. Submission of Application

- a. Applications shall provide straightforward and concise descriptions of the applicant's ability to satisfy the requirements of this RFA. The application must be complete and accurate. Omissions, inaccuracies, or misstatements will be sufficient cause for rejection of an application.
- b. The application must be submitted electronically. Applicants will be required to request access to the Vendor RFA Uploads Portal by the time identified in [Section C –Application Requirements and Information: 1\) Key Action Dates](#) prior to submitting an application.
- c. Access to the Vendor RFA Uploads Portal must be requested by sending an email to [ServiceContracts@hcd.ca.gov](mailto:ServiceContracts@hcd.ca.gov) identifying the name(s) and email(s) of staff requiring access to the Vendor RFA Uploads Portal.
- d. All applications must be submitted electronically to HCD by the date and time shown in [Section C – Application Requirements and Information: 1\) Key Action Dates](#). Applications received after the final submission date and time will not be considered.
- e. HCD requests that applicant include a table of contents and some type of divider system to clearly separate out the different parts of the application. It is the responsibility of the applicant to use a clear naming convention for all documents.
- f. Submit one complete application labeled, “**Master Copy**”. Application must include the cover letter, attachments, and all other required documentation.
- g. If application contains confidential or proprietary information, submit one complete application labeled, “**Reproduction Copy**”. No proprietary information should be included. The application includes the cover letter, attachments, and all other required documentation. All pages containing proprietary information should be removed and a cover sheet must be included which provides the total number of pages and identification of all pages removed due to proprietary/confidential information. Please note, although the Department will exercise its right to withhold certain information under the Public Records Act, by submitting materials to the Department, applicant is consenting to disclosure of any such materials (even if applicant considers them confidential) as determined in the discretion of the Department.
- h. All documents contained in the application package must be signed by an individual who is authorized to bind the applicant. The signature must indicate the title or position that the individual holds in the firm. An unsigned application may be rejected.
- i. If the application is made under a fictitious name or business title, the actual legal name of applicant must be provided.
- j. All applications are required to include the documents identified as required on the [Attachment 1: Required Attachment Checklist](#). Applications not including the proper “required attachments” shall be deemed non-responsive. **A non-responsive application is one that does not meet the basic application requirements. Applications deemed non-responsive may be rejected.**
- k. Applications must be submitted for the performance of all the services described herein. Any deviation from the Scope of Work specifications will not be considered and may cause an application to be scored

accordingly. Applicant is required to meet all requirements of the Scope of Work whether or not fully set forth in the applicant's work plan.

- l. An application may be rejected if it is conditional or incomplete (does not meet Application Minimum Qualifications for Scoring per Application Checklist), or if it contains any alterations of form or other irregularities of any kind. HCD may reject any or all applications and may waive an immaterial deviation in an application. HCD's waiver of an immaterial deviation shall in no way modify this RFA or excuse the applicant from full compliance with all requirements if awarded the Standard Agreement.
- m. Costs incurred for developing applications and in anticipation of award of the Standard Agreement are entirely the responsibility of the applicant and shall not be charged to the State or HCD or reimbursed to the applicant.
- n. An individual who is authorized to bind the applicant contractually shall sign the Attachment 2, application/applicant Certification Sheet. The signature must indicate the title or position that the individual holds with the applicant. An unsigned application form may be returned for correction and signature. The signature and date are required to certify compliance with all of the requirements of this application and authorizes the verification of any part of this application.
- o. An applicant may modify an application after its submission by withdrawing its original application and resubmitting a new application prior to the application submission deadline, as set forth in the Key Action Dates. Application modifications offered in any other manner, oral or written, will not be considered.
- p. An applicant may withdraw its application by submitting a written withdrawal request to HCD, signed by the applicant or an authorized agent to the address indicated in the RFA cover page. An applicant may thereafter submit a new application prior to the application submission deadline. Applications may not be withdrawn without good cause subsequent to application submission deadline.
- q. HCD may modify this RFA prior to the date fixed for submission of applications by the issuance of an amendment in the same manner as the original RFA was released so that all parties who received notice of the RFA can submit an updated application package.
- r. HCD reserves the right to reject all applications. HCD is not required to award a Standard Agreement. Before submitting a response to this RFA, applicants should review their application, correct all errors and confirm compliance with the RFA requirements.
- s. More than one application from an individual, firm, partnership, corporation or association under the same or different names, will not be considered.
- t. HCD will not accept alternate contract language from a prospective AFM. An application containing any such language will be rejected. None of the terms of this RFA including, but not limited to, all exhibits, appendices and attachments are negotiable.
- u. No oral understanding or agreement shall be binding on the State or HCD.

## 6. Application Evaluation and Award Process

- a. At the time of the application opening, each application will be checked for the presence or absence of required information in conformance with the submission requirements of this RFA.
- b. Applications that contain false or misleading statements, or which provide references that do not support an attribute or condition claimed by the Applicant, may be rejected.
- c. Award, if made, will be to the highest scored responsive application.

### Phase I Evaluation – Applicant Minimum Qualifications – Pass/Fail

Applicants must complete Minimum Qualifications Response (Attachment 3). This phase will be scored on a pass/fail basis. Failure to complete Attachment 3 may result in the immediate rejection of an application. **HCD**

***reserves the right to request further documentation and/or proof from the Applicant that the items in Attachment 3 are true and correct before a contract is awarded.***

**Phase II Evaluation – Technical Application –900 Points Available**

1. Applications that meet the minimum qualifications have the rest of their applications scored.
2. The criteria for evaluating the technical applications appear below in the in the Sample Score Sheets.

**Phase III Evaluation – References– 300 Points Available**

1. HCD staff will contact references for the applicants that meet the minimum qualifications.
2. The criteria for evaluating the references appear below in the in the Sample Score Sheets.

**Phase IV Evaluation – Proposed Budget –150 Points Available**

1. All proposed budgets must be submitted using the [Attachment 5: Proposed Budget](#).
2. Costs will be calculated and scored. A maximum of 55 total points may be awarded for this cost assessment component, broken out by budget element as follows:

<b>Budget Element</b>	<b>Maximum points</b>
<b>Administrative Costs</b>	
Start-up costs, including evaluating organizations for qualification as Eligible Sponsors	6
Managing COSRs (20 years)	6
Monitoring Compliance (55 Years)	62
Other Administrative Costs (e.g. overseeing IFMs, tracking progress toward program-level income and geographic goals, reporting to the Department) <i>before</i> all program funds have been committed to projects and all projects have achieved stabilization	19
Other Administrative Costs (e.g. overseeing IFMs, reporting to the Department) <i>after</i> all program funds have been committed to projects and all projects have achieved stabilization	19
<b>Project-Related Transaction Costs</b>	
Managing project grants (not including COSRs or long-term monitoring)	19
Managing project loans (not including COSRs or long-term monitoring)	19

3. For each Budget Element, the lowest offer will receive 100% of the points possible for that element. The next lowest offer will receive the next highest score calculated as follows (the figures below are for informational purposes only and are not representative of the anticipated cost).

4. The scoring for each Budget Element will be calculated from the proposed rates as follows:

Step 1: Find the lowest cost submitted of all the offers for that element.

Offer A Cost for Budget Element 1 \$100.00

Offer B Cost for Budget Element 1 \$125.00

Offer C Cost for Budget Element 1 \$150.00

Step 2: Use that lowest cost as the NUMERATOR to form a fraction for each offer in which the application's cost for that application element is the DENOMINATOR. Multiply that fraction by the maximum points available for that application element to obtain the cost score for that application element. Example for Application Element 1:

$$\frac{\text{Lowest Cost}}{\text{Offer X Cost}} \times \text{Maximum Points} = \text{Cost Score}$$

Offer A      100 / 100 x 6 = 6

Offer B      100 / 125 x 6 = 4.8

Offer C      100 / 150 x 6 = 4

Step 3: For each offer, add up the cost scores for each application element to obtain a total cost score for the offer.

(Sample Score Sheet begins on the next page)

## SAMPLE SCORE SHEET

### Technical Application Scoring Summary

The scoring criteria in this Technical Application Scoring section were developed to determine which applicants will best fulfill the requirements of the FIHPP statutes and Guidelines.

Each scoring criterion in the Scoring Details table below will be evaluated using the following metrics. Each criterion will either be evaluated on a 50-point scale or on a 100-point scale. The Scoring Details table illustrates whether a given criterion is scored on the 50-point or 100-point scale.

#### Scoring Details

<b>Evaluation Metric</b>	<b>Score on 50-point scale</b>
Application response (i.e., content and/or explanation offered) is inadequate or does not meet HCD's needs/requirements or expectations. The omission(s) or defect(s) are significant and unacceptable.	0
Application response (i.e., content and/or explanation offered) is barely adequate or minimally meets HCD's needs/requirements or expectations.	20
Application response (i.e., content and/or explanation offered) is satisfactory and meets HCD's needs/requirements or expectations. The omission(s) or defect(s), if any, are inconsequential and satisfactory.	30
Application response (i.e., content and/or explanation offered) fully meets HCD's needs/requirements or expectations with no omissions or defects.	40
Application response (i.e., content and/or explanation offered) exceeds HCD's needs/requirements or expectations.	50

<b>Evaluation Metric</b>	<b>Score on 100-point scale</b>
Application response (i.e., content and/or explanation offered) is inadequate or does not meet HCD's needs/requirements or expectations. The omission(s), flaw(s), or defect(s) are significant and unacceptable.	0
Application response (i.e., content and/or explanation offered) is barely adequate or minimally meets HCD's needs/requirements or expectations.	40
Application response (i.e., content and/or explanation offered) is satisfactory and meets HCD's needs/requirements or expectations. The omission(s), flaw(s), or defect(s), if any, are inconsequential and satisfactory.	60
Application response (i.e., content and/or explanation offered) fully meets HCD's needs/requirements or expectations with no omissions, flaws or defects.	80
Application response (i.e., content and/or explanation offered) exceeds HCD's needs/requirements or expectations.	100

**Scoring Details**

<b>Criteria</b>	<b>Scoring Scale (50-pt or 100-pt)</b>
<i>For the Administering Fund Manager</i>	Subtotal 400
Application demonstrates experience successfully managing at least one pool of funds of at least \$40 million within the last 10 years.	50
Application demonstrates experience successfully managing multiple organizations as subcontractors, with ideally at least one project involving subcontractors making loans and/or grants for affordable housing.	50
Application demonstrates experience successfully collaborating with other nonprofit lenders.	50
Team of Implementing Fund Managers (IFMs) covers all geographies of the state; designated IFMs have experience in or knowledge of the geographies they cover (i.e. a given region is served by IFM(s) based in that region; rural or outlying areas are served by IFM(s) who understand the needs of rural areas).	100
Application demonstrates that any leveraged capital will be a) long-term (ideally 55 years; at least roughly 30 years), b) brought into the project in a way that will not slow down the speed of acquisition, and c) widely available to many FIHPP-funded projects of varying types.	50
Fund manager team's proposed FIHPP funding application, review, approval, and fund disbursement process appropriately balances sufficient due diligence with how quickly loans and grants can be made to Eligible Sponsors and covers all FIHPP-eligible properties.	100
<i>For the Administering Fund Manager and each Implementing Fund Manager (IFM scores will be averaged into one score)</i>	Subtotal 400 (200 AFM, 200 IFMs)
Application demonstrates deep understanding of and experience with acquisition and rehabilitation of small properties and/or properties facing foreclosure, including in California.	100
Application demonstrates deep understanding of racial disparities in housing and experience measuring racial equity impact.	50
Application demonstrates experience working with potential FIHPP project sponsors (e.g. community land trusts, Habitat for Humanity affiliates, and community development corporations), particularly those that are deeply connected to residents in neighborhoods and communities, with an emphasis on historic communities of color.	50
<i>For each Implementing Fund Manager (IFM scores will be averaged into one score)</i>	Subtotal 100
Application demonstrates experience providing funding for property acquisitions in a timeframe sufficient to deploy loans necessary to purchase real property in trustee's sales pursuant to the time constraints described in Section 2924m of the Civil Code.	100

**References Scoring Summary**

<b>Criteria</b>	<b>100 Possible points per reference = 300 possible points total</b>
How much of the work the applicant did for you related to the acquisition and rehabilitation of affordable housing? Please describe.	Less than 5% of the work = 0 points 5 to 20% of the work = 10 points Over 20% of the work = 20 points
Did the applicant’s work meet or exceed your expectations? Please elaborate.	Did not meet expectations = 0 points Met expectations = 30 points Exceeded expectations = 50 points
Would you hire the applicant again for similar work? Please elaborate.	No = 0 points Maybe = 10 points Yes = 30 points

**7. Award and Appeals**

a. Notice of Award

- i. Applicants will receive a score letter via email with their application’s score, whether or not they are receiving an award, and the deadline for submitting an appeal.
- ii. Notice of award will be posted on the FIHPP website ([Foreclosure Intervention Housing Preservation Program | California Department of Housing and Community Development](#))

b. Basis of Appeals

- i. Applicants may appeal HCD’s written determination that an application is incomplete, has failed threshold review, or has otherwise been determined to provide an insufficient basis for an award.
- ii. No Applicant shall have the right to appeal a decision of HCD relating to another Applicant’s application (e.g., eligibility, award).
- iii. Any request to appeal HCD’s decision regarding an application shall be reviewed for compliance with the Guidelines and this RFA. All decisions rendered shall be made by the Director or his/her designee. The decision shall be final, binding, and conclusive, and shall constitute the final action of HCD.
- iv. The appeal process provided herein applies solely to decisions of HCD made pursuant to this RFA.

c. Appeal Process and Deadlines

- i. Process: To file an appeal, Applicants must submit to HCD, by the deadline set forth below, a written appeal which states all relevant facts, arguments, and evidence upon which the appeal is based. Furthermore, the Applicant must provide a detailed reference to the area or areas of the application that provide clarification and substantiation for the basis of the appeal. No new or additional information will be considered if this information would result in a competitive advantage to an Applicant. Once the written appeal is submitted to HCD, no further information of materials will be accepted or considered thereafter. Appeals are to be

submitted to HCD at [FIHPP\\_RFA@hcd.ca.gov](mailto:FIHPP_RFA@hcd.ca.gov) according to the deadline set forth in HCD score letters.

- ii. Filing Deadline: Appeals must be received by HCD no later than five (5) business days from the date of HCD's score letters, representing HCD's decision made in response to the application.

d. Decision

- i. Any request to appeal HCD's decision regarding an application shall be reviewed for compliance with the Guidelines and this RFA. All decisions rendered shall be final, binding, and conclusive, and shall constitute the final action of HCD.

## 8. Disposition of Applications

Upon application opening, all documents submitted in response to this RFA will become the property of the State of California and will be regarded as public records under the California Public Records Act (Government Code Section 6250 et seq.) and subject to review by the public. Should an applicant desire to keep any or all components of their response to this RFA confidential, the applicant would need to obtain a protective order from a court of competent jurisdiction.

## 9. Tax Delinquency Disclaimer

Prior to executing the Standard Agreement, HCD will verify that the proposed awardee(s) is not on a list of persons or companies identified as the largest tax delinquents by the Franchise Tax Board (FTB) or the California Department of Tax and Fee Administration (CDTFA). The established lists can be found at:

FTB: <https://www.ftb.ca.gov/aboutFTB/Delinquent-Taxpayers.shtml>

CDTFA: <https://www.cdtfa.ca.gov/taxes-and-fees/top500.htm>

## 10. Standard Agreement Execution and Performance

- a. Performance shall start after all approvals have been obtained and the agreement is fully executed. Should the AFM fail to commence work at the agreed upon time, the awarding agency, upon five (5) days written notice to the AFM, reserves the right to terminate the agreement.
- b. All performance under the agreement shall be completed on or before the termination date of the agreement.
- c. Should, during the course of the resulting Standard Agreement, it become necessary to modify the terms of the Standard Agreement, these modifications may be made by mutual agreement by the contracting parties through a written amendment to the Standard Agreement. A Standard Agreement amendment will not be effective unless in writing and until fully executed by both parties. **No oral understanding or agreement will be binding on either the AFM or the HCD unless incorporated through the proper amendment process.** HCD reserves the right to amend the Standard Agreement if funds are available and if deemed appropriate by the department.

## 11. Executive Order N-6-22 – Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or application, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Contractor's bid/application any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.



## Section D – Required Attachments

### Attachment 1:

#### Part One: Required Forms and Attachment Checklist

A complete application or application package must consist of the items identified below.

Complete this checklist to confirm the items submitted in the application. Place a check mark or “X” next to each item that is included with the response to HCD. For an application to be responsive, all required attachments must be returned. This checklist must also be returned with your application package.

<u>Attachment</u>	<u>Name/Description</u>
_____ Attachment 1	Required Attachment Checklist
_____ Attachment 2	<a href="#">Application/Applicant Certification Sheet (with original signature)</a>
_____ Attachment 3	<a href="#">Minimum Qualifications Response (with original signature)</a>
_____ Attachment 4	<a href="#">Applicant’s References</a>
_____ Attachment 5	<a href="#">Budget</a>
_____ Attachment 6	<a href="#">Darfur Contracting Act</a>
_____ Attachment 7	<a href="#">California Civil Rights Laws Certification</a>
_____ Attachment 8	<a href="#">Iran Contracting Act</a>
_____ Attachment 9	<a href="#">Payee Data Record (STD 204)</a>
_____ Attachment 10	<a href="#">Payee Data Record Supplement (STD 205)</a> (Optional)
_____ Attachment 11	HCD ADM 127 (Executive Order N-6-22)

#### Part Two: Required Documentation

- \_\_\_\_\_ Technical Application: See Section 3. Technical Application Requirements
- \_\_\_\_\_ Complete Organizational Charts
- \_\_\_\_\_ Articles of Incorporation (Corp. Code §§ 154, 200 and 202) as certified by the California Secretary of State.
- \_\_\_\_\_ Bylaws and any amendments thereto (Corp. Code §§ 207(b), 211 and 212)
- \_\_\_\_\_ Certificate of Amendment of Articles of Incorporation (Corp. Code §§ 900-910 (general stock), §§ 5810-5820 (public benefit and religious corporations), §§ 7810-7820 (mutual benefit corporations), or §§ 12500-12510 (general cooperative corporations)), as applicable.
- \_\_\_\_\_ Restated Articles of Incorporation (Corp. Code §§ 901, 906, 910 (general stock), §§ 5811, 5815, 5819 (public benefit and religious corporations), §§ 7811, 7815 and 7819 (mutual benefit corporations) and §§ 12501, 12506 and 12510 (general cooperative corporations)), as applicable.
- \_\_\_\_\_ Statement of Information (California Secretary of State form SI-100 or SI-200)
- \_\_\_\_\_ Shareholder Agreements (Corp. Code § 186), if applicable.

\_\_\_\_\_ Certificate of Good Standing certified by Secretary of State (must be dated 30 days or less from the RFA application due date).

\_\_\_\_\_ Evidence of tax-exempt status from IRS and FTB for corporations (non-profits only).

\_\_\_\_\_ Governing board resolution which legally authorizes the RFA application and identifies the authorized signatory for the application.

**Attachment 2: Application/Applicant Certification Sheet**

This Application/Applicant Certification Sheet must be signed and returned along with all the “required attachments” as an entire package.

By signing this certification, the Applicant certifies that:

- 1) The information, statements and attachments included in this application are, to the best of my knowledge and belief, true and correct.
- 2) I possess the legal authority to submit this application on behalf of the entity identified in the signature block.
- 3) I acknowledge that all information in this application and attachments is public and may be disclosed by HCD.

**An unsigned Application/Applicant Certification Sheet may be cause for rejection.**

1. Company Name	2. Telephone Number (    )
3. Address	
Indicate your organization type:	
4. <input type="checkbox"/> Nonprofit lender	5. <input type="checkbox"/> Housing trust fund
Indicate the applicable employee and/or corporation number:	
6. Federal Employee ID No. (FEIN)	7. California Corporation No.
8. Indicate applicable license and/or certification information:	
9. Applicant’s Name (Print)	10. Title
11. <b>Signature</b>	12. Date
_____	_____

The following questions must be responded to by each prospective AFM and IFM.

**Explain all positive responses on a separate sheet and include with this attachment in the application.**

**Exceptions:**

Members of the boards of directors of non-profit corporations, including officers of the boards, are also not required to respond. However, chief executive officers (Executive Directors, Chief Executive Officers, Presidents or their equivalent) must respond, as must chief financial officers (Treasurers, Chief Financial Officers, or their equivalent).

**Civil Matters**

- 1) Has the applicant filed a bankruptcy or receivership case or had a bankruptcy or receivership action commenced against it, defaulted on a loan or been foreclosed against in the *past ten years*?
- 2) Is the applicant currently a party to, or been notified that it may become a party to, any civil litigation that may materially and adversely affect (a) the financial condition of the applicant’s business, or (b) the applicant’s performance in implementing FIHPP?

3) Have there been any administrative or civil settlements, decisions, or judgments against the applicant within the past ten years that materially and adversely affected (a) the financial condition of the applicant's business, or (b) the applicant's performance in implementing FIHPP?

4) Is the applicant currently subject to, or been notified that it may become subject to, any civil or administrative proceeding, examination, or investigation by a local, state or federal licensing or accreditation agency, a local, state or federal taxing authority, or a local, state or federal regulatory or enforcement agency?

5) In the past ten years, has the applicant been subject to any civil or administrative proceeding, examination, or investigation by a local, state or federal licensing or accreditation agency, a local, state or federal taxing authority, or a local, state or federal regulatory or enforcement agency that resulted in a settlement, decision, or judgment?

**Criminal Matters**

6) Is the applicant currently a party to, or the subject of, or been notified that it may become a party to or the subject of, any criminal litigation, proceeding, charge, complaint, examination or investigation, of any kind, involving, or that could result in, felony charges against the applicant?

7) Is the applicant currently a party to, or the subject of, or been notified that it may become a party to or the subject of, any criminal litigation, proceeding, charge, complaint, examination or investigation, of any kind, involving, or that could result in, misdemeanor charges against the applicant for matters relating to the conduct of the applicant's business?

8) Is the applicant currently a party to, or the subject of, or been notified that it may become a party to or the subject of, any criminal litigation, proceeding, charge, complaint, examination or investigation, of any kind, involving, or that could result in, criminal charges (whether felony or misdemeanor) against the applicant for any financial or fraud related crime?

9) Is the applicant currently a party to, or the subject of, or been notified that it may become a party to or the subject of, any criminal litigation, proceeding, charge, complaint, examination or investigation, of any kind, that could materially affect the financial condition of the applicant's business?

10) Within the past ten years, has the applicant been convicted of any felony?

11) Within the past ten years, has the applicant been convicted of any misdemeanor related to the conduct of the applicant's business?

12) Within the past ten years, has the applicant been convicted of any misdemeanor for any financial or fraud related crime?

**Attachment 3: Minimum Qualifications Response**

The following certification must be made by the Applicant:

<b>Minimum Qualification</b>	<b>Applicant's Response</b>
Applicant certifies that it will meet and maintain the insurance requirements included in Exhibit D of the Standard Agreement.	Do you so certify?  Yes      No
I, the undersigned, declare that the certifications required above are true and that I am authorized to make such certifications and contractually bind the Applicant.	
_____	_____
Signature of Declarant	Date Signed

The following certifications must be made by each prospective Fund Manager listed in the application (i.e. the AFM and each IFM):

Prospective Fund Manager Name: \_\_\_\_\_

<b>Minimum Qualification</b>	<b>Applicant's Response</b>
Prospective Fund Manager certifies that it is a nonprofit lender with experience making real estate loans in the State of California, or a housing trust fund operated by a city, a county, a city and county, or a joint powers authority as described in Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code operated for the purpose of funding the development, acquisition, rehabilitation, or preservation of affordable housing for low- or moderate-income residents	Do you so certify?  Yes      No
Prospective Fund Manager certifies that it will maintain an account for the FIHPP funds that is segregated from its other accounts.	Do you so certify?  Yes      No
Prospective Fund Manager certifies that it will escalate the fees marked with an asterisk in the Budget worksheet by no more than 2% per year (not to exceed a maximum of \$85 million in total administration costs over the lifetime of the FIHPP program).	Do you so certify?  Yes      No
I, the undersigned, declare that the certifications required above are true and that I am authorized to make such certifications and contractually bind the Prospective Fund Manager.	
_____	_____
Signature of Declarant	Date Signed

The following certifications must be made by each Fund Manager listed in the application who will act as an IFM:

Prospective Implementing Fund Manager's Name: \_\_\_\_\_

Minimum Qualification	Applicant's Response	
Prospective Implementing Fund Manager certifies that it has legal counsel available to review the FIHPP legal agreements with Eligible Sponsors, including grant and loan agreements and use restrictions.	Do you so certify? Yes      No	
Prospective Implementing Fund Manager certifies its ability to process loans and grants for property acquisitions using the review, approval, and disbursement process described by the AFM in its application.	Do you so certify? Yes      No	
<p>I, the undersigned, declare that the certifications required above are true and that I am authorized to make such certifications and contractually bind the Prospective Fund Manager.</p> <p>_____</p>		
Signature of Declarant	Print First and Last Name	Date Signed

**Attachment 4: Applicant’s References**

Applicant’s Name: \_\_\_\_\_

Applicant must provide three (3) references from customers for whom the Applicant has provided services of the same nature and type as those outlined in this RFA (affordable housing program management). References are only required for the Administering Fund Manager, not the Implementing Fund Managers. References submitted must be for services provided in the past ten (10) years (from the date of this RFA). At least one reference must be from a governmental entity, and if the Applicant has provided similar services to HCD during this timeframe, one of the references MUST be from a HCD contract manager. The remaining references may include one reference from an organization who received one or more loans or grants from the Applicant. The references must be able to provide sufficient information (i.e., specific times and locations where the Applicant was observed while providing services) in order to verify the Applicant’s experience.

Each reference must be someone who had direct experience with the provision of services by the Applicant and be able to address each of the following:

- a. The Applicant’s ability to provide services as compared to his or her agreed upon contract
- b. The customer’s overall assessment of the applicant’s performance
- c. Each reference must also provide the name, address, title, company, and phone number of the qualifying employer/company

HCD reserves the right to use these references in determining whether a applicant is a responsible supplier.

Name of Company		
Address		
Contact Name	Telephone	Email Address

Name of Company		
Address		
Contact Name	Telephone	Email Address

Name of Company		
Address		
Contact Name	Telephone	Email Address

**Attachment 5: Proposed Budget**

Applicant's Name: \_\_\_\_\_

ALL BUDGET ELEMENTS LISTED BELOW MUST BE INCLUDED IN ALL BUDGETS.

Up to 20 percent of the funds appropriated for this program may be expended for the costs to administer the program. This includes the Department's administrative costs, the Fund Managers' administrative costs, and costs to provide technical assistance to support qualified entities.

The Department will reserve \$15 million of the initial \$500 million of appropriated funds for the Department's administrative costs and costs to provide technical assistance to support qualified entities. The Fund Managers' administrative costs must be no more than 17 percent of the initial \$500 million of appropriated funds, or \$85 million over the lifetime of the program. Only those costs listed in the "Administrative Costs" section of the Budget worksheet below count toward that 15 percent limit. Project-related transaction costs incurred by the IFMs (including costs to originate grants or loans and to oversee the Project through Stabilization) are not considered administrative costs; they count as transaction costs (defined in FIHPP statute as "costs related to acquiring a property, which may include property appraisal, transfer taxes, financing costs, underwriting, project management, broker fees, and legal fees") and are therefore eligible FIHPP expenses for Project Sponsors.

**BUDGET WORKSHEET**

<b>Budget element</b>	<b>Required format</b>	<b>Proposed cost</b>
<b>Administrative Costs</b>		
Start-up Costs	Absolute dollar amount	\$
Managing COSRs (20 years)	Flat fee per project per year*	\$_____ per project per year
Monitoring Compliance (55 Years)	Flat fee per unit per year*	\$_____ per unit per year
Other Administrative Costs (e.g. overseeing IFMs, tracking progress toward program-level income and geographic goals, reporting to the Department) <i>before</i> all program funds have been committed to projects and all projects have achieved stabilization	Flat fee per year*	\$_____ per year
Other Administrative Costs (e.g. overseeing IFMs, reporting to the Department) <i>after</i> all program funds have been committed to projects and all projects have achieved stabilization	Flat fee per year*	\$_____ per year
<b>Project-Related Transaction Costs for IFMs</b>		
Managing Project Grants (not including COSRs or long-term monitoring)	Flat fee per project*	\$_____ per project
Managing Project Loans (not including COSRs or long-term monitoring)	Flat fee per project*	\$_____ per project

\* Please enter the fee amount for the first year the fee will be charged. AFM may escalate the fees marked with an asterisk on an annual basis by no more than 2% per year not to exceed a maximum of \$85 million in total administration costs over the lifetime of the program.



**Attachments 6-10**

These attachments can be accessed via the links included in [Attachment 1, Required Attachment Checklist](#)

**Attachment 11**

HCD ADM 127 (Executive Order N-6-22)

STATE OF CALIFORNIA **CERTIFICATION REGARDING EXECUTIVE ORDER N-6-22** HCD ADM 127 (REV 4/22)

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT ADMINISTRATION AND MANAGEMENT DIVISION  
Business and Contract Services Branch

**CERTIFICATION REGARDING EXECUTIVE ORDER N-6-22**

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022 directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned economic sanctions are in effect. In order to contract with the California Department of Housing and Community Development, the Company/Vendor named below must complete the following certification:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that a) the Company/Vendor named below is not a target of any economic sanctions against Russia and Russian entities and individuals as discussed in Executive Order N-6-22; and b) I am duly authorized to legally bind the Company/Vendor named below. This certification is made under the laws of the State of California.

Company/Vendor Name (Printed)			
Federal ID Number			
Contract/Purchase Order Number			
By (Authorized Signature)		Date	
Printed Name and Title of Person Signing			

**Attachment 14 – 2023 FIHPP Guidelines**

# Foreclosure Intervention Housing Preservation Program

## Final Guidelines



**Gavin Newsom, Governor  
State of California**

**Lourdes M. Castro Ramírez, Secretary  
Business, Consumer Services and Housing Agency**

**Gustavo Velasquez, Director  
California Department of Housing and Community Development**

2020 West El Camino Avenue, Suite 500, Sacramento, CA 95833

Telephone: (916) 263-2771

Website: <http://www.hcd.ca.gov/>

Email: [FIHPP@hcd.ca.gov](mailto:FIHPP@hcd.ca.gov)

*January 4, 2023*

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## **ARTICLE I. PURPOSE, AUTHORITY, AND DEFINITIONS.**

### **Section 100. Purpose**

The purpose of the Foreclosure Intervention Housing Preservation Program (FIHPP, or the Program) is to preserve affordable housing and promote resident ownership or nonprofit organization ownership of residential real property. FIHPP will provide funds for nonprofit organizations and other eligible entities to acquire and rehabilitate 1- to 25-unit buildings that are at risk of foreclosure or in the foreclosure process and maintain those properties as affordable housing.

### **Section 101. Authority**

Health and Safety Code Section 50720.12 authorizes the California Department of Housing and Community Development (Department/HCD) to adopt guidelines for the administration of the FIHPP Program (the Guidelines), and expressly exempts those Guidelines from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Therefore, these Guidelines constitute rules, regulations, orders, or standards of general application that implement, interpret, and make specific Chapter 8.6 (commencing with Section 50720) of Part 2 of Division 31 of the Health and Safety Code. These Guidelines have the full force and effect of law.

### **Section 102. Definitions**

- (a) In addition to the definitions found in Chapter 2 (commencing with Section 50050) of Part 1 of Division 31 of the Health and Safety Code, in Chapter 8.6 (commencing with Section 50720) of Part 2 of Division 31 of the Health and Safety Code, and in Section 50675.2 of the Health and Safety Code, the definitions in the Definition Appendix shall apply to these Guidelines.
- (b) The defined terms will be capitalized as they appear in the guideline text. References to sections herein refer to sections of these Guidelines unless otherwise noted.

### **Section 103. Incorporations by Reference**

- (a) The Uniform Multifamily Regulations (UMR) (Cal. Code Regs., tit. 25, § 8300 et seq.), effective November 15, 2017, and as subsequently amended, are hereby incorporated by reference except to the extent that any UMR provision would be inconsistent with these Guidelines.
- (b) The Multifamily Housing Program (MHP) Final Guidelines, effective March 30, 2022, and as subsequently amended, are hereby incorporated by reference except to the extent that any MHP provision would be inconsistent with these Guidelines.
- (c) Health and Safety Code section 50406, subdivision (p), as subsequently amended (AB 1010), is hereby incorporated by reference.

- (d) Governor's Executive Order No. B-10-11 (September 19, 2011) and Governor's Executive Order N-15-19 (June 18, 2019) are hereby incorporated by reference.

## **ARTICLE II. EXECUTIVE SUMMARY AND OVERVIEW OF THE TIERED PROGRAM.**

### **Section 200. Executive Summary**

The objective of the FIHPP Program is to preserve Rental Housing Developments and Homeownership Developments as affordable housing by funding the intervention efforts of Eligible Sponsors at trustee's sales, pre-foreclosure intervention sales, and foreclosure risk intervention sales, and by assisting the acquisition, Rehabilitation, operation, and long-term affordability of those Projects.

### **Section 201. Overview of the Tiered Program**

- (a) Using a Request for Proposals (RFP) process, the Department will contract with a team of Fund Managers to implement FIHPP. The team of Fund Managers will include one Administering Fund Manager (AFM) and multiple Implementing Fund Managers (IFMs). The Department will contract directly with the AFM. The Department's contract with the AFM will identify all of the AFM's proposed and Department-approved partnerships with qualified IFMs. The AFM will, in turn, subcontract with such approved IFMs.
- (b) Up to 20 percent of the funds appropriated for FIHPP may be expended on the qualifying administrative costs of the entire Program. The administrative costs of the AFM/IFM team shall be no more than 17 percent of the initial \$500 million of appropriated funds, or \$85 million over the lifetime of the Program.
- (c) The AFM will ultimately be responsible for implementing and managing the Program, will be the Department's main point of contact with respect to the Program, will manage and enforce the subcontracts with the IFMs, and will ensure compliance with loan and grant terms and conditions.
- (d) The IFMs will, among other things, implement the qualification process for prospective Eligible Sponsors; develop, review, and approve funding applications for Eligible Sponsors; and make loans and grants to fund the Eligible Sponsors' acquisition and rehabilitation of qualified properties. IFMs will also oversee the Project through Stabilization, including disbursing Rehabilitation funds; and manage the deposit of loan repayments into a reuse account for ongoing Program purposes for the full term of the loan and/or use restriction.
- (e) A Tribally Designated Housing Entity constitutes a nonprofit corporation pursuant to Health and Safety Code section 50091, and may participate as an Eligible Sponsor if it otherwise qualifies as an "eligible borrower" pursuant to Health and Safety Code section 50720.2, subdivision (b)(2); has submitted an Eligibility Application in accordance with the Guidelines; and has been duly approved to participate in the Program as an Eligible Sponsor.
- (f) The Department's Director or designee will review, and make a written determination on, any request for an AB 1010 waiver or modification (AB 1010 Request) submitted by a Tribally Designated Housing Entity. The AB 1010



Request shall comply with the Department's AB 1010 program and applicable law. The Fund Manager team shall abide by and implement the Director's or designee's final AB 1010 determinations without any change or modification. All AB 1010 Requests shall be directed to the Director or to the Department's California Indian Assistance Program (CIAP).

### **ARTICLE III. DEPARTMENT - ADMINISTERING FUND MANAGER (AFM).**

#### **Section 300. Objectives**

- (a) Utilizing the RFP process, the Department shall contract with the AFM to implement and manage the program until June 30, 2026. The Department may amend this contract past June 30, 2026, if funds are available and the Department deems such amendment to be appropriate. Such contract shall identify the team of qualified and Department-approved IFMs that will implement the Program pursuant to appropriate subcontracts with the AFM. The AFM shall enter into one or more subcontracts with such qualified, Department-approved IFMs.
- (b) The AFM will be the Department's main point of contact for all Program purposes, and will, among other things, manage, monitor, and enforce the subcontracts with the IFMs; develop and implement a plan, subject to Department approval, to disburse funds to the IFMs and to hold IFMs accountable for meeting FIHPP program goals; develop and oversee a close-out process for when each IFM ceases providing FIHPP funding; and oversee overall program implementation. Notwithstanding the Program's tiered implementation structure, the AFM shall be ultimately responsible for all aspects of Program implementation, operation, compliance, and enforcement.
- (c) An AFM is ineligible to be an Applicant or an Eligible Sponsor under the Program.

#### **Section 301. Criteria for AFM Eligibility**

- (a) The AFM must meet the qualifying criteria under subdivision (d) of Section 50720.6 of the Health and Safety Code.
- (b) The AFM should also have experience managing large pools of funds and have experience managing multiple lenders as subcontractors.

#### **Section 302. Determination of AFM Eligibility**

- (a) Pursuant to its Request for Proposals (RFP) process, the Department will publicly solicit proposals from AFM candidates who will (i) apply to act as the AFM by demonstrating that they can meet and responsibly satisfy the qualification requirements, performance specifications, performance milestones, time frames, and other FIHPP Program requirements set forth in the RFP and these Guidelines; and (ii) identify, in their proposal, a team of qualified IFMs with whom the AFM proposes to subcontract in order to fully implement the FIHPP Program, and the geographic service area in which each IFM will provide FIHPP funding. The geographic service areas of the IFMs are not required to match the areas used to define goals for the geographic distribution of FIHPP funds. (See Section 503.4(f))

of these Guidelines.) Each AFM candidate's proposed team of IFMs shall, to the maximum extent practicable, be geographically dispersed throughout the State of California.

- (b) The Department shall review and score all complete and timely submitted proposals in accordance with applicable law and the scoring rubric set forth in the RFP and shall make an award to the responsible proposer earning the highest score as determined by the Department.

### **Section 303. Compliance with All Licensing and Insurance Requirements**

The AFM shall obtain, and at all times maintain in good standing, any and all licenses and authorizations, bonds, insurance coverages, and/or undertakings necessary or desirable to perform its duties under the FIHPP Program.

### **Section 304. Type and Timing of Disbursement**

- (a) An initial grant of \$100 million will be made to the AFM at time of contract execution with the Department.
- (b) The AFM can request that the Department disburse additional Program funds, in tranches not to exceed \$100 million each (or the remaining funds if less than \$100 million remains to be disbursed to the AFM), during the term of the relevant contract. Each additional disbursement is subject to the AFM's satisfaction of the following conditions at or as of the time of the draw request:
  - (1) The AFM demonstrates that 75 percent of the most recent grant disbursement received has been committed by IFMs to Eligible Sponsors for Eligible Projects (including Capitalized Operating Subsidy Reserves);
  - (2) The AFM is not in default under its agreements with the Department or any subcontract with an IFM;
  - (3) The AFM is in compliance with all Program requirements; and
  - (4) The AFM has satisfied any and all conditions precedent to the Department's disbursement of additional tranches of grant funds.
- (c) If a grant award to the AFM under Health and Safety Code section 50720.6 is not issued, encumbered, or otherwise committed by December 31, 2025, the Department shall deposit those funds into the Housing Rehabilitation Loan Fund to be used as provided by applicable law. To the extent the AFM's committed grant award is undersubscribed, the AFM shall ensure that those excess funds are returned to the Department for deposit into the Housing Rehabilitation Loan Fund to be used as provided by applicable law.

### **Section 305. Eligible Uses of the Grant to the AFM**

- (a) The AFM shall use the grant money to provide and maintain a stream of funding to the IFMs, who will use that funding to award loans and grants to Eligible Sponsors for predevelopment, acquisition, and Rehabilitation activities.

- (b) Additional eligible uses include all necessary and commercially reasonable costs to implement, administer, and enforce the Program, including, without limitation, any and all costs to develop lending criteria; develop a plan to ensure Eligible Sponsors' compliance with loan or grant terms and conditions; develop Program start-up activities; oversee IFMs; track progress toward program-level income and geographic goals; report to the Department; and monitor compliance.

### **Section 306. AFM's Scope of Work and Relevant Timelines**

- (a) The AFM shall subcontract with Department-approved IFMs to support implementation of the program.
- (b) The AFM shall implement its plan to disburse FIHPP funds to the IFMs. Such plan shall have been submitted as part of the entity's RFP proposal and approved by the Department.
- (c) The AFM shall develop and implement a plan, subject to the Department's express prior written approval, to hold IFMs accountable for meeting FIHPP program goals. The plan shall include actions to be taken by an IFM (e.g., revision of their Project review and approval process) if its funded Projects have a high rate of significant problems (e.g., acquisition falls through, Rehabilitation costs greatly exceed initial estimates, Project does not achieve Stabilization in the timeframes required in Section 503.5(c) of the Guidelines).
- (d) The AFM shall monitor each IFM's portfolio for the purpose of overseeing distribution and disbursements of funds and tracking progress towards meeting Program objectives (e.g., equitable geographic distribution or serving targeted income levels).
- (e) The AFM shall collaborate with the IFMs to create an eligibility application form for Applicants to apply to become Eligible Sponsors. The eligibility application form is subject to the Department's express prior written approval. The AFM shall publish the Eligibility Application form and maintain and publish a list of Eligible Sponsors.
- (f) The AFM shall collaborate with the IFMs to create an application form(s) for Eligible Sponsors to apply for predevelopment, acquisition, and Rehabilitation funding. The original funding application form is subject to the Department's express prior written approval.
- (g) The AFM shall collaborate with the IFMs to develop a detailed and consistent set of criteria, standards, guidance, plans, forms, and processes for the IFMs' review and approval of Eligibility Applications (including, without limitation, standards for evaluating the Eligibility Applicants' documentary evidence of capacity). The criteria, standards, guidance, plans, forms, and processes are subject to the Department's express prior written approval.
- (h) Consistent with any application materials and work products submitted in response to the RFP, the AFM shall collaborate with the IFMs and develop a detailed and consistent set of criteria, standards, guidance, plans, forms, and processes for IFMs' review of Funding Applications; approval of Funding Applications; and disbursement of funds to Eligible Sponsors. The fund disbursement process shall

be sufficient to timely deploy funds necessary to acquire properties as allowed under paragraph (1) of subdivision (b) of Section 50720.2 of the Health and Safety Code. The criteria and guidance shall include project-level underwriting criteria; standards for sizing awards of predevelopment funding; cost limitations; minimum and maximum Partnership Incentive Fees, and project management fees. The underwriting criteria and guidance are subject to the Department's express prior written approval.

- (1) When developing project-level underwriting criteria and guidance on minimums and maximums for pro forma assumptions, the AFM shall base the numbers on actual values (e.g., costs, vacancy rates) for small-scale acquisition and rehabilitation projects.
  - (2) The AFM shall refine the underwriting criteria and pro forma guidance numbers as necessary as the IFMs fund larger numbers of acquisition and Rehabilitation Projects.
- (i) The AFM shall also collaborate with the IFMs to develop loan and grant boilerplate and documents (including, without limitation, funding agreements and use restrictions) to evidence, secure, and memorialize Eligible Sponsors' performance of and compliance with Program requirements, subject to the Department's express prior written approval. Such documentation shall be reasonably uniform across geographic regions.
  - (j) The AFM shall also collaborate with the IFMs to develop a consistent and comprehensive set of Eligible Sponsor requirements in connection with Project Stabilization, subject to the Department's express prior written approval.
  - (k) The AFM shall collaborate with the IFMs to develop a detailed appeal and grievance procedure for Eligibility Applicants and Funding Applicants. Such procedure is subject to the Department's express prior written approval.
  - (l) The AFM shall fund a Capitalized Operating Subsidy Reserve (COSR) for each Project that has been determined COSR-eligible by the IFM that has awarded money for that Project. For each Project that receives a COSR, the AFM shall provide long-term management of the COSR pursuant to these Guidelines. Alternatively, the AFM may subcontract out the COSR management duties for some or all Projects; provided, however, notwithstanding such subcontracting, the AFM shall at all times continue to remain ultimately responsible for all aspects of such COSR management duties. All costs in connection with such subcontracts for COSR management (e.g., costs of subcontract development, legal fees, subcontract amounts) are deemed to be "administrative costs." The entity that manages a given COSR shall be known as the COSR Managing Entity for that COSR.
  - (m) The AFM shall develop a plan and be responsible for ensuring Eligible Sponsors' compliance with loan or grant terms and conditions, including affordability terms and physical condition of the property, for the duration of the regulatory agreement. Alternatively, the AFM may subcontract out the long-term compliance monitoring duties for some or all Projects; provided, however, notwithstanding such subcontracting, the AFM shall at all times continue to remain ultimately

responsible for all aspects of such long-term compliance monitoring duties. All costs in connection with such subcontracts for long-term compliance monitoring (e.g., costs of subcontract development, legal fees, subcontract amounts) are deemed to be “administrative costs.” The entity that monitors long-term compliance for a given Project shall be known as the Compliance Monitoring Entity for that Project. The plan is subject to the Department’s express prior written approval.

- (n) The AFM shall provide the Department with a written assessment of the FIHPP portfolio and pipeline of Projects with respect to the geographic distribution targets and income levels served. The AFM shall provide this written assessment when it requests the next tranche in funding (or when it requests the remaining funds if less than \$100 million remains to be disbursed to the AFM). The Department will make any and all subsequent disbursements after confirming that the AFM is in compliance with all Program requirements. Such determination is within the Department’s sole and absolute discretion. The Department will also work with the AFM to consider whether to adjust the geographic distribution targets.
- (o) The AFM shall develop and oversee a close-out process for IFMs that cease to provide FIHPP funding to Eligible Sponsors. The process is subject to HCD’s express prior written approval.
- (p) The AFM shall ensure timely submission of all deliverables, including those deliverables to be developed by the IFMs, according to the timelines established in the STD 213, Standard Agreement.
- (q) The AFM shall receive Tribal Cultural Awareness Training or participate in an informational session with the Department’s California Indian Assistance Program (CIAP) to receive guidance relative to the AB 1010 process, goals, and intent.
- (r) Reporting.
  - (1) The AFM shall timely submit all reporting in form and substance acceptable to the Department in order to allow the Department to duly comply with its statutory reporting requirements to the Legislature.
  - (2) For the first calendar year from the date the Fund Manager team begins accepting applications to become Eligible Sponsors, the AFM shall submit quarterly reports to the Department. The quarterly reports are due no later than 30 days after the end of each quarter. For all subsequent years, until funds have been fully committed to Projects, the AFM shall submit semi-annual reports to the Department. The semi-annual reports are due no later than 30 days after the end of each six-month period. All reports shall include, without limitation, the following:
    - i. Distribution of FIHPP funds to IFMs
      - 1. Total funding disbursed to each IFM
      - 2. Total funding awarded by each IFM to each Funding Applicant

3. Total amount of funds returned to the reuse account by each IFM
  4. Current remaining and uncommitted FIHPP funds for each IFM
- ii. List of organizations that have been certified as Eligible Sponsors, including whether each Eligible Sponsor met the specific acquisition and rehabilitation experience requirements or whether the Eligible Sponsor met a qualifying exception to that requirement.
  - iii. List of predevelopment loans/grants made, including:
    1. Organization receiving funding
    2. Type of funding (loan or grant)
    3. Loan/grant disbursement date
    4. Total amount of loan/grant
    5. List of properties on which predevelopment funds were used
    6. Amount of predevelopment funding used on each property
    7. Whether or not the property was ultimately acquired
  - iv. List of acquisition/Rehabilitation loans/grants made, including:
    1. Organization receiving funding
    2. Type of funding (loan or grant)
    3. Loan/grant disbursement date
    4. Property address
    5. Number of units
    6. Geographic distribution of assisted properties, as per FIHPP Guidelines
    7. Total acquisition price for property
    8. Total amount of loan/grant
    9. Distribution of funds between acquisition and Rehabilitation
    10. Whether the funding was for additional Rehabilitation needs identified post-acquisition
    11. If the property also received a COSR, total amount of COSR
    12. Proposed term of affordability restrictions for units (rental, ownership, cooperative ownership)
    13. Income levels served
    14. The expiration date of the Project's affordability restrictions
    15. After Project achieves Stabilization, add:
      - a. The amount of the initial Project funding that was recovered due to other subsequent financing sources
      - b. List of other financing sources, if applicable
      - c. For each unit, the number of occupants and gross household income
      - d. Demographic composition of occupants, including race/ethnicity and age
      - e. Copy of the recorded Regulatory Agreement

- v. Status of Capitalized Operating Subsidy Reserves (COSRs), including:
    - 1. Organization receiving COSR
    - 2. Property addresses for properties receiving COSR
    - 3. Date of COSR capitalization
    - 4. Length (number of years) of COSR
    - 5. Total amount of initial COSR
    - 6. Amount of COSR remaining as of the date of the submitted report
  
  - vi. Progress towards the income and geographic equity targets described in these Guidelines.
  
  - vii. Summary of funds spent to date on administrative costs, with a line-item breakdown of each category of administrative cost.
  
  - viii. Summary of the AFM's and each IFM's Tribal Cultural Awareness Training or participation in an informational session with the Department's CIAP relative to the AB 1010 process, goals, and intent.
  
  - ix. Narrative description of program progress, including any challenges identified in program execution and/or recommendations for program changes.
- (3) After all funds have been committed to Projects, the AFM shall submit annual reports to the Department. The annual reports are due no later than 90 days after the end of each calendar year until every funded Project has reached the end of its 55-year affordability term. Reports shall include, without limitation, the following:
- i. List of all FIHPP-funded Projects and related unit and occupancy restriction data, and the end date of their affordability term.
  
  - ii. Status of Capitalized Operating Subsidy Reserves (COSRs), including:
    - 1. Organization receiving COSR
    - 2. Property address for property receiving COSR
    - 3. Date of COSR capitalization
    - 4. Length (number of years) of COSR
    - 5. Total amount of initial COSR
    - 6. Amount of COSR remaining as of the date of the submitted report
  
  - iii. Summary of compliance monitoring activities undertaken, such as the following:

1. List of Eligible Sponsors that provided written information
  2. List of Projects for which written information was received
  3. List of Projects that received site visits for physical inspection
- iv. Summary of compliance findings, such as the following:
1. List of Projects that were out of compliance
  2. List of IFMs that were out of compliance
  3. Reason(s) for the non-compliance
  4. Any action(s) taken by the AFM, IFM, and/or Eligible Sponsor to correct the non-compliance
- v. Summary of funds spent to date on administrative costs.
- vi. Narrative description of program progress, including any challenges.

## **Section 307. Legal Documents**

### **Section 307.1 Standard Agreement**

The Department shall enter into an STD 213, Standard Agreement with the AFM. This agreement shall include, but not be limited to, the following:

- (a) The AFM's responsibilities for timing and completion of FIHPP program setup and key deliverables, including reporting requirements;
- (b) Manner, timing, and conditions for disbursement of FIHPP funds to the AFM;
- (c) Manner, timing, and conditions for the AFM's disbursement of FIHPP funds to the IFMs;
- (d) Terms and conditions for extending the Standard Agreement beyond the initial term;
- (e) Remedies available to the Department in the event of a violation, breach, or default of the Standard Agreement;
- (f) Requirements that the AFM must permit the Department, or its designated agents and employees, to inspect all books, records, and documents maintained by the AFM in connection with FIHPP;
- (g) Terms and conditions required by federal or state law; and
- (h) Other provisions necessary to ensure compliance with the requirements of FIHPP.

### **Section 307.2 Monitoring Agreement.**

The Department and the AFM shall enter into a Monitoring Agreement that shall run until the expiration date of the affordability term for the last Project that receives funding



under the Program. Among other terms and conditions, the Monitoring Agreement will require the AFM to monitor and oversee the Projects in the FIHPP Program portfolio and monitor and oversee the IFMs to ensure that they are duly implementing the Program, abiding by the Program requirements, monitoring the Eligible Sponsors (if applicable), and monitoring their respective portfolios of Projects.

### **Section 308. Breach/Violation**

- (a) If the AFM is in breach, default, or violation of any of the provisions of: (i) these FIHPP Guidelines or other Program requirements; (ii) the STD 213, Standard Agreement, the Monitoring Agreement, or any other agreement between the AFM and the Department; (iii) any subcontract between the AFM and the IFMs; or (iv) any Program loan or grant instrument that confers an obligation upon the AFM or is assigned to the AFM for enforcement (including, without limitation, those instruments that name the Department as a third party beneficiary), then the Department may, at its election and in its sole and absolute discretion, exercise one or more of the following rights and remedies:
- (1) Recapture any and all Program grant funds previously disbursed to the AFM that are then still in the AFM's possession or control. The AFM shall reimburse any and all such Program funds to the Department immediately upon demand.
  - (2) Terminate the AFM (both in its AFM capacity and in any hybrid AFM/IFM capacity) and, in accordance with state contracting procedures, select a replacement AFM to perform some or all of the Program-related services then being performed by the terminated AFM.
  - (3) Require that the AFM assign all of its right, title, and interest in, to, and under the subcontracts to the Department and/or its designee. The AFM shall make such assignment as directed by the Department, immediately upon demand, and in form and substance reasonably satisfactory to the Department. In order to minimize Program disruption, the Department may send notice to the IFMs of the AFM's termination and request that the IFMs attend to the Department and/or the Department's designee.
  - (4) Exercise any and all other rights and remedies available to the Department at law or in equity.
- (b) The foregoing rights and remedies shall be cumulative and non-exclusive to the maximum extent permitted by law.
- (c) If the AFM is terminated or otherwise ceases to act in an AFM capacity, the AFM shall also be terminated in its capacity to act as IFM and shall cease acting in that or any other capacity.

### **Section 309. Department – AFM/IFM Hybrid**

The AFM may choose to serve as an IFM in all or some of the geographic service areas. To the extent the AFM is acting in both AFM and IFM capacities, the AFM shall perform in accordance with both Article III and Article IV of these FIHPP Guidelines.

Where the AFM is also performing as an IFM, the Department shall monitor and oversee the AFM's performance in that IFM capacity.

## **ARTICLE IV. AFM – IFM.**

### **Section 400. Objectives**

The AFM shall enter into one or more subcontracts with those qualified IFMs that have been approved by the Department. The IFMs shall be the Program's main point of interface with, and the delivery conduit of Program funds to, Eligible Sponsors. An IFM is ineligible to be an Applicant or an Eligible Sponsor under the Program.

### **Section 401. Criteria for IFM Eligibility**

- (a) Each IFM must meet the qualifying criteria under subdivision (d) of Section 50720.6 of the Health and Safety Code.
- (b) Each IFM should also have experience working with nonprofits who do acquisition and Rehabilitation of small properties (such as Community Land Trusts or community development corporations).

### **Section 402. Compliance with All Licensing and Insurance Requirements**

The IFM shall obtain, and at all times maintain in good standing, any and all licenses and authorizations, bonds, insurance coverages and/or undertakings necessary or desirable to perform its duties under the FIHPP Program.

### **Section 403. Type and Timing of Disbursement**

- (a) The AFM shall disburse funding to the IFMs as grants.
- (b) Each grant disbursement to an IFM shall be conditioned on the following:
  - (1) The AFM's receipt of Program funding from the Department;
  - (2) The IFM's submittal of a written draw request to the AFM;
  - (3) The IFM's written demonstration, in form and substance acceptable to the AFM, that it has successfully committed at least 75 percent of any previous disbursement to qualifying Projects under the Program; and
  - (4) At the time of the IFM's written draw request, the IFM is not in default or violation of its subcontract with the AFM, any of its loan or grant agreements with an Eligible Sponsor, or any of the Program's requirements.

### **Section 404. Eligible Uses of Disbursement to IFM**

- (a) Those activities that are included within the IFM's Scope of Work, as set forth by these Guidelines, constitute eligible uses of FIHPP funds.

- (b) The IFM's share of Transaction Costs in connection with Project acquisition also constitutes an eligible use. The IFM's Transaction Costs are the IFM's financing costs, underwriting costs, and legal fees related to acquiring the Project. These costs are not considered administrative costs for purposes of Health and Safety Code section 50720.2, subdivision (b)(3).

#### **Section 405. IFM's Scope of Work**

- (a) IFMs shall collaborate with the AFM to create or perform all of the following deliverables:
  - (1) Creating an Eligibility Application form for Applicants to apply to become Eligible Sponsors. The Eligibility Application form is subject to the Department's express prior written approval.
  - (2) Creating a Funding Application form(s) for Eligible Sponsors to apply for predevelopment, acquisition, and Rehabilitation funding. The original Funding Application form is subject to the Department's express prior written approval.
  - (3) Developing a detailed and consistent set of criteria, standards, guidance, plans, forms, and processes for IFMs' review and approval of Eligibility Applications (including, without limitation, standards for evaluating the Eligibility Applicants' documentary evidence of capacity). The criteria, standards, guidance, plans, forms, and processes are subject to the Department's express prior written approval.
  - (4) Consistent with any application materials and work products submitted in response to the RFP, developing a detailed and consistent set of criteria, standards, guidance, plans, forms, and processes for IFMs' review of Funding Applications; approval of Funding Applications; and disbursement of funds to Eligible Sponsors. The fund disbursement process shall be sufficient to timely deploy funds necessary to acquire properties as allowed under paragraph (1) of subdivision (b) of Section 50720.2 of the Health and Safety Code. The criteria and guidance shall include project-level underwriting criteria; standards for sizing awards of predevelopment funding; cost limitations; and minimum and maximum Partnership Incentive Fees and project management fees. The underwriting criteria and guidance are subject to the Department's express prior written approval.
  - (5) Developing loan and grant boilerplate and documents (including, without limitation, funding agreements and use restrictions) to evidence, secure, and memorialize Eligible Sponsors' performance of and compliance with Program requirements, subject to the Department's express prior written approval. Such documentation shall be reasonably uniform across geographic regions.
  - (6) Developing a consistent and comprehensive set of Eligible Sponsor requirements in connection with Project Stabilization, subject to the Department's express prior written approval.

- (7) Developing a detailed appeal and grievance procedure for Eligibility Applicants and Funding Applicants. Such procedure is subject to the Department's express prior written approval.
- (b) IFMs shall perform all other activities necessary to implement the Program at the IFM-Eligible Sponsor level in compliance with Program requirements. Such eligible activities include, without limitation, the following:
- (1) Review and approval of Eligibility Applications;
  - (2) Review and approval of Funding Applications from Eligible Sponsors for Predevelopment, Acquisition, and Rehabilitation funding;
  - (3) Collaboration with Eligible Sponsors to develop acquisition and Rehabilitation budgets;
  - (4) Disbursement of Predevelopment, Acquisition, and Rehabilitation funding to qualifying Eligible Sponsors;
  - (5) Ensuring, at funding origination, that Projects are adequately capitalized for long-term success, including with adequate contingencies and operating and replacement reserves;
  - (6) Ensuring the official recordation of legally sufficient use restrictions or deed restrictions to maintain the use and affordability of the Projects in accordance with Program requirements;
  - (7) Monitoring of Eligible Sponsor activities through Project Stabilization (where the IFM has awarded a grant to the Eligible Sponsor's Project);
  - (8) Monitoring of Eligible Sponsor activities for the full loan term (where the IFM has awarded a loan to the Eligible Sponsor's Project);
  - (9) Enforcement of loan and grant documents in connection with Eligible Sponsor activities through the loan term (for FIHPP loans) or through Project Stabilization (for FIHPP grants);
  - (10) Managing all repayments of FIHPP funds to the reuse account;
  - (11) Working closely with the technical assistance provider and/or the Department's CIAP to support successful FIHPP implementation;
  - (12) Receiving Tribal Cultural Awareness Training or participating in an informational session with the Department's CIAP to receive guidance relative to the AB 1010 process, goals, and intent; and
  - (13) Upon request and as specified by the AFM, providing all necessary information to support the AFM's required reporting to the Department.

## **Section 406. Legal documents**

### **Section 406.1 Subcontracts between AFM and IFM**

- (a) Subcontracts between the AFM and the IFM shall set forth the parties' respective duties, obligations, deliverables, and performance deadlines relative to implementing the FIHPP Program.
- (b) Each IFM must have funding available at all times to quickly fund their anticipated pipeline of Funding Applications.
- (c) Each subcontract is subject to the Department's express prior written approval and shall be in form and substance satisfactory to the Department in its sole and absolute discretion.
- (d) The subcontracts shall be assignable to the Department (or its designee) and shall contemplate and provide for attornment by the IFMs to the Department (or its designee), in the event that the Department's contract with the AFM is terminated for any reason.

### **Section 406.2 Fund Monitoring and Reuse Account Agreements**

- (a) Each IFM shall enter into a Fund Monitoring and Reuse Account Agreement with the AFM. Pursuant to this agreement, the AFM shall monitor the IFM's supervision and oversight of the Projects within its portfolio, as well as its enforcement of Program requirements. The agreement shall (a) allow the Department to access, inspect, and audit any and all records maintained by the AFM and IFMs in relation to Program activities and the Program's reuse account; and (b) address the IFM's monitoring, supervision, oversight, and enforcement obligations. The IFM's relevant obligations, for purposes of the Program and this agreement, include, without limitation, the following:
  - (1) Enforcement of loan and grant documents in connection with Eligible Sponsor activities through the loan term (for FIHPP loans) or through Project Stabilization (for FIHPP grants);
  - (2) Maintaining a reuse account that is dedicated solely to repayments of FIHPP funds and earned interest, and that is segregated from any and all other of the IFM's accounts;
  - (3) Ensuring that the funds in the reuse account are not commingled with any of the IFM's other funds and are ultimately reused for Program purposes;
  - (4) Accounting for Project loan repayments;
  - (5) Calculating loan amounts due and payoffs;
  - (6) Ensuring any deed of trust is released as a lien on the property upon satisfaction of all secured obligations; and

- (7) Collection and enforcement of Program notes and other obligations in default.
- (b) The Fund Monitoring and Reuse Account Agreement shall also require all of the following:
    - (1) All repayments of Program loan principal, interest and other amounts shall be deposited into a separately maintained reuse account for ultimate reuse for Program purposes.
    - (2) In the event an Eligible Sponsor sells a Program-funded unit pursuant to a loan agreement, the IFM shall ensure that all purchase and repayment proceeds generated by the sale are deposited into the relevant reuse account.
    - (3) A tracking system to ensure and document the reuse of the funds for eligible Program activities.
  - (c) The Fund Monitoring and Reuse Account Agreement shall comport with the AFM's Department-approved plans for IFM accountability and Eligible Sponsor compliance.

### **Section 406.3 Loan Documentation**

The form of Program loan documentation developed by the AFM and the IFMs pursuant to these Guidelines shall be consistent with the following general principles. These principles shall apply, as applicable, to loan documentation between the Eligible Sponsor and the IFM, as well as to any loan documentation in connection with the conveyance of the property to an owner-occupant buyer:

- (a) The promissory note shall have a term of at least 10 years and shall bear interest at 3 percent per annum, which interest shall start accruing upon disbursement of funds, with all outstanding principal and accrued unpaid interest being deferred until the earlier of: (i) the stated maturity date, or (ii) such earlier date as the loan becomes due and payable. The loan evidenced by the promissory note shall be non-assumable.
- (b) The principal amount of such promissory note shall be subject to the per-unit funding maximums set forth in these Guidelines.
- (c) The promissory note, and the loan evidenced thereby, shall be secured by a deed of trust encumbering all real property and related interests acquired with Program funds recorded in the official real property records of the county in which the acquired property is located. Where Program funds constitute the majority of all financing provided in connection with the acquisition and Rehabilitation of such property, the lien of the deed of trust shall constitute a first (1st) priority lien against the property prior and superior to all other financing and use restrictions, provided, however, such deed of trust shall in all cases be subject and subordinate to any Program affordability restrictions recorded against such property in connection with the acquisition thereof as contemplated by these Guidelines. Where Program funding does not constitute the majority of all financing provided in connection with

the acquisition or rehabilitation of the property, the IFM may, on a case-by-case basis, agree to subordinate the deed of trust in accordance with the principles and considerations of Section 8315 of the UMRs.

- (d) Among other things, the deed of trust shall contain due on transfer and due on encumbrance provisions allowing for the acceleration of all outstanding principal and accrued but unpaid interest due under the promissory note upon the transfer, conveyance or encumbrance of all or any portion of the property. Notwithstanding the foregoing, the following transfers of individual residential units shall not trigger acceleration:
- (1) A transfer to a surviving joint tenant by devise, descent, or operation of law upon the death of a joint tenant; or
  - (2) A transfer, in which the transferee is a person who occupies or will occupy the unit, which is:
    - i. A transfer where the spouse becomes an owner of the unit;
    - ii. A transfer resulting from a decree of dissolution of marriage, legal separation, or from an incidental property settlement agreement by which the spouse becomes the owner of the unit; or
    - iii. A transfer into an inter vivos trust in which the Eligible Sponsor, or the individual to whom the Eligible Sponsor sells the unit is and remains the beneficiary and occupant of the unit.
- (e) All principal and interest due under the promissory note shall become due on the earliest to occur of the following: (i) the stated maturity date, (ii) when the property ceases to be owner-occupied, or (iii) upon the sale or transfer other than those permitted by the subparagraph immediately preceding. If a Project's take-out financing is less than the Project's FIHPP award for acquisition/Rehabilitation, then the Eligible Sponsor is only required to return the equivalent portion of the FIHPP funding covered by the refinancing. The outstanding balance (i.e., the difference between the take-out financing and the FIHPP funding) remains as gap financing for the Project.
- (f) The IFM may convert all or part of a FIHPP-funded loan into a grant at any time provided the Eligible Sponsor is not in default or violation of any of its agreements with the IFM or any of the Program's requirements.
- (g) In addition to securing the promissory note, the deed of trust shall secure performance of any Program affordability restrictions.
- (h) The promissory note may be prepaid in whole or in part, provided, however, in no event or circumstance shall any prepayment of the note entitle the borrower thereunder or the property owner to a reconveyance of the deed of trust or the termination of the Program affordability restrictions, as the deed of trust secures both the promissory note and such Program restrictions, and such Program restrictions shall continue on for their full stated term notwithstanding any repayment or prepayment of the promissory note.

- (i) The Eligible Sponsor shall, at its sole cost and expense, provide the IFM with an ALTA Lender's policy of title insurance insuring the perfection, validity, and priority of the deed of trust as a lien on the property acquired consistent with the foregoing.

#### **Section 406.4 Use Restrictions**

- (a) For every Project loan or grant awarded by the IFM, the IFM shall cause the recordation of a restrictive covenant, regulatory agreement, or similar use restriction against the Project real property. Where Program funds provide all or most of the Project financing, the use restriction shall be recorded as a lien against the Project in first position, and shall remain in first position, over all other Project agreements, covenants, or other matters of record on the real property for the period of affordability required by the Program. Where Program funds do not constitute the majority of Project financing, the IFM may agree to subordinate the Program deed of trust, regulatory agreement, or other agreement securing payment or performance under the Program in accordance with the principles and considerations set forth at Section 8315 of the UMRs.
- (b) The recorded use restriction shall be in form and substance substantially similar to the boilerplate document that was developed by the Fund Manager team and approved by the Department.

#### **Section 407. Breach/Violation**

- (a) If the IFM is in breach, default, or violation of any of the provisions of: (i) these FIHPP Guidelines or other Program requirements; (ii) the relevant subcontract between the IFM and the AFM; (iii) the relevant Fund Monitoring and Reuse Account Agreement between the IFM and the AFM; (iv) any Program loan or grant documentation between the IFM and an Eligible Sponsor; or (v) any Program agreement under which the Department may be a third party beneficiary, then the AFM shall exercise one or more of the following rights and remedies, all subject to the Department's express prior written approval:
  - (1) Recapture any and all Program grant funds previously disbursed to the IFM that are then still in the IFM's possession or control. The IFM shall reimburse any and all such Program funds to the AFM immediately upon demand.
  - (2) Terminate the subcontract with the IFM. If an IFM is terminated, the AFM shall do one of the following:
    - i. Substitute one or more other existing IFMs to cover the relevant geographical region. If the AFM also serves as an IFM in that geographical region, the AFM shall make documented best efforts to secure an acceptable IFM other than itself before self-designating as the IFM for the relevant geographical region.
    - ii. If there are no other IFMs in that geographical region, then the AFM shall either step in and assume the departing IFM's responsibilities, or the AFM shall secure an adequate replacement IFM. Such



replacement IFM is subject to the Department's express prior written approval.

- iii. Distribute any funds returned from the terminated IFM to the replacement IFM or existing IFMs for FIHPP program purposes.
- (3) Require that the IFM assign all of its right, title, and interest in, to, and under the loan/grant documents and reuse accounts to the AFM or to another IFM designated by the AFM and subject to the Department's prior written approval.
  - (4) Exercise any and all other rights and remedies available to the AFM at law or in equity.
- (b) The foregoing rights and remedies shall be cumulative and non-exclusive to the maximum extent permitted by law.

## **ARTICLE V. IFM – ELIGIBLE SPONSOR.**

### **Section 500. Objectives**

Entities that qualify to be Eligible Sponsors may submit applications for predevelopment/acquisition/Rehabilitation funding to their choice of IFMs whose geographic service area covers the area in which the Eligible Sponsor (for predevelopment funding) or the Project (for acquisition/Rehabilitation funding) is located, or they may submit applications to the AFM if working in an AFM/IFM hybrid capacity. If successful, Eligible Sponsors will then work with their chosen Fund Manager to acquire and Rehabilitate a Homeownership Development or a Rental Housing Development, and to preserve, operate, and maintain such Project as affordable housing in accordance with Program requirements.

### **Section 501. Eligibility Application Process**

- (a) In order to apply for FIHPP funds, an organization must have first been qualified as an Eligible Sponsor.
- (b) The qualification process will be managed by the FIHPP Fund Managers. Each prospective Eligible Sponsor shall submit an application to the AFM. The AFM shall assign each application to an IFM covering the geographical area in which the prospective Eligible Sponsor is located for review. If there are multiple IFMs covering that geographical area, the AFM shall assign the application to one of the IFMs at random. If the AFM serves as an IFM covering that geographical area, the AFM must assign the application to another IFM unless there is no other IFM covering that geographical area.
- (c) The Eligibility Application shall require, without limitation, the following information and supporting documentation:
  - (1) A comprehensive set of the entity's organizational documents (and all amendments thereto);

- (2) All California Secretary of State business filings and Certificates of Status relevant to the entity's qualification to transact business in the State of California;
  - (3) State and federal tax-exempt status letters; and
  - (4) Any other documentation required or deemed necessary by the AFM and IFMs to verify the Applicant's experience and capacity to be an Eligible Sponsor.
- (d) Following receipt of a complete Eligibility Application from an Eligibility Applicant, the IFM will approve or deny the application within 10 business days. No additional eligibility review or approval is required from the AFM or the Department after the IFM has approved or denied an application. If an IFM denies an application, the IFM shall explain the basis for the denial to the prospective Eligible Sponsor in writing.

### **Section 502. Funding Application Process**

- (a) After qualifying as Eligible Sponsors, the Eligible Sponsors may submit Funding Applications for predevelopment/acquisition/Rehabilitation funding to their choice of IFMs within their geographic service area (including the AFM if performing in a hybrid AFM/IFM capacity).
- (b) A Funding Application for predevelopment funding shall require, without limitation, the following information and supporting documentation:
  - (1) The amount of funding requested and the corresponding disbursement schedule.
  - (2) Any other documentation required or deemed necessary by the AFM and IFMs to support the Funding Application for predevelopment funding.
- (c) A Funding Application for acquisition/Rehabilitation funding shall require, without limitation, the following information and supporting documentation:
  - (1) The type of Project proposed for funding (i.e., Homeownership Development or Rental Housing Development) and its geographic location.
  - (2) Information regarding the property's profile as a foreclosure risk or its status in the pre-foreclosure or foreclosure process.
  - (3) The amount of funding requested and the corresponding disbursement schedule.
  - (4) Cost breakdowns, budgets, other proposed financing, and any other documentation (including targeted income levels) required or deemed necessary by the AFM and IFMs to support the Funding Application for acquisition/Rehabilitation funding.

- (d) If an application submittal is complete, then the IFM will approve or deny that application within the timeframe specified in the relevant STD 213, Standard Agreement.

## **Section 503. Predevelopment/Acquisition/Rehabilitation Funding**

### **Section 503.1 Eligible Sponsors**

- (a) **Statutory Eligibility.** In order to become an Eligible Sponsor, the entity (or all joint Eligible Sponsor entities in a partnership) must satisfy subpart (A), (B) or (C) of subparagraph (2) of subdivision (b) of Section 50720.2 of the Health and Safety Code; provided, however, natural persons that satisfy subpart (A) of subparagraph (2) of subdivision (b) of Section 50720.2 of the Health and Safety Code, including eligible tenant buyers as defined in subparagraph (2) of subdivision (a) of Section 2924m of the Civil Code, must partner with an Eligible Sponsor.
- (b) **Experience.** Entities applying to become Eligible Sponsors must demonstrate that they have experience in acquiring and rehabilitating properties and managing those properties as affordable housing.
  - (1) To become an Eligible Sponsor, at least one Applicant entity must have successfully acquired and Rehabilitated at least two (2) properties in the last 10 years or at least one Applicant entity must have an ongoing employment or contractual relationship with staff or consultants who have served as project lead on the acquisition and Rehabilitation of at least two (2) properties in the last 10 years. Applicants must provide details on all completed Affordable Housing Development projects with which they were involved within the last 10 years, including the role(s) the organization(s) played in each project. If the Applicant entity is relying on an employment or contractual relationship to meet this experience requirement, that relationship may either be pre-existing or prospective. In either case, the qualifying relationship shall be in place at the time of Eligibility Application. The Applicant entity shall provide documentary evidence of such relationship at time of Eligibility Application and must maintain a qualifying relationship until the Applicant entity itself can meet the minimum experience requirement of having successfully acquired and Rehabilitated at least two (2) properties in the last 10 years.
  - (2) There are exceptions to this experience requirement. If there are insufficient qualifying applications in a given IFM's geographic service area after a three-month application period, then the relevant IFM may permit applications from Applicants that are from that geographic service area and that have experience in developing and managing affordable housing. These Applicants must have successfully completed at least two (2) Affordable Housing Development projects within the last 10 years, or they must have an ongoing employment or contractual relationship with staff or consultants who have served as project lead on at least two (2) Affordable Housing Developments in the last 10 years. These Applicants should commit to seek technical assistance from FIHPP technical assistance providers or the CIAP on acquisition and rehabilitation of small

properties. Applicants must provide details on all completed Affordable Housing Development projects with which they were involved within the last 10 years, including the role(s) the organization(s) played in each project. If the Applicant entity is relying on an employment or contractual relationship to meet the criteria under this exception, that relationship may either be pre-existing or prospective. In either case, the qualifying relationship shall be in place at the time of the Eligibility Application. The Applicant entity shall provide documentary evidence of such relationship at time of Eligibility Application and must maintain a qualifying relationship until the Applicant entity itself can meet the minimum experience requirement of having successfully acquired and Rehabilitated at least two (2) properties in the last 10 years or successfully completed at least two (2) Affordable Housing Development projects within the last 10 years.

- (3) **Project Management Experience.** The Applicant's project manager must have experience with at least one affordable housing acquisition (or Affordable Housing Development) or be assisted by a consultant or other staff person with greater experience. When using a consultant, the consultant's resume should demonstrate that the consultant has successfully managed all aspects of at least two (2) comparable development projects in the recent past.
  - (4) **Property Management Experience.** Applicants seeking FIHPP funds for properties to be managed as affordable rental housing must also demonstrate property management experience. The Applicant, the Applicant's staff, or the Applicant's management agent must have managed at least one Affordable Housing Development for at least 24 months of occupancy.
  - (5) **Construction Management Experience.** The Applicant's construction manager must have experience with at least one Affordable Housing Development.
  - (6) **Experience – Homeownership Units.** Applicants seeking FIHPP funds for properties to be managed as affordable homeownership units must also demonstrate experience managing a long-term affordable homeownership program including at least two (2) properties and at least one (1) resale. Experience requirements may be met by the Applicant's staff or a consultant.
    - i. **Conversions to Cooperative Ownership.** Applicants seeking FIHPP funds for properties to be converted to cooperative ownership must also demonstrate that they have experience transitioning at least two (2) properties to co-operative ownership and experience with nonprofit oversight of at least two (2) co-op properties for at least five (5) years. Experience requirements may be met by the Applicant's staff or a consultant.
- (c) **Capacity.** Entities applying to become Eligible Sponsors must demonstrate sufficient staff and organizational capacity to successfully execute the Affordable Housing Development transaction for which FIHPP funding is provided. In cases of

joint Eligibility Applicants, at least one entity in the Applicant partnership must meet the capacity requirements.

- (1) **Financial Stability and Operational Capacity.** Eligible Sponsors must be financially stable and demonstrate sufficient staff and organizational capacity to own and operate the proposed housing in a manner that is sustainable over the long term.
  - i. **Financial Stability – Plan.** The Applicant must provide a business and sustainability plan that demonstrates their ability to sustainably own and operate Affordable Housing Developments in the long term. The plan must indicate the types and estimated quantity of properties the organization intends to acquire and operate and include a 20-year cash flow that demonstrates the financial viability of the projected acquisitions and the Applicant’s operational sustainability. The plan can assume the organization received FIHPP funds pursuant to these Guidelines. In order for an Eligible Sponsor to receive FIHPP funds for a given project, the project must be consistent with the business and sustainability plan.
  - ii. **Financial Stability – Data.** The Applicant must provide financial data, staffing, and governing body, partnership, or management information, development history, list of real estate owned, litigation history, and organizational good standing information for the past three (3) years, or for all years the Applicant has been in legal existence if the Applicant has been in legal existence for less than three years. Applicants that have been in legal existence for less than three years are subject to additional review on a case-by-case basis; decisions will be made in the IFM’s sole discretion.
  - iii. **Operational Capacity – Construction Management Capacity.** The Applicant must identify specific staff or consultant(s) who will provide construction management functions relative to Rehabilitation on behalf of the owner, including permit applications and expediting, cost analysis, completion evaluations, change order evaluations, scope analysis and schedule analysis.
  - iv. **Operational Capacity – Asset Management Capacity.** The Applicant must describe asset management staffing plans and show how they manage the financial performance and capital needs of their existing and future assets, including timely performance of capital needs assessments, maintaining adequate replacement reserves and timely collection of tenant rents if applicable.
  - v. **Program and Property Management Capacity.** The Applicant must demonstrate that they have:
    1. Resident selection procedures that meet the fair housing requirements as detailed in these Guidelines (including

ensuring that if a property transitions to cooperative ownership, fair housing requirements continue to be met).

2. A monitoring plan to ensure ongoing compliance (e.g., annual verification of primary residence, annual income verification for rental properties).
3. A plan to ensure that properties in the organization's portfolio are transferred to another Eligible Sponsor that will maintain long-term affordability if the organization shuts down, is determined to be out of compliance, or is otherwise no longer a fit and willing owner.

vi. **Capacity – Homeownership Units.** Applicants seeking FIHPP funds for properties to be managed as affordable homeownership units must also demonstrate that they have a plan for managing resales, including a resale formula to determine the new sales price.

(2) **Joint Eligible Sponsor Application - Exception to Experience and Capacity Requirements.**

- i. If an entity does not fully meet the relevant experience and capacity requirements to become an Eligible Sponsor, that entity may jointly apply to become an Eligible Sponsor with another entity that does fully meet those requirements. This exception is subject to all of the following:
  1. Prior to the disbursement of any FIHPP funds, the joint Eligibility Applicant entities shall enter into a fully executed contract that provides for their mutual performance as joint Eligible Sponsor entities. The contract shall identify the less experienced and/or resourced entity as the designated payee for any awards of FIHPP funds. The contract term shall be no less than ten (10) years in duration. Division of duties shall be subject to negotiation between the parties.
  2. The joint Eligible Sponsor entities shall equitably divide any project management fees that accrue under the FIHPP Program prior to, at, or after Project acquisition.
  3. FIHPP funds may be used to provide the more experienced and/or resourced entity with a one-time Partnership Incentive Fee per Eligible Sponsor partnership. The Partnership Incentive Fee is payable from the first award of FIHPP funds to the joint Eligible Sponsor entities. The Partnership Incentive Fee is not available to joint Eligible Sponsor entities that are affiliated.

(d) **Commitment to Racial Equity.**

- (1) The entity (or all joint Eligible Sponsor entities) must have a demonstrated commitment to advancing racial equity and reducing racial disparities in housing outcomes without engaging in discrimination. As part of the application to become an Eligible Sponsor, entities shall provide the following:
  - i. A profile describing the entity's mission, its length of existence, its staff experience, the composition of its Board of Directors or partnership or management structure, and its commitment to affordable housing and advancing racial equity;
  - ii. A narrative analysis of racial disparities in housing outcomes in the entity's geographic area of operation, including, but not limited to, income by race, housing cost burden by race, history of displacement of residents of color;
  - iii. A description of actions the organization is already taking to reduce racial disparities in housing outcomes, e.g., documenting the race and ethnicity of residents served by the organization, engaging with residents to inform the entity's work, marketing projects equally to all racial and ethnic groups, and using a tenant or homebuyer selection process that does not disadvantage individual racial groups; and
  - iv. A plan for additional actions the entity will take to reduce racial disparities in housing outcomes in its geographic area of operation.

## **Section 503.2 Type and Term of Funding**

- (a) An IFM shall provide an Eligible Sponsor with the option to receive funding in the form of a grant or a loan.
- (b) FIHPP funds can be used for up to 100 percent of eligible Project costs. No developer equity is required. However, Eligible Sponsors may leverage FIHPP funds with other funds.
- (c) **Predevelopment Funding.**
  - (1) **Pre-Acquisition Transaction Costs.** An IFM shall make predevelopment funding available to an Eligible Sponsor to pay its reasonable Pre-Acquisition Transaction Costs related to acquiring an Eligible Project. Pre-Acquisition Transaction Costs shall be limited to the following:
    - i. The costs of performing pre-acquisition due diligence with respect to an identified Eligible Project. Pre-acquisition due diligence includes the retention of third-party professionals to generate surveys, appraisals, inspections, environmental assessments and other reports or studies related thereto.
    - ii. The costs of the following, as applicable:

1. Reasonable legal fees incurred in connection with negotiating and executing a legally binding purchase and sale agreement, option agreement, or other similar acquisition agreement for the Eligible Project.
  2. Earnest money deposits, option payments, or other monetary consideration required to be made under the acquisition agreement prior to the close of escrow for the acquisition.
  3. The costs of preparing, noticing, and making any foreclosure bid in accordance with the legal requirements applicable to the relevant foreclosure proceedings; the funding of any and all amounts required to be paid prior to the ultimate acquisition bid at foreclosure; and the reasonable legal fees incurred by the Eligible Sponsor in connection with the bidding process.
- iii. The one-time Partnership Incentive Fee, if applicable.
- (2) **Pre-Acquisition Project Management Fee.** An IFM shall, upon the Eligible Sponsor's written and reasonably supported request, award the Eligible Sponsor a Pre-Acquisition Project Management Fee. Such written request shall include a written projection of the fee amount, which shall be supported by a reasonable allocation of staff costs and overhead expenses to the identified Eligible Project, as well as a reasonable allocation (or projected allocation) of such costs and expenses across all other unrelated FIHPP Projects for the same fiscal period. This fee shall fund the Eligible Sponsor's staff costs (e.g., salaries) and overhead expenses (e.g., supplies, rent, utilities, insurance, and office equipment) that are reasonably allocable to the following pre-acquisition activities related to the Eligible Project:
- i. Identification of the Eligible Project for possible acquisition under the FIHPP Program;
  - ii. Preparation and submission of the Funding Application in connection with that Eligible Project;
  - iii. Coordination with the IFM to develop a budget for acquisition or acquisition/Rehabilitation;
  - iv. Review and assessment of all pre-acquisition due diligence materials in connection with the Eligible Project; and
  - v. Coordination with legal counsel in connection with the Eligible Project's acquisition agreement or foreclosure bid process.
- (3) An IFM shall make predevelopment funding available to an Eligible Sponsor in an expeditious manner and regardless of whether the Eligible Sponsor has yet identified a potential Eligible Project. An IFM should



award such funding in the amounts and at the times set forth in the approved Funding Application and memorialized in the funding agreement, subject to any timeframe specified in the STD 213, Standard Agreement between the Department and the AFM.

- (4) Such predevelopment funds, with the exception of the Preacquisition Project Management Fee, shall be provided in the form of a grant or a forgivable loan. The Preacquisition Project Management Fee shall be deemed earned when paid. All predevelopment funds, including the Preacquisition Project Management Fee, will be awarded without expectation of repayment so long as the Eligible Sponsor timely complies with all funding terms and conditions and acts in good faith and best effort to identify and acquire an Eligible Project. An Eligible Sponsor is not required to acquire the proposed Project as a condition of the loan or grant.

- (d) **Acquisition and Rehabilitation Funding.** An IFM shall also make acquisition and Rehabilitation funding available in the amounts and at the times set forth in the approved Funding Application and memorialized in the funding agreement, subject to any timeframe specified in the STD 213, Standard Agreement between the Department and the AFM. This funding shall be payable in the following amounts:

- (1) **Acquisition-Related Transaction Costs.** The IFM shall fund the following commercially reasonable Acquisition-Related Transaction Costs in connection with the Eligible Project, as applicable:

- i. Financing costs (i.e., points or funding origination fees);
- ii. Any commissions or finder's fees due and payable;
- iii. The portion of any applicable escrow and closing costs typically paid by a buyer in the county where the acquired Project is located (e.g., transfer taxes, escrow fees, document preparation and recording fees, title insurance premiums);
- iv. Any fees or costs typically paid at a foreclosure risk intervention sale;
- v. Any fees or costs typically paid by a successful bidder at a foreclosure sale; and
- vi. Interim Project Management Fee for the Eligible Sponsor to fund the following costs incurred from Project acquisition through Stabilization:
  1. Planning and overseeing any Rehabilitation;
  2. Overseeing any tenant relocation assistance;
  3. Verifying applicable tenant income and other qualifications;
  4. Project lease-up; and

5. Any co-op conversion of the Project.

- (2) **Direct Acquisition Costs.** The IFM shall fund the Eligible Sponsor's Direct Acquisition Costs, as defined by these Guidelines and as further specified below:
- i. The remaining unpaid portion of the Eligible Project's purchase price under the acquisition agreement or the full amount of the Eligible Sponsor's ultimate maximum foreclosure bid, with such bid amount in no event exceeding the amount of the Program award allocable to the projected foreclosure acquisition price as set forth in the approved Funding Application. In the event the Eligible Sponsor acquires the Eligible Project at a foreclosure sale for less than the maximum foreclosure bid amount funded by the Program, the excess amount shall be immediately returned to the IFM originally funding the same; and
  - ii. The Eligible Project's necessary and commercially reasonable Rehabilitation costs. If the Eligible Sponsor discovers additional rehabilitation needs after property acquisition that could not have reasonably been foreseen before acquisition, the Eligible Sponsor may apply for additional FIHPP funds for the additional rehabilitation.
- (3) **IFM's Transaction Costs.** The acquisition and Rehabilitation funding shall also fund the IFM's Transaction Costs, as further specified and described in Section 404(b) of these Guidelines.
- (e) **Funding Cap.** An Eligible Sponsor's total award of Pre-Acquisition Transaction Costs, Pre-Acquisition Project Management Fee, Acquisition-Related Transaction Costs, Interim Project Management Fee, and/or IFM's Transaction Costs for an Eligible Project shall not exceed the 10 percent limit on Transaction Costs set forth at Health and Safety Code section 50720.8, subdivision (a)(2).
- (f) **Capitalized Operating Subsidy Reserves.**
- (1) Multifamily Rental Housing Developments serving households with an average AMI of 50 percent of AMI or less are also eligible for a Capitalized Operating Subsidy Reserve (COSR) for up to 20 years of operating subsidy if there is a demonstrated financial need, as determined by the IFM.
  - (2) Up to \$175,000 per unit may be provided for a COSR to cover project operating deficits including an annual Post-Stabilization Project Management Fee during the period from and after Project Stabilization. The COSR shall be sized to cover anticipated operating deficits, including Post-Stabilization Project Management Fee payments, for a minimum of 20 years after Project Stabilization.
  - (3) The maximum per-unit COSR amount will be adjusted annually based upon increases in the Consumer Price Index. The adjustment will affect

only new projects that are granted COSRs after the adjustment; projects with existing COSRs will not be affected.

- (4) The AFM will determine the total amount of each project COSR based upon the individual project underwriting performed by the IFM pursuant to the requirements of these Guidelines.
- (5) Eligible uses include an annual Post-Stabilization Project Management Fee, consistent with the limits established by the AFM. The Post-Stabilization Project Management Fee will fund the Eligible Sponsor's staff costs and overhead expenses over the 20-year COSR term that are reasonably allocable to the following deliverables, as applicable:
  - i. Verification of applicable tenant income and other qualifications;
  - ii. Submission of annual operating budgets to the COSR Managing Entity;
  - iii. Submission of all other reports and information required under these Guidelines; and
  - iv. General Project management after Project Stabilization.

**(g) Replacement Reserves.**

- (1) As part of their FIHPP funding application, Eligible Sponsors of rental housing Projects shall provide a 20-year physical needs assessment detailing the projected capital needs over the first 20 years of Project operations. IFMs shall fully fund those capital needs in a replacement reserve.

**(h) Maximum Funding Amounts.**

- (1) The maximum funding amount per unit (for acquisition and for acquisition/Rehabilitation combined) is \$500,000 for multifamily properties or \$600,000 for single-family properties. Any COSR for which a multifamily Rental Housing Development may be eligible will be in addition to these per-unit maximums. The amount of FIHPP funding provided will vary based on the household income levels the Project will serve.
- (2) The maximum award amount per multifamily Rental Housing Development, including all eligible capital and COSR costs, is \$10,000,000.
- (3) These maximum amounts will be adjusted annually based upon year-over-year changes in the California Construction Cost Index as published by the Real Estate Services Division of the California Department of General Services.
- (4) IFMs may make additional funding available on a case-by-case basis for Projects that provide exceptional community benefit (for example, by providing very deep affordability to households at 30 percent AMI or less).

### Section 503.3 Eligible Uses

- (a) Commercially reasonable costs associated with predevelopment, acquisition, and Rehabilitation are eligible uses of Program funds. Eligible uses of Program funds include, without limitation, the following:
- (1) Pre-acquisition due diligence costs
  - (2) Purchase costs
  - (3) Holding costs associated with the property such as taxes, insurance, and debt service
  - (4) Option fees
  - (5) Due diligence reports, including environmental assessments and property inspections
  - (6) Legal costs
  - (7) Architectural and engineering expenses, as applicable
  - (8) Appraisals
  - (9) Gap financing costs
  - (10) Construction costs associated with Rehabilitation
  - (11) Capitalized replacement reserves
  - (12) Relocation assistance costs
  - (13) Costs associated with the real property, such as tax liabilities or fines from property code violations
  - (14) Marketing and leasing
  - (15) Fees for consultants to assist general contractors in complying with prevailing wage requirements
  - (16) A Partnership Incentive Fee (available one time per Eligible Sponsor partnership) for experienced organizations who partner with less experienced and/or resourced organizations
- (b) **IFM's Transaction Costs.** The Eligible Sponsor shall, for each acquired Project, reimburse the IFM for the IFM's share of the Transaction Costs in connection with that Project's acquisition. The IFM's Transaction Costs are the IFM's financing costs, underwriting costs, and legal fees. Where the IFM is funding a Project with a loan, the Eligible Sponsor shall reimburse the IFM for those costs at close of escrow or the foreclosure sale date, as applicable. Where the IFM is funding a Project with a grant, the Eligible Sponsor shall reimburse the IFM for those costs at the time of the grant award pursuant to a negotiated written agreement. In all

cases, such costs are factored into and are payable from the Eligible Sponsor's loan or grant award for the acquisition/Rehabilitation. These costs are not considered administrative costs for purposes of Health and Safety Code section 50720.2, subdivision (b)(3).

- (c) No more than 25 percent of total FIHPP funds shall be used to support units serving households of Moderate Income.
- (d) Projects that are in default under Department financing are not eligible for FIHPP funding.
- (e) In no event may an IFM, or the AFM if acting also as an IFM, use any Program funds to acquire, Rehabilitate, develop, or own any Project or property in which the AFM and/or IFM has a direct or indirect ownership interest. For purposes of this provision, the term "ownership interest" means a fee simple interest, a leasehold interest, an option to purchase or to sell, a right of first refusal, or any other beneficial interest.
- (f) No Program loan or grant award, or any corresponding document evidencing or securing performance or repayment under the Program, shall be assigned, transferred, encumbered, financed, or otherwise alienated.

#### **Section 503.4 Eligible Projects**

- (a) Eligible properties for FIHPP acquisition are identified and set forth at paragraph (1) of subdivision (b) of Section 50720.2 of the Health and Safety Code.
- (b) A "preforeclosure intervention sale" is defined in accordance with subdivision (d) of Section 50720.4 of the Health and Safety Code.
- (c) A "foreclosure risk intervention sale" is defined in accordance with subdivision (c) of Section 50720.4 of the Health and Safety Code. Additional indicators of foreclosure risk at the time of sale include, but are not limited to, the following:
  - (1) The property has outstanding citations from a local government body for habitability problems.
  - (2) A local government body has identified the property as at risk of foreclosure.
- (d) Properties can be single-family homes, duplexes, triplexes, apartment buildings, townhomes, or condominiums.
- (e) Properties that are currently funded by the Department, or that have a pending funding application with the Department, are not eligible properties for FIHPP acquisition.
- (f) **Geographic Distribution.** To the extent possible, at least 45 percent of the total funds awarded under FIHPP should be awarded to Projects in Southern California, 30 percent should be awarded to Projects in Northern California, and 20 percent should be awarded to Projects in Rural Areas. For the purpose of this paragraph:

- (1) Southern California includes the counties of Kern, San Bernardino, San Luis Obispo, and all counties to the south of these counties;
- (2) Northern California includes all other counties of the state; and
- (3) "Rural Area" is defined to be consistent with the definition set forth at Health and Safety Code section 50199.21.

### **Section 503.5 Eligible Sponsor's Scope of Work**

- (a) Eligible Sponsors shall be solely responsible for all of the following:
  - (1) Identifying potential Projects that may benefit from FIHPP assistance and that comport with FIHPP objectives.
  - (2) Making an initial assessment of whether each potential Project would satisfy Program requirements and represent a reasonable investment of public FIHPP money in view of relevant practical considerations (e.g., timing).
  - (3) Ascertaining the potential Project's profile as a foreclosure risk or its status in the pre-foreclosure or foreclosure process.
  - (4) Performing all preacquisition investigation and due diligence as is reasonably necessary and practicable.
  - (5) Requesting Program funding in a sufficiently timely manner.
  - (6) If awarded Program funds, acquiring and Rehabilitating the Project, and then operating and maintaining the Project over the full term of the applicable affordability restriction.
- (b) After funding origination and over the long term, Eligible Sponsors shall ensure that Projects are adequately capitalized for long-term success, including with adequate contingencies and operating and replacement reserves.
- (c) Eligible Sponsors have up to three (3) years for their Project to achieve Stabilization, as measured from the date that the IFM conditionally commits to fund that Project. The IFM can extend this deadline for up to another five (5) years at their discretion. As the Project approaches Stabilization, the Eligible Sponsor shall work closely with the IFM to identify how much (if any) outside financing the Project can/will secure from other sources to take out a portion of the initial FIHPP funding provided for acquisition and Rehabilitation.

### **Section 503.5.1 Homeownership Development Scope of Work**

- (a) The Eligible Sponsor shall be responsible for all Rehabilitation (if applicable), as well as all management functions of the Project, including selection of the homebuyers and ensuring compliance with the affordability/resale restrictions and other provisions of these Guidelines and of the Regulatory Agreement.
- (b) **Reporting.**

- (1) Upon request and as specified by the AFM and/or IFM, the Eligible Sponsor shall provide necessary information to support the AFM's required reporting to the Department and/or the IFM's required reporting to the AFM.

### **Section 503.5.2 Rental Housing Development Scope of Work**

- (a) The Eligible Sponsor shall be responsible for all management functions of the Project, including selection of the tenants and ensuring compliance with the affordability restrictions and other provisions of these Guidelines and of the Regulatory Agreement.
- (b) For Rental Housing Developments, the Eligible Sponsor is responsible for all Rehabilitation (if applicable), all repair and maintenance functions, including ordinary and routine maintenance, replacement of capital items, and extraordinary and/or unforeseen repairs and replacement necessary to maintain the health and safety of the Project and residents. The Eligible Sponsor shall ensure maintenance of residential units, commercial space, and common areas in accordance with local health, building, and housing codes.
- (c) **Reporting.**
  - (1) If the Project has received a COSR, the Eligible Sponsor must annually submit an actual operating budget for the Project to the COSR Managing Entity.
  - (2) On or before the end of the tenth year of Project operation, Eligible Sponsors of rental housing projects shall submit a 20-year cash flow projection to the COSR Managing Entity (if the Project has a COSR) or the Compliance Monitoring Entity. Eligible Sponsors of rental housing projects may submit a 20-year cash flow projection to the COSR Managing Entity (if the Project has a COSR) or the Compliance Monitoring Entity at any time if they anticipate problems covering operating expenses and/or building maintenance needs.
  - (3) Upon request and as specified by the AFM and/or IFM, the Eligible Sponsor shall provide necessary information to support the AFM's required reporting to the Department and/or the IFM's required reporting to the AFM.

### **Section 503.6 General Terms and Conditions**

- (a) In no event shall the Department, the AFM, or the IFM have any liability to any Eligible Sponsor or to any other third party if Program funds are not timely delivered to complete an acquisition.
- (b) If a Project's take-out financing is less than the Project's FIHPP award for acquisition/Rehabilitation, then the outstanding balance of FIHPP funding (i.e., the difference between the take-out financing and the FIHPP funding) shall remain with the Project as long-term gap financing.

- (c) Notwithstanding any other provisions in these Guidelines, the Eligible Sponsor is only allowed to refinance the property for purposes of repaying FIHPP funding, funding necessary capital repairs after exhaustion of the replacement reserve or maintaining Project feasibility.

### **Section 503.6.1 Affordability Requirements**

- (a) The Eligible Sponsor shall ensure that all vacant units are restricted in accordance with subdivision (b) of Section 50720.8 of the Health and Safety Code.
- (b) The detailed affordability requirements for each Project shall be outlined in the Project's Regulatory Agreement and/or deed restrictions for Homeownership Developments.

### **Section 503.6.2 Rent Standards**

- (a) At no time shall Rents for households that meet income qualifications at the time of acquisition exceed 30 percent of household income.
- (b) Rents on Units with households that meet income qualifications at the time of acquisition may be increased by a maximum of the lesser of the allowable increase for similar buildings under an applicable local rent stabilization ordinance or up to 5 percent annually, up to the affordable Rent for the restricted income level for that unit as per the Project's Regulatory Agreement.
- (c) Rents on Units with over-income households at the time of acquisition must stay at their current level until the current lease term ends. At lease renewal, Rents may be increased by a maximum of the lesser of the allowable increase for similar buildings under an applicable local rent stabilization ordinance or up to 5 percent annually until the tenant is paying 30 percent of their household income for Rent, at which point the rent increase will match the rent increase percentage for other tenants in the building.

### **Section 503.6.3 Capitalized Operating Subsidy Reserves**

- (a) The COSR Managing Entity will make an annual COSR disbursement to the Project based on the actual operating budget for the prior operating year.
- (b) If, after review of the actual operating budget for a given year, the COSR Managing Entity finds that the Project did not need as much from the COSR as it received that year, the COSR Managing Entity shall do one of the following:
  - (1) Provide less in COSR payments in a subsequent year to make up the difference between what the Project received and the actual amount of the operating deficit in the prior year;
  - (2) Require the Project to return to the COSR Managing Entity the amount provided that was in excess of the amount of the operating deficit. Any such amount returned shall be deposited to the Project's COSR subaccount; or



- (3) Recalculate the remaining amount of COSR funds available over the remaining years until the 20th year and inform the Sponsor of an allowable COSR withdrawal amount per year, with the intent of keeping the COSR available for the full 20 years.
- (c) If, after review of the Project's first five years of annual operating budgets, the COSR Managing Entity finds that the Project has used more than 25 percent of the total amount of the Project's COSR funds, the COSR Managing Entity shall conduct a review of the Project's finances and do one or more of the following:
    - (1) Continue to provide COSR funds at the rate needed for the Project to achieve fiscal integrity;
    - (2) Approve an increase in income levels served by the Project upon natural unit turnover to the minimum extent required for fiscal integrity, in 5 percent increments up to 80 percent AMI; or
    - (3) Impose annual limits for withdrawals of the remaining COSR funds.
  - (d) The COSR Managing Entity reserves the right, at its sole discretion, to implement the same COSR review process at years 10 and 15.
  - (e) If there are funds remaining in the Project COSR after the 20th year, the COSR Managing Entity reserves the right, at its sole discretion, to implement a similar process for determining the amounts available for allocation. Any funds remaining in the COSR after the 20th year shall continue to be disbursed by the COSR Managing Entity to the Project in accordance with the requirements of these Guidelines.

#### **Section 503.6.4 Revisions to the Rental Housing Development's Unit Mix or to Any Income Restrictions**

If the COSR Managing Entity or Compliance Monitoring Entity verifies that the Eligible Sponsor's 20-year cash flow projection demonstrates a financial need, they may approve an increase in income levels served by the Project upon natural unit turnover to the minimum extent required for fiscal integrity, in 5 percent increments up to 80 percent AMI.

#### **Section 503.6.5 Nondiscrimination and Fair Housing**

- (a) Eligible Sponsors 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), arbitrary characteristics, and all other classes of individuals protected from discrimination under federal or state fair 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.

Sponsors shall adopt written policies for providing reasonable accommodations, reasonable modifications, and auxiliary aids and services for effective communications with residents and applicants with disabilities.

- (b) Occupancy restrictions on all properties, including properties structured as cooperative ownership, shall be imposed and enforced in a manner which does not violate state or federal fair housing laws.

### **Section 503.6.6 Adaptability and Accessibility**

The Eligible Sponsor shall ensure compliance with all applicable federal, state, and local laws regarding adaptability and accessibility.

### **Section 503.6.7 Violence Against Women Act**

Where applicable, Eligible Sponsors shall ensure individuals are not denied assistance, evicted, or have their assistance terminated because of their status as survivors of domestic violence, dating violence, sexual assault, or stalking, or for being affiliated with a victim, pursuant to 34 USC Section 12491.

### **Section 503.6.8 Pet Friendly Housing Act of 2017**

Eligible Sponsors shall authorize residents of the Rental Housing Development to own or otherwise maintain one or more common household pets pursuant to the Pet Friendly Housing Act of 2017 (Health & Saf. Code, § 50466), subject to reasonable rules to protect the health and safety of Project residents and to prevent damage to the Project.

### **Section 503.6.9 Prevailing Wage Law**

Each Project is subject to state and federal prevailing wage law. Eligible Sponsors shall comply with these laws, as applicable. Accordingly, Eligible Sponsors should seek professional legal advice about prevailing wage law requirements and their potential obligations thereunder.

### **Section 503.6.10 Relocation Assistance**

This funding is subject to the State of California's relocation assistance law, which is set forth at Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code and in the Department's implementing regulations (Cal. Code Regs., tit. 25, § 6000 et seq.). If the Project will cause the displacement of any persons, businesses, or farm operations, either directly or indirectly, then the Eligible Sponsor shall provide relocation benefits and assistance as required under the law. If relocation benefits and assistance are legally required, then the Eligible Sponsor's acquisition and Rehabilitation budget shall include sufficient funds to fully pay any and all costs in connection therewith. Each Eligible Sponsor shall also comply with federal Uniform Relocation Act requirements to the extent applicable.

### **Section 503.6.11 Article XXXIV**

This funding is subject to the requirements of article XXXIV, section 1, of the California Constitution (Article XXXIV). The AFM/IFM shall work with the relevant local jurisdiction to ensure and document that each Project has either been approved by local voters, received a sufficient allocation of Article XXXIV authority, or falls within a relevant statutory exception to Article XXXIV under the Public Housing Election Implementation Law (PHEIL) (Health & Saf. Code, §§ 37000 – 37002). For example, the PHEIL exempts the following from the local voter requirements of Article XXXIV: (i) a development intended for owner-occupancy, rather than rental-occupancy (Health & Saf. Code, § 37001, subd. (c)); and (ii) a development involving the rehabilitation, reconstruction, improvement or addition to, or replacement of, dwelling units of a previously existing low-rent housing project, or a project previously or currently occupied by lower income households, as defined in Health and Safety Code section 50079.5 (Health & Saf. Code, § 37001, subd. (f)).

### **Section 503.7 Legal Documents**

- (a) The Program funding, the Eligible Sponsor’s performance, and the relationship between the IFM and the Eligible Sponsor shall be evidenced, secured, and memorialized, as appropriate, by legally binding and mutually acceptable documents. Such documents include, without limitation and as applicable, the following:
  - (1) Note
  - (2) Deed of trust
  - (3) Use restriction or restrictive covenant
  - (4) Deed restriction
  - (5) Disbursement agreement for grant funding

### **Section 503.8 Breach/Violation**

If the Eligible Sponsor breaches any term or condition of the Program grant or loan, or fails to comply with any Program requirement, and if the breach or violation is not duly cured within the relevant time period established in the legal documents, then the Eligible Sponsor forfeits the opportunity to apply for any additional Program funding, and is subject to all rights and remedies available to the IFM, the AFM, and/or the Department under the applicable Program funding documentation, at law or in equity.

## **ARTICLE VI. OPERATIONS.**

### **Section 600. Technical Assistance**

- (a) The Department will contract with a technical assistance provider team to support Fund Managers and Eligible Sponsors in implementing FIHPP.
- (b) The technical assistance provider team shall provide a variety of services to Eligible Sponsors and to prospective Eligible Sponsors, such as:

- (1) Access to data on FIHPP-eligible properties
  - (2) Legal assistance
  - (3) Peer learning opportunities
  - (4) One-on-one technical assistance from experts on a variety of topics related to acquiring, rehabilitating, and managing small properties as affordable housing, including property assessment and due diligence, developing budgets and pro formas, closing on eligible properties, complying with affordability restrictions, and building capacity for tenant ownership including housing cooperative formation and long-term project management.
- (c) The Department, through its CIAP, will provide dedicated technical support and consultations to Tribally Designated Housing Entities that are applying to or participating in the Program – whether at the AFM, IFM, or Eligible Sponsor level.

### **Section 601. Program-wide Compliance with State and Federal Laws, Rules, Guidelines and Regulations**

- (a) The AFM entity, the IFM entity, and each Eligible Sponsor entity shall comply with all applicable state and federal laws, rules, guidelines, and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Program, each Project, its respective contractors or subcontractors, and any loan or grant activity.
- (b) The AFM entity, the IFM entity, and each Eligible Sponsor entity shall comply with all applicable state and federal laws, rules, guidelines, and regulations that pertain to nondiscrimination and fair housing. Such laws include, without limitation, the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); the Americans with Disabilities Act of 1990; the Fair Housing Act; the Fair Housing Amendments Act of 1988; the California Fair Employment and Housing Act; the Unruh Civil Rights Act; Government Code section 11135; Section 504 of the Rehabilitation Act of 1973; and all regulations promulgated pursuant to those statutes.

### **Section 602. Program Assessment**

After the first \$100 million of funding has been distributed or within one year of the date upon which Eligible Sponsors may begin applying for FIHPP funding, the Department will work with Fund Managers, technical assistance providers and Eligible Sponsors to assess how the Program has been working and whether changes to the Program Guidelines are needed to best achieve the Program goals.

### **Section 603. Retention, Inspection, and Audit of Records**

- (a) The AFM entity, each IFM entity, and each Eligible Sponsor entity is responsible for maintaining records which fully disclose its respective FIHPP-funded activities, as well as its respective reporting requirements under these Guidelines. Each AFM, IFM, and Eligible Sponsor entity shall maintain such records over the full

tenure of its respective participation in the FIHPP Program and for a period of five (5) years after such participation has ended, by termination or otherwise. 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.

- (b) The Department, as well as its appointees, employees, agents, and delegates, shall have the right, but not the obligation, to review, obtain, and copy all records pertaining to each entity's performance under this Program during the period of that entity's participation in the Program. Each and every entity 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.
- (c) At any time during an entity's participation in the FIHPP Program, the Department may perform or cause to be performed a financial audit of that entity's FIHPP-related activities. At the Department's request, the entity 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.
- (d) If there are audit findings, the relevant entity 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 relevant entity in writing. If the Department determines, in its sole and absolute discretion, that the response is not satisfactory, the Department will contact the relevant entity, in writing, and explain the action required to cure any audit deficiencies. Such action could include the repayment of ineligible costs or other remediation.

## **APPENDIX A. DEFINITIONS.**

- a. **AB 1010** –Health and Safety Code section 50406, subdivision (p), as subsequently amended. AB 1010 provides for the following: **(i)** Where the provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or agency legal structure would cause a violation or not satisfy the requirements of any FIHPP funding being provided to a Project, said requirements may be modified as necessary to ensure Program compatibility; and **(ii)** where provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or agency legal structure create minor inconsistencies with the requirements of any FIHPP funding being provided to a Project (as determined by the Director or a duly authorized designee thereof), the Department may waive said requirements, as deemed necessary, to avoid an unnecessary administrative burden.
- b. **AB 1010 Request** – means any request for an AB 1010 waiver or modification submitted by a Tribally Designated Housing Entity to the Director or to the Department’s California Indian Assistance Program.
- c. **Acquisition-Related Transaction Costs** – Acquisition-Related Transaction Costs are the necessary and commercially reasonable costs in connection with acquiring a Project, as specified and described in Section 503.2(d)(1) of these Guidelines. Such costs fall within the category of Transaction Costs, as defined by these Guidelines and Health and Safety Code section 50720.4, subdivision (g).
- d. **Administering Fund Manager** or **AFM** - The legal entity that is selected by the Department and obligated under the Standard Agreement, the documents contemplated by the Standard Agreement, and these Guidelines to oversee all aspects of Program implementation, operation, compliance, and enforcement.
- e. **Affiliated** – refers to a relationship that is closer than a mere unrelated third-party arm's length contractual relationship.
- f. **Affordable Housing Development** - Has the following meaning:
  - (a) Any acquisition, or acquisition and rehabilitation, of existing residential structures for the primary purpose of providing decent, safe, and sanitary housing for persons and families of Extremely Low, Very Low, Low, or Moderate Income. An “Affordable Housing Development” shall be either a “Rental Housing Development” or a “Homeownership Development” pursuant to this Program.
  - (b) An Affordable Housing Development may include any buildings, land, facilities, equipment, and/or fixtures that the IFM determines, pursuant to these Guidelines, is necessary or convenient to the provision of housing as contemplated by the Program.

- (c) In the context of an IFM's assessment of an Eligibility Applicant for experience, an "Affordable Housing Development" can also mean construction of new residential structures for renter- or owner-occupancy by persons and families of Extremely Low, Very Low, Low, or Moderate Income.
- g. **Applicant** – As indicated by context, the "Applicant" is either the "Eligibility Applicant" or the "Funding Applicant."
- h. **Area Median Income or AMI** - The most recent applicable county median family income published by California Tax Credit Allocation Committee (TCAC). For Eligible Sponsors that are Tribally Designated Housing Entities, if the HUD income for a county/parish located within a Tribally Designated Housing Entity's service area is lower than the United States median, then the Tribally Designated Housing Entity may use the United States median income limit.
- i. **Assisted Unit or Unit** – A Homeownership Development or Rental Housing Development dwelling or unit that is, or upon vacancy will be, subject to use, income, occupancy, and rent (or resale) restrictions, in accordance with Health and Safety Code section 50720.8, subdivision (b), as a result of funding provided under the FIHPP Program.
- j. **CIAP** – means the Department's California Indian Assistance Program.
- k. **COSR Managing Entity** – The legal entity that provides long-term management of the COSR for each Eligible Project. The COSR Managing Entity may be the AFM, or it may be one or more entities under subcontract with the AFM for performance of the COSR management duties with respect to certain or all Eligible Projects.
- l. **Capitalized Operating Subsidy Reserve or COSR** – A reserve established by the Administering Fund Manager or its designated agent to cover Project operating deficits, including Post-Stabilization Project Management Fee payments. A COSR is available to multifamily Rental Housing Developments serving households with an average AMI of 50 percent of AMI or less if there is a demonstrated financial need, as determined by the IFM.
- m. **Community Land Trust** – is defined in accordance with clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
- n. **Compliance Monitoring Entity** – The legal entity that monitors long-term compliance for a given Project. The Compliance Monitoring Entity may be the AFM, or it may be one or more entities under subcontract with the AFM for performance of the monitoring duties with respect to certain or all Eligible Projects. Notwithstanding the AFM's delegation of these responsibilities through subcontract, the AFM shall remain ultimately responsible for, and report to the Department on, all aspects of Program compliance within the FIHPP portfolio.

- o. **Department or HCD** - The California Department of Housing and Community Development.
- p. **Direct Acquisition Costs** – Direct Acquisition Costs are the necessary and commercially reasonable costs in connection with acquiring a Project, as specified and described in Section 503.2(d)(2) of these Guidelines. Such costs include “property acquisition costs,” as defined at Health and Safety Code section 50720.4, subdivision (f).
- q. **Director** – means the director of the California Department of Housing and Community Development.
- r. **Eligibility Applicant** – A legal entity that applies to be evaluated under the qualification requirements of these Guidelines (e.g., experience, capacity) in order to be approved for participation in the FIHPP Program as an Eligible Sponsor.
- s. **Eligibility Application** – The application to become an Eligible Sponsor submitted by a legal entity to the AFM. A joint Eligibility Application may be submitted by two entities if one of the entities is relying on the other to supply the qualifying experience and/or capacity for an Eligible Sponsor determination.
- t. **Eligible Project** – A property eligible for FIHPP acquisition and funding pursuant to these Guidelines and Chapter 8.6 (commencing with Section 50720) of Part 2 of Division 31 of the Health and Safety Code.
- u. **Eligible Sponsor** – A legal entity that qualifies as an “eligible borrower” under Health and Safety Code section 50720.2, subdivision (b)(2); has submitted an Eligibility Application in accordance with these Guidelines; and has been duly approved to participate in the Program as an Eligible Sponsor. A Tribally Designated Housing Entity constitutes a nonprofit corporation pursuant to Health and Safety Code section 50091, and may participate as an Eligible Sponsor if it otherwise qualifies as an “eligible borrower” pursuant to Health and Safety Code section 50720.2, subdivision (b)(2); has submitted an Eligibility Application in accordance with Guidelines; and has been duly approved to participate in the Program as an Eligible Sponsor. An Eligible Sponsor may receive an award of Program funds for eligible activities from the IFM.
- v. **Extremely Low Income** - Households with Gross Incomes not exceeding 30 percent of Area Median Income as set forth in Health and Safety Code section 50106.
- w. **Fund Manager**– means an AFM, an IFM, or both.



- x. **Fund Monitoring and Reuse Account Agreement** – A legally binding and enforceable agreement entered into between the AFM and each IFM detailing the IFM’s obligations relative to fund monitoring, fund management, supervision, oversight, and enforcement, as well as the AFM’s oversight of such IFM performance, in form and content reasonably acceptable to the Department.
- y. **Funding Applicant** – An Eligible Sponsor that is applying for predevelopment, acquisition, and/or Rehabilitation funding by submitting a Funding Application to its choice of IFM within its geographic service area or to an available AFM/IFM hybrid. The foregoing choice remains within the Eligible Sponsor’s sole and absolute discretion.
- z. **Funding Application** – The application for predevelopment, acquisition, and/or Rehabilitation funding submitted by an Eligible Sponsor to its choice of IFM within its geographic service area or to an available AFM/IFM hybrid.
- aa. **Gross Income** - all income as defined in California Code of Regulations, title 25, section 6914.
- bb. **Guidelines** – means these Guidelines adopted by the Department, pursuant to Health and Safety Code section 50720.12, for the administration of the FIHPP Program.
- cc. **Homeownership Development** - means the acquisition in fee of an existing 1- to 25- attached or detached unit residential property for the primary purpose of developing the same into owner-occupied dwelling units that are each restricted to house an Extremely Low, Very Low, Low, or Moderate Income household. A Homeownership Development shall result in each household holding title to their respective unit in either fee simple title, or a fee simple equivalent in a cooperative or land trust ownership structure customary to affordable housing ownership.
- dd. **IFM’s Transaction Costs** – The IFM’s financing costs, underwriting costs, and legal fees in connection with a Project’s acquisition. The Eligible Sponsor shall reimburse the IFM for these costs from the award of acquisition/Rehabilitation funding relative to the acquired Project, and as further specified and described in Section 404(b) of these Guidelines. Such costs are not considered “administrative costs” for purposes of Health and Safety Code section 50720.2, subdivision (b)(3). Such costs fall within the category of Transaction Costs, as defined by these Guidelines and Health and Safety Code section 50720.4, subdivision (g).
- ee. **Implementing Fund Manager or IFM** - The legal entity that is obligated, pursuant to a contract with the AFM, to provide financing to an Eligible Sponsor for eligible activities subject to affordability restrictions.

- ff. **Interim Project Management Fee** – A fee payable by an IFM to an Eligible Sponsor that has received an award of Program funding to defray the Eligible Sponsor’s commercially reasonable staff costs (e.g., salaries) and overhead expenses (e.g., supplies, rent, utilities, insurance, and office equipment) that are reasonably allocable to performing specified activities, as set forth in Section 503.2(d)(1) of these Guidelines, in connection with the awarded Project and during the period from the date of Project acquisition to the date of Project Stabilization. This fee constitutes an Acquisition-Related Transaction Cost, and it shall be payable from the award of acquisition/Rehabilitation funding.
- gg. **Lower Income or Low Income** - Households with Gross Incomes not exceeding 80 percent of Area Median Income as set forth in Health and Safety Code section 50079.5.
- hh. **Moderate Income** - Households with Gross Incomes not exceeding 120 percent of Area Median Income as set forth in Health and Safety Code section 50093.
- ii. **Monitoring Agreement** – A legally binding and enforceable agreement entered into between HCD and the AFM detailing the AFM’s Program monitoring and oversight obligations pursuant to these Guidelines.
- jj. **Partnership Incentive Fee** – A fee provided to an entity with qualifying experience and capacity in order to incentivize its partnership with a less experienced and/or resourced entity on a joint Eligibility Application and in all related Funding Applications and FIHPP-funded activities. The Partnership Incentive Fee is available on a one-time basis per Eligible Sponsor partnership. The Partnership Incentive Fee constitutes a Pre-Acquisition Transaction Cost, and it shall be payable, if applicable, from the first award of FIHPP funds to the joint Eligible Sponsor entities. The Partnership Incentive Fee is not available to joint Eligible Sponsor entities that are affiliated.
- kk. **Post-Stabilization Project Management Fee** – A fee payable by an IFM to an Eligible Sponsor that has received an award of Program funding to defray the Eligible Sponsor’s commercially reasonable staff costs (e.g., salaries) and overhead expenses (e.g., supplies, rent, utilities, insurance, and office equipment) that are reasonably allocable to performing specified activities, as set forth in Section 503.2(f)(5) of these Guidelines, in connection with the awarded Project and during the period from Project Stabilization through the 20-year term of the COSR. This fee shall be payable only to the extent the Project is awarded COSR funding, and, in such case, shall be paid solely from such funding.
- ll. **Pre-Acquisition Project Management Fee** – A fee payable by an IFM to an Eligible Sponsor that has received an award of Program funding to defray the Eligible Sponsor’s commercially reasonable staff costs (e.g., salaries) and overhead expenses (e.g., supplies, rent, utilities, insurance, and office equipment) that are reasonably allocable to performing specified pre-acquisition activities, as set forth in Section 503.2(c)(2) of these Guidelines, in connection

with an identified Eligible Project. This fee constitutes a Pre-Acquisition Transaction Cost, and it shall be payable from the award of predevelopment funding.

- mm. **Pre-Acquisition Transaction Costs** – Pre-Acquisition Transaction Costs are the necessary and commercially reasonable costs of performing pre-acquisition due diligence with respect to an identified Eligible Project, as specified and described in Section 503.2(c)(1) of these Guidelines. Such costs fall within the category of Transaction Costs, as defined by these Guidelines and Health and Safety Code section 50720.4, subdivision (g).
- nn. **Program or FIHPP** – The Foreclosure Intervention Housing Preservation Program.
- oo. **Project** - means a Rental Housing Development or a Homeownership Development, including the development, rehabilitation, and operation thereof, as well as the financing structure and all agreements and documentation approved in connection therewith.
- pp. **Project Management Fee** – A Project Management Fee means a Pre-Acquisition Project Management Fee, an Interim Project Management Fee, and/or a Post-Stabilization Project Management Fee.
- qq. **Regulatory Agreement** – See **Use Restriction**.
- rr. **Rehabilitation** - means repairs and improvements to a substandard residential structure that are necessary to make it meet rehabilitation standards and to preserve its affordability. Substandard residential structure means a structure in which any of the conditions in Health and Safety Code section 17920.3 exist.
- ss. **Rent** - The same as “gross rent,” as defined in accordance with the Internal Revenue Code (IRC) (26 USC 42(g)(2)(B)). It includes all mandatory charges, other than deposits paid by the tenant, for use and occupancy of an Assisted Unit, plus a utility allowance established in accordance with TCAC regulations, if applicable. For units assisted under the Housing Choice Voucher Program (HCV), or a similar rental or operating subsidy program, rent includes only the tenant contribution portion of the contract rent.
- tt. **Rental Housing Development** - Rental Housing Development means a structure or set of structures which comprises up to 25 rental units. Rental Housing Development does not include any “health facility” as defined by Section 1250 of the Health and Safety Code or any “alcoholism or drug abuse recovery or treatment facility” as defined by Section 11834.02 of the Health and Safety Code. A Rental Housing Development may include households that are above Moderate Income at time of acquisition as part of an overall plan to rehabilitate units where housing for persons and families of Extremely Low, Very Low, Low, or Moderate Income is a primary goal. Vacancies of such units shall occur

through natural turnover. Subsequent tenancies of vacated units shall be restricted pursuant to Health and Safety Code section 50720.8, subdivision (b).

- uu. **Stabilization** shall mean the point in time where the Eligible Sponsor has completed Rehabilitation activities on the Project, has identified tenant income levels as necessary, has completed conversion to cooperative ownership (if applicable) and has optionally brought in takeout financing (as evidenced by enforceable funding commitments), and the taken-out portion of the FIHPP funds, if any, has been deposited into the reuse account.
- vv. **Standard Agreement** – The STD 213, Standard Agreement entered into between the Department and the selected AFM, which shall set forth and memorialize the AFM’s contractual implementation, oversight, and enforcement obligations under the FIHPP Program.
- ww. **Transaction Costs** – has the meaning set forth in Health and Safety Code section 50720.4, subdivision (g). Such costs include Preacquisition Transaction Costs, Acquisition-Related Costs, and an IFM’s Transaction Costs.
- xx. **Tribally Designated Housing Entity** – A Tribally Designated Housing Entity is defined in accordance with Section 4103 of Title 25 of the United States Code and Section 50104.6.5 of the Health and Safety Code. A Tribally Designated Housing Entity constitutes a nonprofit corporation pursuant to Health and Safety Code section 50091, and may participate as an Eligible Sponsor if it otherwise qualifies as an “eligible borrower” pursuant to Health and Safety Code section 50720.2, subdivision (b)(2); has submitted an Eligibility Application in accordance with the Guidelines; and has been duly approved to participate in the Program as an Eligible Sponsor.
- yy. **Use Restriction** - A recorded instrument that imposes use, income, occupancy, and rent (or resale) restrictions on a Project in accordance with Health and Safety Code section 50720.8, subdivision (b).
- zz. **Very Low Income** - Households with Gross Incomes not exceeding 50 percent of Area Median Income as set forth in Health and Safety Code section 50105.

## EXHIBIT A

### AUTHORITY, PURPOSE, AND SCOPE OF WORK

#### 1. Authority

The Foreclosure Intervention Housing Preservation Program (“**FIHPP**” or “**Program**”) was established by California Assembly Bill No. 140 (Chapter 111, Statutes of 2021) (“**AB 140**”), which added Chapter 8.6 (commencing with Section 50720) to Part 2 of Division 31 of the Health and Safety Code (the “**FIHPP Statutes**”). Health and Safety Code section 50720.2, subdivision (a) authorizes the Department of Housing and Community Development (“**Department**” or “**HCD**”) to administer the FIHPP Program. FIHPP funding is derived from the State of California’s General Fund.

The Department issued a Request for Applications on [DATE] (the “**RFA**”) to identify the most qualified entity to serve as the Administering Fund Manager (“**AFM**”) for this Program. Pursuant to that RFA, the Department selected the undersigned AFM. The Department now enters into this STD 213, Standard Agreement (“**Agreement**”) with the AFM under the authority and in furtherance of the Program.

Information from the AFM’s work plan submitted in its response to the RFA (the “**Application**”) will be incorporated into this Agreement including detailed timelines for the completing of each deliverable.

This Agreement is governed by the following (collectively, the “**Program Requirements**”), and each of the following, as amended and in effect from time to time, is incorporated hereto as if set forth in full herein:

- A. The FIHPP Statutes;
- B. The Department’s Foreclosure Intervention Housing Preservation Program Final Guidelines, adopted on January 4, 2023 (the “**Guidelines**”);
- C. California Assembly Bill No. 1010 (Chapter 660, Statutes of 2019), which is set forth at Health and Safety Code section 50406, subdivision (p) (“**AB 1010**”); and
- D. All other applicable laws.

#### 2. Purpose

The purpose of the Program is to preserve affordable housing and promote resident ownership or nonprofit organization ownership of residential real property. Pursuant to its mandate, the Department shall administer the Program

## EXHIBIT A

to provide funds to eligible entities to support the acquisition of 1- to 25-unit properties meeting any of the following criteria:

- A. Real property subject to a trustee's sale pursuant to Section 2924m of the Civil Code wherein an eligible bidder has made a bid or represents an intention to bid using funds from the Program.
- B. Real property subject to a preforeclosure intervention sale.
- C. Real property subject to a foreclosure risk intervention sale.
- D. Real property subject to a recorded notice of default.

Pursuant to this Agreement, the AFM shall implement the Program in accordance with the Program Requirements. AFM acknowledges and agrees that it is obligated to provide all work and deliverables set forth in the Scope of Work, whether or not such work or deliverables were included in the AFM's Application.

### 3. Definitions

To the extent any capitalized terms in this Agreement are not expressly defined herein, those terms shall have the meanings ascribed to them by the FIHPP Statutes or the Guidelines.

- A. "**AB 1010 Process**" means the process by which the Department meaningfully addresses tribal access to and participation in the Department's funding programs, such as FIHPP. Consistent with this process, the Department's Director or designee will review, and make a written determination on, any AB 1010 request submitted by a Tribally Designated Housing Entity relative to that entity's participation in FIHPP as an Eligible Sponsor.
- B. "**AB 1010 Request**" means any request for an AB 1010 waiver or modification submitted by a Tribally Designated Housing Entity to the Department's Director or to the Department's California Indian Assistance Program.
- C. "**Administering Fund Manager**" or "**AFM**" means the legal entity that is selected by the Department and obligated under this Agreement, the documents contemplated by this Agreement, and the Program Requirements to oversee all aspects of Program implementation, operation, compliance, and enforcement. The Administering Fund Manager or AFM also means the "**Contractor**," and it is identified as the Contractor on the STD 213 portion of this Agreement.

**EXHIBIT A**

- D. **“COSR Managing Entity”** means the AFM, or other legal entity, that provides long-term management of the Capitalized Operating Subsidy Reserve, or **“COSR,”** for each Eligible Project, as provided at Section 306 of the Guidelines. The COSR Managing Entity may be the AFM, or it may be one or more entities under subcontract with the AFM for performance of the COSR management duties with respect to certain or all Eligible Projects.
- E. **“Compliance Monitoring Entity”** means the AFM, or other legal entity, that monitors long-term compliance for a given Project, as provided at Section 306 of the Guidelines. The Compliance Monitoring Entity may be the AFM, or it may be one or more entities under subcontract with the AFM for the performance of the monitoring duties with respect to certain or all Eligible Projects. Notwithstanding the AFM’s delegation of these responsibilities through subcontract, the AFM shall remain ultimately responsible for, and report to the Department on, all aspects of Program compliance within the FIHPP portfolio.
- F. **“Contract Managers”** means the Department’s and the AFM’s respective representatives over the term and during the operation of this Agreement, as set forth and identified at Paragraph 5 of this Exhibit A of the Agreement.
- G. **“Effective Date”** means the date that this Agreement has been fully executed by the AFM and the Department.
- H. **“Eligible Project”** means a property eligible for FIHPP acquisition and funding pursuant to the FIHPP Statutes and the Guidelines.
- I. **“Eligible Sponsor”** means a legal entity that qualifies as an “eligible borrower” under Health and Safety Code section 50720.2, subdivision (b)(2); has submitted an Eligibility Application in accordance with the Guidelines; and has been duly approved to participate in the Program as an Eligible Sponsor. A Tribally Designated Housing Entity constitutes a nonprofit corporation pursuant to Health and Safety Code section 50091, and may participate as an Eligible Sponsor if it otherwise qualifies as an “eligible borrower” pursuant to Health and Safety Code section 50720.2, subdivision (b)(2); has submitted an Eligibility Application in accordance with the Guidelines; and has been duly approved to participate in the Program as an Eligible Sponsor.
- J. **“Eligible Uses”** means the activities that may be funded under the Program.

## EXHIBIT A

- K. **“Grant Disbursement”** or **“Grant”** means either of the following, as indicated by context: **(i)** the Department’s initial grant of \$100 million to the AFM upon the execution of this Agreement by the AFM and the Department, and all subsequent tranches of FIHPP funds duly disbursed by the Department to the AFM, all as specified and described at Section 304 of the Guidelines; and **(ii)** the grant money that the AFM, in turn, provides and maintains as a stream of funding to the IFMs, who will use that funding to award loans and grants to Eligible Sponsors for predevelopment, acquisition, and Rehabilitation activities.
- L. **“Implementing Fund Manager”** or **“IFM”** means the legal entity that is obligated, pursuant to a contract with the AFM, to provide financing to an Eligible Sponsor for eligible activities subject to affordability restrictions.
- M. **“Project”** means a Rental Housing Development or a Homeownership Development, including the development, rehabilitation, and operation thereof, as well as the financing structure and all agreements and documentation approved in connection therewith.
- N. **“Scope of Work”** means the services and deliverables to be performed and submitted by the AFM to accomplish the Program purpose. Such services and deliverables are further described at Paragraph 4 of this Exhibit A.

### 4. Scope of Work

- A. AFM shall apply its Grant Disbursement to Eligible Uses in accordance with Section 305 of the Guidelines. AFM shall further perform all services and submit all deliverables as set forth and described at Section 306 of the Guidelines.
- B. AFM shall further monitor and oversee **(i)** the IFMs’ application of their respective Grant Disbursements to Eligible Uses as set forth and described at Section 404 of the Guidelines; and **(ii)** the IFMs’ performance of all services and submission of all deliverables as set forth and described at Section 405 of the Guidelines. AFM’s monitoring and oversight responsibilities are separately memorialized in and shall be enforced pursuant to the Monitoring Agreement for the Foreclosure Intervention Housing Preservation Program, entered into between the AFM and the Department on [DATE] (the **“Monitoring Agreement”**). A reference copy of the Monitoring Agreement is attached to this Agreement as Exhibit F.
- C. AFM shall ensure that the Director or the Department’s California Indian Assistance Program promptly receives any AB 1010 Request submitted by a Tribally Designated Housing Entity relative to that entity’s



**EXHIBIT A**

participation in FIHPP as an Eligible Sponsor. The AFM shall ensure, either directly or in its capacity as the Compliance Monitoring Entity, that the Director’s or designee’s final AB 1010 determinations are implemented without any change or modification.

D. Work will be provided at the AFM’s location. Some travel may be allowed with prior written approval from the Department’s Contract Manager. Travel expenses are not to exceed the rates specified by the California Department of Human Resources (“**CalHR**”). (See <https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>.) AFM shall itemize all travel expenses, including receipts, and submit to the HCD Contract Manager for approval. This approval, including the itemization and receipts, must be attached to the invoice submitted for payment.

**5. Contract Managers**

The Contract Managers during the term of this Agreement will be:

Department of Housing and Community Development	AFM (TBD)
Section/Unit: State Financial Assistance	Contract Manager:
*Contract Manager: (TBD)	Title:
Address:	Address:
Phone No.:	Phone No.:
Email:	Email:

*\*HCD has the right to change the Contract Manager from time to time throughout the term of this Agreement. Such change will not require the consent of AFM. HCD will notify AFM in writing of the name of the new Contract Manager within 30 calendar days of his or her appointment to such position. Such written notice will not constitute, nor require, an amendment to this Agreement.*

**6. Deliverables and Milestones**

A. AFM shall perform its Scope of Work in accordance with **(i)** all Program Requirements; and **(ii)** all plans, timelines, deliverables schedules, and work product descriptions and representations set forth and included in its Application.

## EXHIBIT A

B. If HCD is delayed beyond the review periods specified in the AFM's HCD-approved work plan, the AFM's ultimate deadline for that deliverable will be extended by the number of days that HCD's review was delayed.

### 7. **Progress Reports**

AFM shall submit all reports to HCD as detailed in Section 306(r) of the Guidelines.

### 8. **Evaluation, Acceptance**

The Department will evaluate the AFM's performance of services and submission of deliverables in accordance with **(i)** all Program Requirements; and **(ii)** all plans, timelines, deliverables schedules, and work product descriptions and representations set forth and included in the AFM's Application.

Acceptance criteria for all performance and deliverables: AFM shall perform all services and submit all deliverables in accordance with Program Requirements and consistent with the overall intent of FIHPP.

Without limiting the generality of the foregoing, Table 8.1, *infra*, identifies specific acceptance criteria for the following deliverables:

**EXHIBIT A**

**Table 8.1**

<b>Deliverable</b>	<b>Responsibility</b>	<b>Acceptance Criteria</b>
Subcontract(s) with HCD-approved IFMs	AFM	Must comply with Section 406.1 of the Guidelines.
Plan for how AFM will hold IFMs accountable for meeting FIHPP Program goals	AFM	Plan must be consistent with Section 300 of the Guidelines, as well as any plans, timelines, deliverables schedules, and work product representations and descriptions set forth in the Application.
Eligibility Application form for Applicants to apply to become Eligible Sponsors	AFM to collaborate with IFMs	Form must comply with all applicable requirements set forth at Section 501 of the Guidelines. Form must be made available online and Applicants must be able to fill it out and submit electronically (e.g., as an online form or a fillable PDF).
Funding Application form(s) for Eligible Sponsors to apply for predevelopment, acquisition, and Rehabilitation funding	AFM to collaborate with IFMs	Must be consistent with any application materials and work products set forth and included in the Application, and with Section 502 of the Guidelines. Form(s) must be made available online and Applicants must be able to fill them out and submit electronically (e.g., as an online form or a fillable PDF). Funding Application forms should not require Funding Applicants to repeat information that was already provided in the Eligibility Application.

**EXHIBIT A**

<b>Deliverable</b>	<b>Responsibility</b>	<b>Acceptance Criteria</b>
<p>Detailed and consistent set of criteria, standards, guidance, plans, forms, and processes for IFMs' review and approval of Eligibility Applications (including, without limitation, standards for evaluating the Eligibility Applicants' documentary evidence of capacity)</p>	<p>AFM to collaborate with IFMs</p>	<p>Must be consistent with Sections 501 and 503.1 of the Guidelines.</p>
<p>Detailed and consistent set of criteria, guidance, plans, forms, and processes for IFMs' review of Funding Applications; approval of Funding Applications; and disbursement of funds to Eligible Sponsors</p>	<p>AFM to collaborate with IFMs</p>	<p>Must be consistent with any application materials and work products set forth and included in the Application, and with Sections 306 and 503 of the Guidelines.</p>

**EXHIBIT A**

<b>Deliverable</b>	<b>Responsibility</b>	<b>Acceptance Criteria</b>
Loan and grant boilerplate and documents (including, without limitation, funding agreements and use restrictions) to evidence, secure, and memorialize Eligible Sponsors' performance of and compliance with Program Requirements	AFM to collaborate with IFMs	Must be consistent with Section 503.7 of the Guidelines.
Consistent and comprehensive set of Eligible Sponsor requirements in connection with Project Stabilization	AFM to collaborate with IFMs	Must be consistent with Section 503.5 of the Guidelines.
Detailed appeal and grievance procedure for Eligibility Applicants and Eligible Sponsors/Funding Applicants	AFM to collaborate with IFMs	Must allow Applicants a minimum of five (5) business days to file a grievance.  Must comply with Section 601 of the Guidelines – Program-Wide Compliance with State and Federal Laws, Rules, Guidelines and Regulations.

**EXHIBIT A**

<b>Deliverable</b>	<b>Responsibility</b>	<b>Acceptance Criteria</b>
<p>Fund a Capitalized Operating Subsidy Reserve (“<b>COSR</b>”) for each Project that has been determined COSR-eligible by the IFM that has awarded money for that Project. For each Project that receives a COSR, the AFM will provide long-term management of the COSR as the COSR Managing Entity</p>	<p>AFM</p>	<p>Implementation is consistent with Section 503.2(f) of the Guidelines.</p>
<p>Plan for ensuring Eligible Sponsors’ compliance with loan or grant terms and conditions, including affordability terms and physical condition of the property, for the duration of the Regulatory Agreement</p>	<p>AFM</p>	<p>Must describe, in detail, the AFM’s mechanisms for ensuring Eligible Sponsors’ compliance with the loan documentation, which is specifically identified and described at Section 406.3 of the Guidelines, in accordance with the Program Requirements.</p> <p>Must describe, in detail, the AFM’s mechanisms for enforcing FIHPP use restrictions, which are specifically identified and described at Sections 406.4, 503.6.1, and 503.6.2 of the Guidelines, in accordance with the Program Requirements.</p>

**EXHIBIT A**

<b>Deliverable</b>	<b>Responsibility</b>	<b>Acceptance Criteria</b>
Provide HCD with a written assessment of the FIHPP portfolio and pipeline of projects with respect to the geographic distribution targets.	AFM	Assessment must include property addresses to which funding has been committed, property addresses for which a Funding Application has been received, and any property addresses that are expected to result in a Funding Application.
Close-out process for IFMs that cease providing FIHPP funding to Eligible Sponsors	AFM	Must require, at a minimum, that the IFM: (i) reimburse any and all Program grant funds previously disbursed to the IFM that are then still in the IFM's possession or control to the AFM, (ii) assign, endorse and deliver to the AFM all Program funding related documents and instruments in such IFM's portfolio, as well as all of the IFM's rights and interests thereunder or thereto, and (iii) take all actions reasonably necessary or desirable to the foregoing.
Submit regular written reports to HCD on Program implementation	AFM	Must be consistent with Section 306(r) of the Guidelines.
Receive Tribal Awareness Training or participate in an informational session with HCD's California Indian Assistance Program to receive guidance relative to the AB 1010 Process, goals, and intent.	AFM	HCD will verify AFM compliance upon receipt of the AFM's relevant reporting pursuant to Section 306(r) of the Guidelines.

**EXHIBIT A**

9. **Contract Term**

- A. This Agreement will run from the Effective Date through June 30, 2026. Such contract term may be amended past June 30, 2026 at the Department's election and discretion in accordance with Health and Safety Code section 50720.6, subdivision (b). Upon any such election by the Department, the AFM shall execute such amendment. Any such amendment shall be express, in writing, duly executed by both the Department and the AFM, and it shall otherwise comply with this Agreement and the Program Requirements.



## EXHIBIT B

### BUDGET DETAIL AND PAYMENT PROVISIONS

1. Agreement Amount

The total amount of this Agreement shall not exceed \$485,000,000.00.

2. Budget Detail

AFM has been selected and awarded the sum set forth directly above (the “**Grant**” as referenced in Exhibit A) for the grant or loan activities described in this Agreement. In no instance shall the Department be liable for any costs for work in excess of this Agreement amount, or for any unauthorized or ineligible costs as set forth in the FIHPP Statutes and the Guidelines, or for any costs of AFM in preparing its application, or for work done prior to the Effective Date.

The table below includes the administrative and Project costs.

The awarded AFM's proposed budget information will be included here.

Upon satisfaction of the below Conditions of Performance, as well as any relevant conditions specified at Exhibit E of this Agreement, the Department shall disburse sums to the AFM either via warrant or electronic funds transfer. AFM shall maintain all FIHPP funds in an account that is segregated from any and all of the AFM's other accounts. AFM shall ensure that the FIHPP funds are not commingled with any of the AFM's other funds and that they are ultimately used for Program purposes.

3. Conditions of Performance

Funds are not obligated to the AFM prior to the Effective Date.

- A. The Department will not disburse the first tranche of funds to the AFM until all of the following are satisfied:
- i. This Agreement has been fully executed by both parties.
  - ii. The Department receives an authorizing resolution from the AFM that, in the Department's reasonable determination, materially comports with the Program's legal requirements, including its Guidelines and the FIHPP Statutes.
  - iii. AFM executes and delivers to the Department, and the Department counter-executes, the Monitoring Agreement attached hereto as Exhibit F.
  - iv. AFM submits a Payee Data Record STD 204 or TIN Form (as applicable).

**EXHIBIT B**

- v. AFM provides any and all other forms, materials, and information that the Department determines, in its sole but reasonable discretion, are reasonably necessary to effectuate the first disbursement of FIHPP funds to the AFM.
  - vi. AFM has satisfied all relevant Program Requirements, including those set forth in the FIHPP Statutes and the Guidelines.
- B. The Department will not disburse the second tranche of funds to the AFM until all of the following are satisfied:
- i. AFM has entered into subcontracts with the IFMs that were identified in the AFM's application and subsequently approved by the Department.
  - ii. AFM, in collaboration with the IFMs, has developed a Department-approved Eligibility Application form for prospective Eligible Sponsors.
  - iii. AFM, in collaboration with the IFMs, has developed a Department-approved set of criteria, standards, guidance, plans, forms, and processes for the IFMs' review and approval of Eligibility Applications.
  - iv. AFM, in collaboration with the IFMs, has developed a Department-approved Funding Application form for Eligible Sponsors.
  - v. AFM, in collaboration with the IFMs, has developed a Department-approved set of criteria, standards, guidance, plans, forms, and processes for the IFMs' review of Funding Applications; approval of Funding Applications; and disbursement of funds to Eligible Sponsors.
  - vi. AFM has begun disbursing FIHPP funds to all of the IFMs in accordance with its Department-approved plan.
  - vii. AFM, in collaboration with the IFMs, has developed Department-approved loan and grant boilerplate and documents (including, without limitation, funding agreements and use restrictions) to evidence, secure, and memorialize Eligible Sponsors' performance of and compliance with the Program Requirements.
  - viii. AFM has provided a Fund Monitoring and Reuse Account Agreement, which is acceptable to the Department and in compliance with Program Requirements, and which includes verification of established and separately maintained reuse accounts for funds repaid from IFM loans.
  - ix. AFM, in collaboration with the IFMs, has developed a Department-approved appeal and grievance procedure for Eligibility Applicants and Funding Applicants.

## EXHIBIT B

- x. AFM has submitted documentary evidence that it has received Tribal Cultural Awareness Training, or that it has participated in an informational session with the Department's California Indian Assistance Program relative to the AB 1010 process, goals, and intent.
  - xi. AFM has provided the Department with a written assessment of the FIHPP portfolio and pipeline of Projects with respect to the geographic distribution targets and income levels served.
  - xii. AFM has demonstrated that 75 percent of the balance of the initial tranche remaining after performance of all conditions set forth under this Paragraph 3.B has been committed by the IFMs to Eligible Sponsors for Eligible Projects.
  - xiii. AFM has satisfied all relevant Program Requirements, including those set forth in the FIHPP Statutes and the Guidelines.
- C. The Department will not disburse any additional FIHPP funds to the AFM until all of the following are satisfied:
- i. AFM has satisfactorily performed or submitted any remaining Scope of Work services or deliverables in accordance with the timelines represented in its application.
  - ii. AFM has provided the Department with a written assessment of the FIHPP portfolio and pipeline of Projects with respect to the geographic distribution targets and income levels served.
  - iii. AFM has demonstrated that 75 percent of the most recent tranche has been committed by the IFMs to Eligible Sponsors for Eligible Projects.
  - iv. AFM has satisfied all relevant Program Requirements, including those set forth in the FIHPP Statutes and the Guidelines.

#### 4. Payment Provisions

- A. AFM shall submit a request for its initial disbursement of the Grant proceeds on or before [insert date no later than one (1) year after RFA publication], in an amount of \$100 million.
- B. AFM shall provide financial reports regarding any and all uses of the Grant funds prior to any subsequent Grant Disbursement requests. The Department may withhold or pause payment of subsequent Grant Disbursement requests if the AFM fails to provide adequate reports, as determined by the Department in its sole but reasonable discretion.

**EXHIBIT B**

- C. The Department may withhold or pause payment of subsequent Grant Disbursement requests if the Department determines, in its sole but reasonable discretion, that the AFM has failed to comply with any of the Program Requirements.
- D. All subsequent draw requests shall be for amounts not to exceed \$100 million. AFM's final draw request shall not exceed the amount of funds remaining under the FIHPP Program.
- E. All Grant Disbursement requests must include this Agreement number and a purchase order number. The purchase order number will be provided at a later time by the Contract Manager. A handwritten Agreement number is not acceptable.
- F. AFM must place its final Grant Disbursement request by or before March 31, 2027, in order to ensure enough time for the Department to timely process payment prior to the statutorily imposed disbursement deadline of June 30, 2027.
- G. Requests shall be submitted to:

Department of Housing and Community Development  
Accounting Division  
[Accounts.Payable@hcd.ca.gov](mailto:Accounts.Payable@hcd.ca.gov)  
2020 W. El Camino Avenue, Suite 300  
Sacramento, California 95833  
(916) 263-6612

5. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the Agreement, this Agreement shall be of no further force and effect. In this event, HCD shall have no liability to pay any funds whatsoever to AFM or to furnish any other considerations under this Agreement and AFM shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Agreement, HCD shall have the option to either cancel this Agreement with no liability occurring to HCD or offer an Agreement amendment to AFM to reflect the reduced amount.

**EXHIBIT D**

HCD ADDITIONAL TERMS AND CONDITIONS

1. Interpretation

In the interpretation of this Agreement, any inconsistencies between the State of California General Terms and Conditions (GTC - 04/2017) and the terms of this Agreement and exhibits or attachments shall be resolved in favor of the General Terms and Conditions (GTC - 04/2017)

2. Publications and Reports

A. Unless otherwise provided for in this Agreement, AFM shall:

- 1) Incorporate any comments or revisions required by HCD into any publication or report and shall not publish any material until it receives final written HCD approval from the Contract Manager.
- 2) Furnish one copy of each publication and report required plus one reproducible original. Any publication or report produced in PDF must be supplied to HCD in an unlocked Word or Excel format.

B. Illustrations, maps and graphs in summaries and publications and reports shall be developed in a manner which allows the complete illustration to be contained on a single 8-1/2 by 11 page unless specific written approval is given to the contrary.

C. Graphs, illustrations, and printed materials shall be printed in a single color throughout each publication unless prior written HCD approval is granted.

D. AFM's name shall appear only on the cover and title page of publications and reports and summaries. Covers and title pages will read as follows:

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT  
TITLE OF PUBLICATION  
BY (AFM)

E. HCD retains ownership of and reserves the right to use and reproduce all publications and reports and data produced and delivered pursuant to this Agreement.

F. If the publication and/or report are prepared by nonemployees of HCD, it shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the report in a separate section of the report (Government Code Section 7550).

## EXHIBIT D

### 3. Reports

AFM shall comply with the periodic reporting requirements of the Program Requirements, including, without limitation, those requirements set forth at Section 306(r) of the Guidelines.

### 4. Presentation

Upon HCD's request, AFM shall meet with HCD to present any findings, conclusions and recommendations required per this Agreement.

### 5. Report Delivery

All reports, or other communications except invoices, are to be delivered to the Contract Manager identified at Exhibit A of this Agreement.

### 6. HCD Staff

HCD staff shall be permitted to work side by side with AFM's staff to the extent and under conditions that may be directed by the Contract Manager. HCD staff will be given access to all relevant records that are maintained by the AFM in relation to this Agreement, including, without limitation, data and working documents.

### 7. Confidentiality of Data and Documents

- A. AFM will not disclose data or documents or disseminate the contents of the final or any preliminary report without the express prior written permission of the Contract Manager.
- B. Permission to disclose information or documents on one occasion, or during public hearings held by HCD relating to the same, shall not authorize AFM to further disclose such information or documents on any other occasion.
- C. AFM will not comment publicly to the press or any other media regarding its data or documents, or HCD's actions on the same, except to HCD staff, AFM's own personnel involved in the performance of this Agreement, or at a public hearing, or in response to questions from a legislative committee.
- D. If requested by HCD, the AFM shall require each of its employees or officers who will be involved in the performance of this Agreement, to agree, in writing, to the above terms in an HCD-approved form. AFM shall supply HCD with evidence of the employee's or officer's signature on the HCD form.
- E. To the extent that HCD has approved the use of subcontractors in this Agreement, AFM shall include in its agreements with each approved subcontractor the foregoing provisions related to the confidentiality of data and the non-disclosure of the same.

**EXHIBIT D**

- F. Ninety (90) days after records generated by the AFM pursuant to this Agreement are made part of the public record by the Department, AFM may, at its own expense, and upon written approval by the Contract Manager, publish or utilize such records so long as each such record includes the following legend:

Legal Notice

This record was prepared as an account of work sponsored by HCD but does not necessarily represent the views of HCD or any of its employees except to the extent, if any, that it has formally been approved by HCD. For information regarding any such action, communicate directly with HCD at P.O. Box 952050, Sacramento, California, 94252-2050. Neither HCD nor the State of California, nor any officer or employee thereof, or any of its contractors or subcontractors makes any warranty, express or implied, or assumes any legal liability whatsoever for the contents of this document, nor does any party represent that use of the data contained herein would not infringe upon privately owned rights.

8. Provisions Relating to Data

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may be, for example, document research, experimental, developmental or engineering work; or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections, extrapolations of data or information, etc. It may be in machine form, punched cards, magnetic tape, computer printouts, or retained in computer memory.
- B. "Proprietary data" is such data as the AFM has identified in a satisfactory manner as being under AFM's control prior to commencement of performance of this Agreement and which has been reasonably demonstrated as being of a proprietary force and effect at the time this Agreement is commenced.
- C. "Generated data" is that data which the AFM has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the AFM in the performance of this Agreement at HCD's expense, together with complete documentation thereof, shall be treated in the same manner as generated data.
- D. "Deliverable data" is that data which under terms of this Agreement is required to be delivered to HCD, in accordance with the terms of this Agreement. Such data shall be the property of HCD.

**EXHIBIT D**

- E. "Generated data" shall be the property of HCD unless and only to the extent that it is specifically provided otherwise herein.
- F. As to generated data which is reserved to the AFM by express terms and as to any preexisting or proprietary data which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, AFM shall preserve the same in a form which may be introduced in evidence in a court of competent jurisdiction at AFM's own expense for a period of not less than three years after acknowledged receipt by HCD of the final report or termination of this Agreement and any and all amendments hereto, or for three years after the conclusion or resolution of any and all audits or litigation relevant to this Agreement, whichever is later.
- G. Prior to the expiration of such time and before changing the form of or destroying any such data, AFM shall notify HCD, in writing, of any such contemplated action. HCD may within 30 days after said notification determine whether it desires said data to be further preserved and, if HCD elects, the expense of further preserving said data shall be paid for by HCD. AFM agrees HCD shall have unrestricted reasonable access to the same during said three-year period and throughout the time during which said data is preserved in accordance with this Agreement, and AFM agrees to use best efforts to furnish competent witnesses or identify such competent witnesses to testify in any court of law regarding said data.

9. Amendments

- A. Amendments to this Agreement are allowed as follows:
  - 1) The time for performance of the tasks and items within the budget may be changed with prior written approval of the Contract Manager. However, the term of this Agreement or contract amount may only be changed by formal amendment.
- B. No amendment or modification of this Agreement shall be valid unless it is in writing and executed by the authorized representatives of the parties. Any amendment or modification shall become effective as of the date of (i) the authorized Department representative's signature thereto; or (ii) the date specified in the amendment.



## EXHIBIT D

### 10. Approval of Services and Deliverables

Each service or deliverable to be approved under this Agreement shall be approved by the Contract Manager. HCD's determination as to satisfactory work shall be final absent fraud, mistake, or arbitrariness.

### 11. Substitutions

AFM's key personnel as indicated in its application may not be substituted without the Contract Manager's prior written approval. Notice to either party may be given by email as provided in Exhibit A. Such notice shall be effective when received as indicated on email. Alternatively, notice may be given by personal delivery by any means whatsoever to the party and such notice shall be deemed effective when delivered.

### 12. Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. Failure of HCD to enforce at any time the provisions of this Agreement, or require at any time performance by AFM of any provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of HCD to enforce said provisions.

### 13. Agreement is Complete

Other than as specified herein, no document or communication passing between the parties hereto shall be deemed a part of this Agreement.

### 14. Captions

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the clauses to which they pertain.

### 15. Public Hearings

If public hearings on the subject matter dealt with in this Agreement are held within one year from this Agreement's expiration date, the AFM shall make available to testify the personnel assigned to this Agreement at the hourly rates specified in the AFM's proposed budget. HCD will reimburse AFM for travel of said personnel at the contract rates for such testimony, as may be requested by HCD.

## EXHIBIT D

### 16. Force Majeure

“Force Majeure” is an unforeseeable event outside of a party’s reasonable control which prevents or delays performance of that party’s obligations under this Agreement. Such event does not include the normal risks a party assumes when it enters a contract. A Force Majeure event is a natural disaster such as an earthquake, flood, hurricane, pandemic, an Act of God, act of war, act of public enemies of this state or of the United States, or other similar event.

Force Majeure also includes actions or measures taken by any governmental authority, including executive orders, public health orders, other governmental orders, laws, regulations, or other government actions taken in response to a Force Majeure event, such as a quarantine or other restriction which prevents or delays the performance of a party’s obligations under this Agreement.

The party asserting Force Majeure must give notice to the other party to this Agreement within ten (10) days of the occurrence of the Force Majeure event, notice to be given in accordance with the notice provisions of this Agreement. Such notice must include a description of the Force Majeure event, how said event has prevented or delayed the party’s ability to perform its obligations under this Agreement, a description of reasonable measures the asserting party proposes to take to resume performance of its obligations under this Agreement, and a date by which the party anticipates it will resume performance of its obligations.

During a Force Majeure event, the time for each party’s performance under this Agreement shall be extended one day for each day the Force Majeure event reasonably prevents the asserting party from performing its obligations hereunder.

### 17. Permits and Licenses

AFM shall procure and keep in full force and effect during the term of this Agreement all permits, registrations and licenses necessary to accomplish the work specified in this Agreement and give all notices necessary and incident to the lawful prosecution of the work. AFM shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws, which in any way affect the conduct of the work of this Agreement. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then the AFM shall immediately notify HCD in writing.

### 18. Litigation

HCD, promptly after receiving notice thereof, shall notify the AFM in writing of the commencement of any claim, suit, or action against HCD or its officers or employees for which the AFM must provide indemnification under this Agreement. To the extent permitted by law, HCD shall authorize the AFM or its insurer to defend such claims,

## EXHIBIT D

suits, or actions and shall provide it or its insurer, at the AFM's expense, information, and assistance both necessary and available for such defense. The failure of HCD to give such notice, information, authorization, or assistance, shall not relieve the AFM of its indemnification obligations.

The AFM shall immediately notify HCD of any claim or action against it, which affects or may affect this Agreement, the terms and conditions hereunder, or HCD, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of HCD.

### 19. Insurance Requirements

#### **General Provisions Applying to All Policies**

- A. **Coverage Term** – Coverage needs to be in force for the complete term of the Standard Agreement and of the Monitoring Agreement. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.
- B. **Policy Cancellation or Termination & Notice of Non-Renewal** – AFM and/or insured is responsible to notify the State within five business days before the effective date of any cancellation, non-renewal, or material change that affects required insurance coverage. In the event AFM and/or insured fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- C. **Deductible** – AFM and/or insured is responsible for any deductible or self-insured retention contained within their insurance program.
- D. **Primary Clause** – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.
- E. **Insurance Carrier Required Rating** – All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the AFM and/or insured is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- F. **Endorsements** – Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

**EXHIBIT D**

- G. **Inadequate Insurance** – Inadequate or lack of insurance does not negate the AFM and/or insured's obligations under the contract.
- H. **Satisfying an SIR** - All insurance required by this contract must allow the State to pay and/or act as the AFM's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the AFM's agent in satisfying any SIR is at the State's discretion.
- I. **Available Coverages/Limits** - All coverage and limits available to the AFM shall also be available and applicable to the State, regardless of the minimum limits required in Section 20. Coverage/Limit Requirements below. The State and HCD reserves the right, in its sole and absolute discretion, to modify the coverages and limits of the insurance specified in Section 20. Coverage/Limit Requirements below.
- J. **Subcontractors** - In the case of AFM and/or Permittee's utilization of subcontractors to complete the contracted scope of work, AFM and/or Permittee shall include all subcontractors as insured's under AFM and/or Permittee's insurance or supply evidence of insurance to The State equal to policies, coverages and limits required of AFM and/or Permittee.
- K. **Premiums** – The AFM/Permittee shall be responsible for any premium, deductible or self-insured retention in connection with any Required Insurance.
- L. **Required Insurance** - By requiring the insurance herein, the Department does not represent that the insurance coverage and limits will necessarily be adequate to protect the AFM/Permittee and such coverage and limits shall not be deemed as a limitation on the AFM's/Permittee's liability under the indemnities granted to the Department in this Contract.
- M. **Insurance Certificate** - AFM shall provide an insurance certificate evidencing the required insurance coverage before work commences under the Standard Agreement.

20. Coverage/Limit Requirements

- a. **Commercial General Liability**  
AFM shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each

## EXHIBIT D

insured against which claim is made, or suit is brought subject to the AFM's limit of liability. **The policy must name The State of California, HCD, BCSH, their officers, agents, and employees as additional insured, but only with respect to work performed under the contract.**

a. **Automobile Liability**

By signing the Standard Agreement, the AFM certifies that the AFM and any employees, subcontractors or servants possess valid automobile coverage in accordance with California Vehicle Code Sections 16450 to 16457, inclusive. The State reserves the right to request proof at any time.

b. **Workers' Compensation and Employer's Liability**

AFM shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract. In addition, employer's liability limits of \$1,000,000 are required. By signing this contract, AFM acknowledges compliance with these regulations. **A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California must be attached to certificate.**

c. **Fiduciary Liability**

AFM shall maintain Fiduciary Liability on a claims-made form covering any damages caused by a negligent error, act or omission with a limit not less than \$2,000,000. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained, and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work**. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the AFM must purchase "extended reporting" coverage for a minimum of **Five (5)** years after completion of work.

d. **Crime Insurance**

AFM shall maintain Employee Dishonesty and theft, Forgery or alteration, and when applicable, Inside/Outside Money and Securities coverage for state-owned property in the care, custody and/or control of the AFM. Coverage limits shall not be less than \$5,000,000. A Clients' Property endorsement as broad as CR 04 01 08 13 must be endorsed to this policy and notated on the certificate of insurance. The policy shall include State of California, California Housing & Community Development as loss payee.

## EXHIBIT D

### 21. Severability

If any provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this Agreement and remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are and shall be deemed to be severable.

### 22. Disputes

- A. Except as otherwise provided in this Agreement, any dispute arising under or relating to the performance of this Agreement, which is not disposed of by mutual agreement of all parties shall be decided via a two-tier resolution process. First, the parties with a dispute will present their dispute documentation to the Contract Manager for review and resolution. If the dispute cannot be resolved by the Contract Manager, then it will be presented to HCD's Deputy Director or designated Executive staff. The decision of the Deputy Director/Executive staff shall be final, conclusive, and binding on both parties.
- B. AFM shall continue to perform its obligations under this Agreement during any dispute, unless HCD directs otherwise.
- C. In the event of any litigation, proceeding or dispute arising out of this Agreement or the need to interpret any language or provision of this Agreement, California law will apply and California courts will decide all such matters as the exclusive forum for such matters.

### 23. Suspension or Termination

- A. **Generally.** The Department may terminate this Agreement and/or exercise any of its other rights and remedies described in this Agreement for cause at any time by giving at least thirty (30) calendar days' advance written notice and opportunity to cure to the AFM (such 30-day period being the "**Cure Period**"). Without limiting the generality of the foregoing, upon such termination, the AFM 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.
- B. **Cause.** Cause shall consist of the following:
  - 1) AFM's breach, default, or violation of any of the terms or conditions of this Agreement or any other agreement between the AFM and the Department;

**EXHIBIT D**

- 2) The AFM's breach, default, or violation of any Subcontract with an IFM or any other person;
- 3) The AFM's breach, default, or violation of any Program loan or grant instrument that confers an obligation upon the AFM or is assigned to the AFM for enforcement (including, without limitation, those instruments that name the Department as a third-party beneficiary);
- 4) The Department's determination of either of the following:
  - (i) Any material fact or representation, made or furnished to the Department by the AFM in connection with the FIHPP Program's RFA process or this Agreement, 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
  - (ii) The AFM has concealed any material fact from the Department related to its application or to its fitness to perform as an AFM (or as an AFM/IFM, if applicable) under the Program.
- 5) The AFM's violation of any of the Program Requirements;
- 6) In the event any voluntary or involuntary proceedings in bankruptcy (or similar insolvency proceedings) are commenced by or against the AFM or its control persons, or the AFM or its control persons is adjudged bankrupt or has suffered or undergone the appointment of a receiver, trustee, or assignment for the benefit of creditors;
- 7) The AFM or any of its control persons or affiliated entities is at any time determined to be a Target of Economic Sanctions as contemplated by Paragraph 30 of Exhibit D of this Agreement, and the AFM shall give the Department written notice immediately upon the occurrence of any such event;
- 8) In the event any of the fund managers (the AFM or any IFM) at any time becomes subject to a pending Securities Exchange Commission investigation which the Department determines in its sole and absolute discretion will impair the fund manager's ability to perform under this Agreement, and the AFM shall give the Department written notice immediately upon the occurrence of any such event;
- 9) The AFM at any time becomes a party to or otherwise becomes involved in any pending litigation which the Department determines in its sole and

## EXHIBIT D

absolute discretion will impair the fund manager's performance under this Agreement, and the AFM shall give the Department written notice immediately upon the occurrence of any such event; or

- 10) There has been a threat to a Department employee pursuant to subparagraph F. of this Paragraph 22.

- C. **Rights/Remedies.** If the breach, default, or violation of any of the foregoing is not cured to the Department's satisfaction within the Cure Period then the Department may declare a default under this Agreement and may exercise any and all rights and remedies that are available under the Program Requirements, under this Agreement, at law, in equity, or otherwise, including without limitation terminating this Agreement.
- D. **Remedies Cumulative.** The exercise of any such right or remedy will not limit or preclude the exercise of any other rights and remedies that may be available to the Department under the Program Requirements, under this Agreement, at law, in equity, or otherwise. All such rights and remedies shall be cumulative and non-exclusive to the maximum extent permitted by law.
- E. **Completion.** In the event of termination for default, without limiting the generality of the foregoing, HCD reserves the right to take over and complete the work by contract or other means. In such case, AFM is liable to HCD for any additional costs incurred by HCD to complete the work.
- F. **Threats to HCD employee(s).** AFM agrees to be fully responsible to HCD for the acts and omissions of AFM's subcontractors and any other persons directly or indirectly employed by AFM or any of its subcontractors. The word 'acts' in the preceding sentence includes any threat, whether real, implied, apparent or perceived, made to an employee of the State of California. Any such threat shall be grounds, in HCD's discretion, to terminate this contract.

### 24. Evaluation of AFM's Performance (STD 4 - Contract/Contractor Evaluation)

The AFM's performance under this Agreement shall be periodically evaluated under the Program Requirements, including, without limitation, the reporting requirements set forth at Section 306(r) of the Guidelines.

### 25. Potential Subcontractors

- A. This Agreement shall not create any contractual relation between HCD and any subcontractors, and no subcontract shall relieve the AFM of its responsibilities and obligations hereunder. AFM agrees to be as fully responsible to HCD for the



**EXHIBIT D**

acts and omissions of its subcontractors and persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the AFM.

- B. Any subcontracts between the AFM and the IFMs shall be assignable to HCD (or to its designee) in the event the AFM is terminated by the Department.

26. Conflict of Interest Clause

A. Purpose

The purpose of this clause is to ensure that the AFM (1) is not biased, or in any way appear to be biased, in the performance of its duties under this Agreement due to any financial, contractual, organizational, or other interests or relationships relating to the nature of the work it is performing under this Agreement, (2) does not receive any improper gain or financial or other benefits as a result of performing the work required by this Agreement, and (3) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this Agreement.

**EXHIBIT D**

B. Conflicts of Interest

AFM represents, warrants, and covenants to HCD as follows:

- 1) No Current or Prior Conflicts of Interest. AFM has no business, professional, personal, or other interests or relationships, including but not limited to, the representation of current or prior clients that would conflict in any manner or degree with the performance of AFM's obligations under this Agreement.
- 2) Prohibition on Conflicts. Neither the AFM, nor its staff or agents, will engage in conduct that would constitute a conflict of interest, whether actual, potential, or perceived, during the term of this Agreement.
- 3) Notice of Conflict. If any actual or potential conflict of interest arises under this Agreement, AFM shall immediately inform HCD in writing of such conflict and HCD shall be entitled to exercise its rights and remedies under subsection (4) below.
- 4) Termination for Material Conflict. If in the sole and absolute discretion of HCD a material conflict of interest exists that in HCD's opinion would negatively impact or call into question the performance of AFM's duties under this Agreement, or that would give rise to the appearance of a material conflict of interest on the part of AFM, HCD may elect to terminate this Agreement upon written notice to AFM. Such termination shall be effective upon the receipt of such notice by AFM.

27. Americans with Disabilities Act and Section 508 of the Rehabilitation Act

- A. AFM, by signature hereto, certifies that it complies with the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101 et seq.), which, among other things, prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
- B. AFM is responsible for ensuring all products and services provided to HCD pursuant to this Agreement, including hosting services for electronic content, meet the accessibility requirements of the refreshed Section 508 of the Rehabilitation Act (29 U.S.C. § 794d) and all the applicable provisions of the Information and Communication Technology (ICT) Standards and Guidelines. These standards incorporate by reference all of the requirements of Web Content Accessibility Guidelines 2.0 AA success criteria. HCD reserves the right to ask for proof of conformance or to perform testing on any solution to verify conformance.
- C. AFM shall ensure that all deliverables provided by AFM pursuant to this Agreement that will be posted to HCD's website or will be viewed and/or utilized by persons either within or outside HCD, comply with all of the laws, standards and guidelines referenced in the preceding paragraph. In the event any

## EXHIBIT D

deliverables provided by AFM under this Agreement require remediation in order to comply with all of the laws, standards and guidelines referenced in the preceding paragraph, all costs for such remediation shall be borne by AFM.

28. Executive Order N-6-22 – Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine AFM is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide AFM advance written notice of such termination, allowing AFM at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

29. Segregated Accounts.

All Program funds shall be placed in a segregated account. These funds shall not be comingled with funds from any other source.

30. Retention, Inspection and Audit of Records

AFM shall at all times comply, and shall cause all other relevant parties to comply, with the record retention, inspection and audit requirements set forth in the Program Requirements, including without limitation Section 603 of the Guidelines. Without limiting the generality of the foregoing, the AFM agrees that the Department, the Department of General Services, the Bureau of State Audits, or their designated representatives shall each have the same inspection and audit rights as are set forth above. AFM agrees to include all such retention, inspection and audit rights in any subcontract related to the performance of this Agreement.

32. Assignment

Pursuant to the competitive RFA process, the Department identified the AFM as the person or entity most qualified to implement, operate, and administer the Program based on the AFM’s qualifications and application. Therefore, notwithstanding any of the other terms and provisions of this Agreement, the AFM shall not assign, transfer, encumber, or otherwise alienate (each, a “**Transfer**”) this Agreement, or any of its rights, interests, or obligations hereunder, in whole or in part, without the express, prior written consent of the Department, which consent may be withheld or conditioned in its sole and absolute discretion. Any attempted Transfer by the AFM without the Department’s express, prior written consent shall be null and void. Any Transfer

## EXHIBIT D

consented to by the Department shall in no event relieve or release the AFM from any of its obligations or duties hereunder unless the Department's consent expressly provides for such release.

The Department may delegate some or all of its Program administration duties and obligations to one or more third-party consultants pursuant to and in accordance with Health and Safety Code section 50720.6, subdivision (e). Accordingly, the Department shall at all times be entitled to assign, transfer, or alienate this Agreement and/or any of its rights or interests hereunder, in whole or in part, upon written notice to the AFM.

### 33. Compliance with State and Federal Laws, Rules, Guidelines, and Regulations

AFM shall comply, and shall ensure that each of the IFMs complies, with all applicable state and federal laws, rules, guidelines, and regulations that pertain to construction, health and safety, accessibility, labor, fair employment practices, equal opportunity, nondiscrimination, fair housing, and all other matters applicable to the Program.

**EXHIBIT F**  
**MONITORING AGREEMENT**  
**FOR THE**  
**FORECLOSURE INTERVENTION AND HOUSING PRESERVATION PROGRAM**

THIS MONITORING AGREEMENT (“**Agreement**”) dated \_\_\_\_\_, 2022 is entered into by and between the California Department of Housing and Community Development, a public agency of the State of California (the “**Department**”), and [FULL LEGAL NAME OF ENTITY], a California [LEGAL TYPE OF ENTITY] (the “**Administrative Fund Manager**” or “**AFM**”), with reference to the following facts:

**Recitals**

- A. Pursuant to the Department’s competitive Request for Applications (“**RFA**”) process, the AFM was selected by the Department to implement, operate, and administer the Foreclosure Intervention Housing Preservation Program (“**FIHPP**” or “**Program**”) authorized by Chapter 8.6 (commencing with Section 50720) of Part 2 of Division 31 of the Health and Safety Code (the “**FIHPP Statutes**”) subject to and in accordance with the Foreclosure Intervention Housing Preservation Program Guidelines, which the Department adopted on January 4, 2023 (the “**Guidelines**”). Pursuant to the RFA selection process, the Department and the AFM, among other things: (i) entered into that certain STD 213, Standard Agreement dated \_\_\_ and numbered \_\_\_ (the “**Standard Agreement**”), and (ii) agreed to enter into this long-term Agreement.
- B. This Agreement hereby incorporates by reference the AFM’s RFA application (the “**Application**”). This Agreement is governed by and/or is subject to the following authorities and instruments (collectively, the “**Program Requirements**”), and each of the following, as amended and in effect from time to time, is incorporated hereto as if set forth in full herein:
- i. The FIHPP Statutes;
  - ii. The Guidelines;
  - iii. California Assembly Bill No. 1010 (Chapter 660, Statutes of 2019), which is set forth at Health and Safety Code section 50406, subdivision (p) (“**AB 1010**”); and
  - iv. All other applicable law.
- C. Pursuant to the Standard Agreement, the Department agreed to grant up to a maximum amount of \$485,000,000 (the “**Grant Funds**”) to the AFM to implement, operate, and administer the Program subject to the terms,

## EXHIBIT F

conditions and limitations of the Program Requirements; and the AFM has agreed to do so by, among other things, **(i)** entering into subcontracts (collectively, the “**Subcontracts**”) with Implementing Fund Managers (the “**IFMs**”), who, in turn, will interface with, and act as the delivery conduit of Program funds to, the Eligible Sponsors of FIHPP-eligible Projects, **(ii)** managing the IFMs and ensuring their compliance with Program Requirements, and **(iii)** providing long-term monitoring of the entire FIHPP portfolio to ensure compliance with Program Requirements.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The recitals set forth above are incorporated herein by reference and are explicitly made a part of this Agreement.
2. **AFM’s Obligations to the Department.**
  - A. The AFM shall monitor and oversee the Projects that are in the FIHPP portfolio.
    - i. Notwithstanding any other agreement to which the AFM is a party, the AFM shall serve as the Compliance Monitoring Entity. In that capacity, the AFM shall provide long-term monitoring of individual Projects, as well as the FIHPP portfolio as a whole, to ensure compliance with the Program Requirements.
      1. The AFM shall, in accordance with all applicable law, take any action that is necessary to enforce compliance with the Program Requirements.
    - ii. The AFM shall develop and maintain any plans intended to monitor and enforce compliance with the Program Requirements in accordance with the Guidelines, including, without limitation, the IFM accountability plan and the Eligible Sponsor compliance plan, each as further specified and described at Section 306 of the Guidelines.
      1. All plans shall remain consistent with any plans submitted by the AFM during its competition in the RFA process.
    - iii. To the extent allowed by the Program Requirements, the AFM may subcontract with a third-party Compliance Monitoring Entity to perform the monitoring duties with respect to certain or all Eligible Projects. Notwithstanding the AFM’s delegation of these responsibilities through subcontract, the AFM shall remain ultimately responsible for, and shall report to the Department on, all aspects of Program compliance within the FIHPP portfolio.

## EXHIBIT F

- B. The AFM shall monitor and oversee the IFMs to ensure that the IFMs are duly implementing the Program, abiding by the Program Requirements, monitoring the Eligible Sponsors (if applicable), and monitoring their respective portfolios of Projects.
- i. Notwithstanding any other agreement to which the AFM is a party, the AFM shall monitor each IFM for compliance with Program Requirements. The AFM's monitoring responsibilities shall include, but not be limited to, monitoring and overseeing all of the following IFM activities:
    1. The qualification process for prospective Eligible Sponsors.
    2. The evaluation of proposed acquisition and Rehabilitation projects and the award of Program grants and loans to an Eligible Sponsor, in accordance with applicable underwriting criteria.
    3. The recordation of use restrictions against properties funded by the Program, in accordance with Program Requirements.
  - ii. The AFM shall enter into all necessary agreements with each IFM to ensure compliance with Program Requirements, including, but not limited to, all of the following:
    1. The Subcontracts.
    2. Funding documents.
    3. A Fund Monitoring and Reuse Account Agreement that identifies the Department as a third-party beneficiary.
- C. COSR Management.
- i. For each Project that has a Program-funded Capitalized Operating Subsidy Reserve ("**COSR**"), the AFM shall serve as the COSR Managing Entity. In that capacity, the AFM shall provide management of the COSR over the full 20-year term of the COSR, and shall do all of the following:
    1. Determine the total amount of the COSR based upon the individual project underwriting performed by the IFM pursuant to the Program Requirements.
    2. Control the rate and amount disbursed from the COSR.
    3. Obtain and review all Project financial records relative to the COSR, including, without limitation, its annual operating budget and 20-year cash flow projection.
    4. In accordance with the Program Requirements, take action to remedy any overpayment of COSR funding.

## EXHIBIT F

- ii. To the extent allowed by the Program Requirements, the AFM may subcontract with a third-party COSR Managing Entity to manage some or all of the COSRs. Notwithstanding the AFM's delegation of these responsibilities through subcontract, the AFM shall remain ultimately responsible for, and shall report to the Department on, all aspects of COSR management within the FIHPP portfolio.
- D. Reporting. The AFM acknowledges and agrees that it shall fully and timely observe and comply with all of its reporting requirement obligations as set forth in the Program Requirements. These shall generally include, but not be limited to, the following:
- i. Periodic Reporting. The AFM shall fully and timely provide the periodic (quarterly, semi-annual, and annual) reporting contemplated by the Program Requirements, including Section 306(r) of the Guidelines. Such periodic reporting generally includes, without limitation, the following information and data, as applicable:
    - 1. Information related to the AFM's disbursement of the Grant Funds to the various IFMs, and the total award funding ultimately made by the IFMs from such funds to successful Program applicants (including any remaining uncommitted funds and any funding repaid to the IFMs);
    - 2. A list of certified Eligible Sponsors;
    - 3. Separate break-downs of predevelopment and acquisition/Rehabilitation funding, including, without limitation, the identity of successful Funding Applicants, the amounts and types of funding (loan or grant), in the case of predevelopment funding, the identified properties being pursued and whether they were ultimately acquired, a description of all properties acquired (including number of units), the purchase prices paid for the acquired properties, the extent to which the acquired properties received COSR funding, the proposed term of the affordability restrictions, the income levels served by and geographic dispersal of the acquired properties, and post-Stabilization, the amount of any funding recovered or repaid, a list of other financing sources and a copy of recorded affordability restrictions;
    - 4. Information relating to any COSR funding, including identity of Eligible Projects receiving the same, the original COSR amount funded and amount thereof then remaining, and the date and duration of such funding;



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5. An assessment of the progress toward fulfilling the required income and geographic targeting;
  6. A summary and line-item break-down of Grant Funds spent to date on administrative costs, together with a certification that the same does not exceed any applicable limits imposed thereon by any Program Requirement;
  7. A summary of the AFM's and IFM's Tribal Awareness Training and related matters;
  8. A list of all Program-funded projects, the total amount of Program funds provided thereto, related unit and occupancy restriction data, and the end date of the affordability term;
  9. A summary of any and all compliance monitoring activities undertaken and compliance findings; and
  10. A description of overall Program progress, including any challenges identified and/or recommended Program changes.
- ii. IFM Reporting. At all times during the term of this Agreement, the AFM shall also: **(i)** generally monitor all Program activities of the IFMs, including all IFM Program funding portfolios, and **(ii)** request and obtain all information, data, assessments, and reporting from the IFMs related to their Program funding for Eligible Projects at such times and in such a manner as necessary or desirable to support the AFM's full and timely periodic reporting to the Department as contemplated by the Program Requirements.
  - iii. Generally. The foregoing reporting: **(i)** shall be ongoing and shall continue for the full term of this Agreement; and **(ii)** shall in all events be done in a manner which allows the Department to fully and timely meet and satisfy all of its Program reporting requirements and other obligations. The AFM should in all cases refer to the applicable provisions of the Program Requirements for the specific reporting requirements imposed on the AFM with respect to the Program.
- E. AB 1010 Process. The AFM shall ensure that the Director or the Department's California Indian Assistance Program promptly receives any AB 1010 Request submitted by a Tribally Designated Housing Entity relative to that entity's participation in FIHPP as an Eligible Sponsor. The AFM shall ensure, either directly or in its capacity as the Compliance Monitoring Entity, that the Director's or designee's final AB 1010 determinations are implemented without any change or modification.

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- F. AFM/IFM Hybrid. The parties recognize that under the Guidelines, the AFM may, as prescribed by Program Requirements, also elect to serve as an IFM in one or more of the Program's geographic service areas. In the event that the AFM acts as both the AFM and as one of the IFMs, the parties acknowledge and agree: **(i)** that acting in such dual capacity shall in no event or circumstance terminate, alter, modify or affect any of the AFM's Program obligations, whether under the Program Requirements or this Agreement; and **(ii)** that the AFM's performance of any IFM-related activities or obligations shall in all cases be subject to the Department's and/or its designee's direct monitoring and oversight.

### 3. Effective Date, Term of Agreement.

- A. This Agreement, when fully executed by the Department and the AFM, is effective upon the date set forth above.
- B. This Agreement shall terminate upon the fifty-fifth (55<sup>th</sup>) anniversary of the affordability term for the last Project that receives funding under the Program, regardless of any prepayment of a Program loan, any repayment of Program funding, or any sale, assignment, transfer, or conveyance of a Program-funded Project.

### 4. Termination for Cause.

- A. The Department may terminate this Agreement for cause at any time by giving at least thirty (30) calendar days' advance written notice to the AFM. Upon such termination, the AFM 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 rights and remedies that may be available to the Department under the Program Requirements, under this Agreement, at law, in equity, or otherwise. All such rights and remedies shall be cumulative and non-exclusive to the maximum extent permitted by law.
- B. Cause shall consist of the AFM's breach, default, or violation of any of the terms or conditions of this Agreement. Cause also includes, without limitation, the following:
- i. The AFM's breach, default, or violation of any of the provisions of its Standard Agreement with the Department, or of any other agreement between the AFM and the Department.
  - ii. The AFM's breach, default, or violation of any Subcontract.

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- iii. The AFM's breach, default, or violation of any Program loan or grant instrument that confers an obligation upon the AFM or is assigned to the AFM for enforcement (including, without limitation, those instruments that name the Department as a third-party beneficiary).
- iv. The Department's determination of the following:
  - 1. Any material fact or representation, made or furnished to the Department by the AFM in connection with the FIHPP Program's RFA process, 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. The AFM has concealed any material fact from the Department related to its Application or to its fitness to perform as an AFM (or as an AFM/IFM, if applicable) under the Program.
- v. The AFM's violation of any of the Program Requirements.

C. In the event of this or any other breach, default, or violation by the AFM, the Department may give written notice to the AFM to cure the breach, violation, or default. If the breach, default, or violation 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 may exercise any and all rights and remedies that are available under the Program Requirements, under this Agreement, at law, in equity, or otherwise.

**5. Waivers.** No waiver by the Department of any breach, default, or violation in the performance of any covenant, condition, or agreement under this Agreement shall be deemed or held to be a waiver by the Department of such covenant, condition, or agreement in the future or of any other covenant, condition, or agreement hereunder. The Department's failure, at any time, to enforce the provisions of this Agreement or to require the AFM'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. Any waiver, to be effective, shall be express, in writing, duly executed by the Department, and delivered to the AFM.

**6. Intended Third-Party Beneficiaries to this Agreement.** This Agreement is for the sole and exclusive benefit of the Department and the AFM and their

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permitted respective successors and assigns. This Agreement does not inure to the benefit of or confer any rights upon, nor may any of its provisions be enforced by, any other person or entity, including, without limitation, any IFM, Eligible Sponsor, subcontractor or delegee.

- 7. AFM Representations.** The AFM hereby represents and warrants to the Department that, to the best of its knowledge:
- A. The AFM is duly organized, validly existing, and in good standing under the laws of the State of California.
  - B. The AFM has all requisite right, power, and authority to enter into and deliver this Agreement and to perform all of its obligations hereunder, and the person(s) executing this Agreement on behalf of the AFM has/have been properly authorized to sign on behalf of and to bind the AFM in connection with performing its obligations hereunder.
  - C. This Agreement shall constitute the legal, valid, and binding obligation on the AFM, and shall be enforceable in accordance with its terms, and shall not violate any law, order, decree, agreement, contract, covenant, condition, or exclusion to which the AFM is a party or is subject.
  - D. There are no pending or threatened suits, actions, or proceedings to which the AFM is a party or is subject which would affect the AFM's ability to enter into and perform its obligations under this Agreement.
  - E. The Application, as well as any other applications, information, financial statements, and other materials provided by the AFM or its employees or agents to the Department in connection with the Program are true, correct, complete, and not materially misleading, both at the time the same were presented and as of the date of this Agreement.
  - F. Neither the AFM nor any of its affiliated or related entities is the subject of any pending or threatened bankruptcy proceedings, whether voluntary or involuntary.
  - G. The foregoing representations and warranties shall survive the execution and performance of this Agreement.
- 8. Updated Information.** If there is any change in the information that has been provided to the Department, prior to or as of the date hereof, the AFM shall promptly provide the Department with updated information and supporting

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documentation, and indicate to the Department whether such updated information causes any of the AFM's representations or warranties to the Department, whether made prior hereto, in this Agreement, or otherwise, to no longer be clear, complete, accurate, and true. All changes shall be subject to Department approval. In addition, the AFM shall promptly notify the Department, in writing, of any changes in its organization, authorization, or capacity.

- 9. Litigation.** The AFM 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. The AFM 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 FIHPP Program.
- 10. Disputes.** In the event of any conflict between this Agreement and any AFM documents, side agreements, or subcontracts, in all events and circumstances 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 AFM documents, side agreements, or subcontracts.
- 11. Consent.** The parties agree that wherever the consent or approval of the Department or the AFM is required under this Agreement, such consent or approval shall not be unreasonably 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.
- 12. Retention, Inspection, and Audit of Records.**

  - A. The AFM is responsible for maintaining records which fully disclose its respective FIHHP-funded activities, as well as its respective reporting requirements under the Guidelines. The AFM shall maintain such records over the full tenure of its respective participation in the Program and for a period of five (5) years after such participation has ended, by termination or otherwise. 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.
  - B. The Department, as well as its appointees, employees, agents, and delegates, shall have the right, but not the obligation, to review, obtain, and copy all records pertaining to the AFM's performance under this Program during the period of such performance. The AFM shall provide

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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.

- C. At any time during the AFM's performance under the Program, the Department may perform or cause to be performed a financial audit of the AFM's FIHPP-related activities. At the Department's request, the AFM 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.
- D. If there are audit findings, the AFM 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 AFM in writing. If the Department determines, in its sole and absolute discretion, that the response is not satisfactory, the Department will contact the AFM, in writing, and explain the action required to cure any audit deficiencies. Such action could include the repayment of ineligible costs or other remediation.
- E. The foregoing record retention, inspection, and other rights and obligations shall survive any expiration or termination of this Agreement, whether on account of the termination of the AFM hereunder, or otherwise.

**13. Entire Agreement; Severability.** This Agreement, together with the Program Requirements, constitutes the entire agreement between the AFM and the Department with respect to the monitoring subject matter of this Agreement. Any other representations, statements, negotiations, and undertakings with regard to the subject matter hereof are superseded by this Agreement and the Program Requirements. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms or provisions shall not be affected or impaired.

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**14. Amendment.** No amendment or modification of this Agreement shall be valid unless set forth in an express writing and executed by authorized representatives of all of the parties. Any amendment or modification shall become effective as of the date of the authorized Department representative's signature thereto or as of the date specified in the amendment.

**15. Additional Documents.** The AFM shall execute and deliver such other documents, including, without limitation, any amendments to or clarifications of this Agreement, as may be reasonably requested by the Department to further evidence or carry out the purpose and intent of this Agreement.

**16. AFM Assignment.** Pursuant to the competitive RFA process, the Department identified the AFM as the person or entity most qualified to implement, operate, and administer the Program based on the AFM's qualifications and proposal. Therefore, notwithstanding any of the other terms and provisions of this Agreement, the AFM shall not assign, transfer, encumber, or otherwise alienate (each, a "**Transfer**") this Agreement, or any of its rights, interests, or obligations hereunder, in whole or in part, without the express, prior written consent of the Department, which consent may be withheld or conditioned in its sole and absolute discretion. Any attempted Transfer by the AFM without the Department's express, prior written consent shall be null and void. Any Transfer consented to by the Department shall in no event relieve or release the AFM from any of its obligations or duties hereunder unless the Department's consent expressly provides for such release.

**17. Department Assignment.** The Department may delegate some or all of its Program administration duties and obligations to one or more third-party consultants pursuant to and in accordance with Health and Safety Code section 50720.6, subdivision (e). Accordingly, the Department shall at all times be entitled to assign, transfer, or alienate this Agreement and/or any of its rights or interests hereunder, in whole or in part, upon written notice to the AFM.

**18. Notice.**

- A. Any notice required or desired to be given under this Agreement shall be in writing and shall be delivered by any of the following methods to the appropriate address(es) below: (i) personal service, (ii) overnight courier, (iii) electronic mail, or (iv) First-Class Mail with return receipt requested:
- i. California Department of Housing and Community Development  
[INSERT ADDRESS AND E-MAIL]
  - ii. [INSERT NAME OF AFM, ADDRESS, AND E-MAIL]

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- B. Any notice given by personal service or overnight courier shall be deemed given when received, as verified by a written receipt from the person making such service or delivery. Any notice given by a correctly addressed electronic mail transmission shall be deemed given when transmitted, and any notice given by U.S. mail shall be deemed to have been given on the third (3<sup>rd</sup>) business day after its deposit. Either party may, by written notice to the other in the foregoing manner, change the address to which notices shall be addressed and delivered.

**19. Time Is of the Essence.** Time is of the essence under this Agreement, and in the AFM's performance of every term, covenant, and obligation contained herein.

**20. Calendar Days/Dates of Performance.** Unless otherwise expressly stated, all time periods referred to herein shall be deemed to mean calendar days. In the event any date for performance by either party of any obligation hereunder falls on a Saturday, Sunday, or holiday recognized in the State of California, the time for performance of such matter shall be deemed extended until the next business day immediately following such date.

**21. Attorneys' Fees.** In the event either party shall commence legal proceedings for the purpose of interpreting or enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the successful party in such proceedings shall be entitled to reasonable attorneys' and expert witness fees and court costs to be determined by the court.

**22. Defense and Indemnification.**

A. The AFM shall, at its sole cost and expense, indemnify, defend, and hold harmless the Department, and its appointees, agents, employees, officers, attorneys, contractors, delegees, and successors and assigns (the Department, together with all such other persons being collectively, the "**Indemnified Parties**") from and against any and all demands, liabilities, claims, costs, fees, actions, judgments, losses, damages, court costs and legal or other expenses (including attorneys' fees), of whatever kind or nature, incurred or suffered by, or threatened against, any Indemnified Party(ies) arising or resulting from, or by reason of, the AFM's or the AFM's contractors' or delegees' use of the FIHPP funds and/or the AFM's performance under this Agreement.

B. The AFM's indemnification and defense of the Indemnified Parties contemplated herein shall commence immediately upon any such claim or other matter being made, threatened, or asserted against the Indemnified



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Party(ies) without the Indemnified Party(ies) first contesting or defending the same, suffering or incurring any loss or adverse disposition, or otherwise taking or failing to take any other action, and shall apply to all such matters regardless of any action, failure, or negligence of the Indemnified Parties, it being the express intent that this indemnification, defense, and hold harmless obligation shall apply to all matters referenced above except to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties. In all matters as to which indemnification is available to the Indemnified Party(ies) under this Agreement, the Indemnified Party(ies) shall be free to select and retain counsel of its/their choosing (including, without limitation, the California Attorney General). If any attorney, including the California Attorney General, is engaged by the Indemnified Party(ies) to enforce, construe, or defend any provision of this paragraph, with or without the filing of any legal action or proceeding, the AFM shall pay to the Indemnified Party(ies), immediately upon demand, the amount of all attorneys' fees and costs incurred by the Indemnified Party(ies) in connection therewith.

**23. Governing Law and Interpretation.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The captions of paragraphs used in this Agreement are for convenience only. Except to the extent that assignment of this Agreement is prohibited, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

**24. Definitions.** To the extent any capitalized terms in this Agreement are not expressly defined herein, those terms shall have the meanings ascribed to them by the FIHPP Statutes or the Guidelines.

**25. Counterparts.** This Agreement may be executed in identical counterparts.

**26. Compliance with Program Requirements and Program Documents.** During the term of this Agreement, the AFM shall fully and timely comply with the Program Requirements, as well as with all of the terms, requirements, and conditions set forth in any other agreements between the Department and the AFM that are related to or arising from the Program. In no event or circumstance shall this Agreement limit, modify, or alter, or be deemed or interpreted as limiting, modifying, or altering, the AFM's obligations or duties under the Program Requirements or any other agreements between the Department and the AFM that are related to or arising from the Program. In the event of any

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inconsistencies between this Agreement and the Program Requirements, the Program Requirements shall control.

**27. Compliance with State and Federal Laws, Rules, Guidelines, and Regulations.** The AFM agrees to comply with all state and federal laws, rules, guidelines, and regulations that are applicable to the FIHPP Program, including those that pertain to health and safety, labor, fair employment practices, nondiscrimination, and equal opportunity.

**[REMAINDER OF THE PAGE IS BLANK]  
[SIGNATURE PAGE FOLLOWS]**

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**IN WITNESS WHEREOF**, the parties have entered into this Agreement as of the date first written above.

**DEPARTMENT**

**CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**,  
a public agency of the State of California

By: \_\_\_\_\_  
[FULL NAME OF SIGNATORY]  
[FULL TITLE OF SIGNATORY]

**ADMINISTERING FUND MANAGER**  
[FULL LEGAL NAME OF AFM],  
a [LEGAL TYPE OF ENTITY]

By: \_\_\_\_\_  
[FULL NAME OF SIGNATORY]  
[FULL TITLE OF SIGNATORY]