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DIVISION OF HOUSING POLICY DEVELOPMENT**

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May 5, 2022

MEMORANDUM FOR: ALL POTENTIAL APPLICANTS

FROM: Megan Kirkeby, Deputy Director
Division of Housing Policy Development

SUBJECT: **2022 LOCAL GOVERNMENT MATCHING
GRANTS PROGRAM FINAL GUIDELINES**

The California Department of Housing and Community Development is pleased to announce the 2022 Final Guidelines for the Excess Sites Local Government Matching Grants Program (LGMG, or "Program"). The Program has been designed pursuant to Assembly Bill (AB) 140 (Statutes of 2021, Chapter 21). The Program provides Selected Projects with funds for activities to enable development on excess state-owned property ("Excess Sites").

Attachment:

Excess Sites Local Government Matching Grants Program (LGMG)

2022 Final Guidelines



**Gavin Newsom, Governor
State of California**

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Business, Consumer Services and Housing Agency**

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May 2022

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2022 FINAL GUIDELINES EXCESS SITES LOCAL GOVERNMENT MATCHING GRANTS PROGRAM

ARTICLE I: GENERAL

Section 100. Program Overview

On January 15, 2019, Governor Gavin Newsom signed Executive Order N-06-19 (“the EO”), which allows housing production on excess state-owned properties (“Excess Sites”). The EO authorizes the Department of General Services (DGS) and the California Department of Housing and Community Development (HCD or “Department”) to identify and prioritize excess state-owned property (“Excess Sites”) for sustainable, cost-effective, and innovative multifamily affordable housing projects.

Chapter 111, Statutes of 2021 (Assembly Bill (AB) 140), which makes several statutory changes for the purpose of implementing the housing and homelessness provisions of the Budget Act of 2021, establishes the Excess Sites Local Government Matching Grants Program (LGMG or “Program”). The legislation directs the Department to administer the Program for Selected Projects to apply for funds for activities to enable affordable housing development on Excess Sites. The Department will award all Program funds as grants, although Awardees may elect to employ Program funds as a loan, as further described and subject to conditions in Section 401(g) of these Guidelines.

The Program provides funds for Predevelopment and Development Costs of Selected Projects that receive a contribution from a Local Government in support of affordable housing development on Excess Sites.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 101. Authority and Scope

- (a) These Guidelines implement, interpret, and make specific Section 22 of Chapter 111, Statutes of 2021, which establishes the Program.
- (b) These Guidelines establish terms, conditions, forms, procedures, and other mechanisms as the Department deems necessary to exercise the powers and perform the duties conferred by Chapter 8.2 of the Health and Safety Code sections 50704.80 through 50704.83.

- (c) The Department reserves the limited right, at its sole discretion, to suspend or amend the provisions of these Guidelines, including, but not limited to, Program award amounts after the close of the application period. Such right does not extend to material provisions of the application submission, review, and award process (e.g., scoring and tiering criteria). Any provisions amended after the issuance of the Guidelines will take immediate effect and will govern the Standard Agreement process. After Standard Agreements have been executed, the Department will only amend these Guidelines as necessary to provide clarification or to avoid a conflict of law.
- (d) Further, the Department may implement the Program through the issuance of forms, guidelines, and one or more Notices of Funding Availability (NOFAs), as the Department deems necessary, to exercise the powers and perform the duties conferred on it by Chapter 8.2 of the Health and Safety Code. Any forms, guidelines, and NOFAs issued for the Program are hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) (Health and Safety Code section 50704.83(f)).
- (e) The matters set forth herein are regulatory mandates, and are adopted in accordance with the authorities set forth below: Quasi-legislative regulations have the dignity of statutes ... [and]... delegation of legislative authority includes the power to elaborate the meaning of key statutory terms...

Ramirez v. Yosemite Water Co., 20 Cal. 4th 785, 800 (1999)

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 102. Program Objectives

- (a) The Program's primary objectives are to accelerate affordable housing production on Excess Sites in a way that aligns with state planning priorities, housing, transportation, equity, and climate goals, and to foster a spirit of collaboration between the state, Local Governments, and Selected Developers to facilitate meaningful community engagement and multi-benefit outcomes.
- (b) Under this Program, Selected Projects receiving a Local Government Contribution are eligible for gap funding for Predevelopment Costs and Development Costs necessary for specific residential or mixed-use developments on Excess Sites.
- (c) Program funds are allocated through a competitive process, based on the merits of the Selected Projects and Local Government Contributions. The application selection criteria are described below.

- (d) The Uniform Multifamily Regulations (UMRs) in Title 25, Division 1, Chapter 7, Subchapter 19 (commencing with section 8300) of the California Code of Regulations, effective November 15, 2017, and as subsequently amended, are hereby incorporated into these Guidelines by reference, except to the extent that any UMR provision would be inconsistent with the intent and administration of the Program, as determined by the Department. In the event of a conflict between the UMRs and these Guidelines, the provisions of these Guidelines shall prevail.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

ARTICLE II: PROGRAM ELIGIBILITY

Section 200. Eligible Projects

- (a) Eligible projects are limited to Selected Projects (i.e., those projects selected by the Department and DGS in accordance with the EO).
- (b) Selected Projects are eligible to apply for Program funding if:
- (1) The Selected Project has secured a Local Government Contribution towards Total Project Costs, and
 - (2) Other committed funding sources, including all Tax Credit Equity generated by the Selected Project, are insufficient to cover the Total Project Cost.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 201. Eligible Applicants

- (a) Eligible Applicants are limited to Selected Developers as defined in Appendix A of these Guidelines.
- (b) Selected Developers may submit a joint application with the Local Government responsible for providing the contribution.
- (c) A Local Government may delegate a Local or Regional Housing Trust Fund to contribute a Local Government Contribution to a Selected Project, provided that the Local Government enters into a legally binding agreement with the Local or Regional Housing Trust Fund and the Local Government Contribution is consistent with Program requirements. The delegating Local Government

shall be identified in the application. The Local or Regional Housing Trust Fund shall be responsible for complying with all Program requirements.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 202. Threshold Requirements

Applicants must meet the following threshold requirements to be eligible for Program funds:

- (a) Applicants must be a Selected Developer with a Local Government Contribution as defined in Section 302(b)(2) of these Guidelines.
- (b) The Project complies with the site control requirements as set forth at UMR Sections 8303 and 8316, with the additional requirement that the Applicant shall maintain site control through the award date, as stated in the NOFA.

Where site control will be satisfied by a long-term ground lease, the Department will require the execution and recordation of the Department's form lease rider, which shall be entered into by and among the ground lessor, the ground lessee, the Department, and any other applicable parties. In all cases, the lease rider shall be recorded against the fee interest in the Project property.

Section 203. Eligible Uses and Activities

Eligible uses of funds must accelerate housing production of a Selected Project and align with the goals of the EO. Predevelopment and development activities eligible under the Program include, but are not limited to, the following:

- (a) Development and implementation of a community engagement plan or lease-up strategy;
- (b) Construction and Rehabilitation work;
- (c) Offsite improvements, such as sewers, utilities, and streets, directly related to, and required by the Selected Project;
- (d) Onsite improvements related to the Selected Project;
- (e) Architectural, appraisal, engineering, legal and other consulting costs and fees, which are directly related to the planning and execution of the Selected Project and which are incurred through third-party contracts;
- (f) Development Costs of a residential unit reserved for an onsite manager,

childcare facilities, and after-school care and social service facilities integrally linked to, and addressing the needs of the tenants of the Assisted Units;

- (g) Development Costs of health care facilities integrally linked to, and addressing the needs of tenants of the Assisted Units;
- (h) A reasonable developer fee subject to developer fee restrictions included in awards from other Department programs and further conditions as stated in Section 204(b) of these Guidelines;
- (i) Lease-up and related marketing costs;
- (j) Carrying costs during construction, including insurance, construction financing fees and interest, taxes, and any other expenses necessary to hold the property while the Selected Project is under construction;
- (k) Building permits and state and local fees;
- (l) Capitalized operating and capitalized replacement reserves up to the amount of the initial deposit required by the Department pursuant to UMR Sections 8308(b) and 8309(b);
- (m) Title insurance, recording and other related costs;
- (n) Costs for items intended to ensure the completion of construction, such as contractor bond premiums;
- (o) Environmental hazard reports, surveys, investigations, and mitigation;
- (p) Costs associated with preparing the site for construction of the Selected Project, including removal of existing improvements and site clearance; and
- (q) Any other Predevelopment or Development Cost with written approval from the Department.
- (r) Program funds shall not be subject to the limits of other Department programs on the total value of Departmental subsidy per project or number of Department programs per Assisted Unit.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 204. Ineligible Activities.

- (a) Program funds shall not be used for costs not directly related to the eligible uses of funds.
- (b) In no scenario may Program funds be used for developer fees already collected or expected to be collected through another funding source.
- (c) Costs associated exclusively with non-Restricted Units. A Manager Unit may be considered to be a Restricted Unit for the purpose of allocating Development Costs.
- (d) Activities unrelated to accelerating production of the Selected Project.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 205. Application Requirements

- (a) Applications shall demonstrate that the Program funds are necessary to support and/or accelerate production of the Selected Project, and the Selected Project is infeasible without Program funds and other committed funds.
- (b) Applicants must submit a completed, signed original application in electronic form to the Department that includes:
 - (1) A draft or executed resolution demonstrating the value, form, and date of commitment of the Local Government Contribution(s) to the Applicant for Predevelopment Costs and/or Development Costs for the Selected Project, and an attached budget for the Selected Project or applicable phase of the Selected Project that includes all sources. A draft resolution is sufficient for the application, however an executed resolution approved by an applicable Local Government will be required subject to the timing and conditions stated in NOFA Section II(B), or the application or award, whichever is applicable, will be disqualified. The value and form of the Local Government Contribution(s) must not change from the time of application to submission of the final executed resolution.
 - (2) Demonstration of Enforceable Funding Commitments for each form of Local Government Contribution, subject to conditions of Appendix A(j). Proof of the Enforceable Funding Commitment must be received by

the Department prior to final rating and ranking of the Program application.

- (3) The Program funds requested by the Applicant for the Selected Project.
- (4) An explanation of how the Local Government Contribution and the Program Funds will support and accelerate housing production on the Excess Site.
- (5) A description of the Applicant's community engagement plan and lease up strategy for the Selected Project or applicable phase, including the participatory role of an applicable Local Government.
- (6) Completed or proposed activities consistent with the EO.
- (7) All other required information contained in the Department's application.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

ARTICLE III: APPLICATION PROCEDURES

Section 300. Application Submission Process

Applicants will demonstrate consistency with Program requirements utilizing the forms and manner prescribed in the Department's application.

- (a) An application will be available with the release of the NOFA and will include a template resolution, and forms to fulfill application requirements.
- (b) The Department encourages early applications and will accept applications up to the application due date and time noted in the NOFA.
- (c) In order to be eligible for Program funding, an Applicant must submit a completed original application by the due date specified in the NOFA by email to: ExcessSitesMatch@hcd.ca.gov.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 301. Application Review Process

- (a) Applications will be reviewed for completeness and for meeting threshold requirements. The application must be sufficiently complete to assess the feasibility and competitiveness of the application and its compliance with Program requirements.
- (b) In order to be considered complete, an application must contain all requested information and supporting documentation where appropriate.
- (c) All applications must meet the Program eligibility requirements as specified in these Guidelines.
- (d) The Department, at its own discretion, may request additional information to complete and approve the application for funding up to and no more than 30 days beyond the application due date.
- (e) Applications will be reviewed within 30 days from the date the Department receives the application.
- (f) All Applicants not meeting the eligibility requirements will be informed within 30 days from the date the Department receives the application.

- (g) The Department shall accept applications for Program funds and evaluate them on a competitive basis using the scoring criteria in Section 302 of these Guidelines.
- (h) The Department may elect to not evaluate compliance with some or all threshold requirements for applications that are not within a fundable range as indicated by self-scoring in the application.
- (i) In the event of two or more applications having the same rating and ranking scores, the Department will apply the tie-breaking criteria set forth in Section 302 of these Guidelines.
- (j) The Applicant shall comply with all state and federal fair housing laws. Compliance with state law includes, but is not limited to, the duty to carry out the project in a manner to Affirmatively Further Fair Housing and take no action that is materially inconsistent with Affirmatively Furthering Fair Housing pursuant to Government Code section 8899.50.

Occupancy restrictions must be carried out in a manner which does not violate state or federal fair housing laws, including the California Unruh Civil Rights Act (Civ. Code, §§ 51 - 53), the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.) and the FEHA regulations (California Code of Regulations, title 2, sections 12005- 12271).

- (k) The Department’s decision to approve or deny an application or request for funding pursuant to the Program, and its determination of the amount of funding to be provided, shall be final.
- (l) The Department reserves the right to award Program funds in values less than that determined eligible or requested in an Applicant’s application.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 302. Scoring Criteria

- (a) Complete applications meeting threshold requirements will be rated and ranked based on the following factors:

Selection Criteria	Maximum Score
1. Project Readiness	50
2. Local Government Contribution as Percent of Total Project Cost	300
Total	350

(1) **Project readiness** – 50 points maximum.

Readiness points will be awarded as follows:

- (A). Applicants who have been awarded or obtained all necessary land use approvals or entitlements necessary prior to issuance of a building permit, including any required discretionary approvals, such as a site plan review or design review shall receive 50 points.
- (B). Applicants who have submitted a complete application to the relevant authorities for land use approval under a nondiscretionary approval process, where the application has been neither approved or disapproved shall receive 40 points.
- (C). Applicants who have been awarded a letter signed by a planner employed by the jurisdiction where the Selected Project is located and certified by the American Institute of Certified Planners indicating that, in their opinion, the project meets all of the requirements for approval under a nondiscretionary approval process, where an application has not been approved or disapproved by the relevant authorities shall receive 30 points.

(2) **Local Government Contribution** as Percent of Total Project Cost (TPC) – 300 points maximum.

Applications will be awarded points based on the value of a Local Government Contribution as a percentage of the project's TPC. Local Government Contribution(s) within the five below categories will be adjusted as defined below and summed to determine the full value of the Local Government Contribution(s) as a percent of TPC.

- (A). Local Government Contribution(s) from a Local Funding Source.

Local Government Contributions from local funding sources, such as city or county grants or residual receipts loans ("Local Funding Source"), will be awarded points as a percentage of TPC without adjustment.

- (B). Local Government Contribution(s) from an HCD-originated funding source.

Local Government Contributions from state- and federally-originated HCD sources, excluding Rental Assistance, will be awarded points as a percentage of TPC with a -50 percent adjustment.

Examples of HCD-originated sources include, but are not limited to, No Place Like Home, the Permanent Local Housing Allocation, HOME, etc.

(C). Local Government Contribution in the form of Local Fee Waivers

Local Government Contributions in the form of Local Fee Waivers, excluding school impact fees, will be awarded points as a percentage of TPC with a +25 percent adjustment.

(D). Local Government Contribution(s) in the form of a Land Donation.

Local Government Contributions in the form of a Land Donation from a Local Government directly related to the development of the Selected Project and with documentation of the current appraised value as supported by an independent third-party appraisal prepared by a Member of the Appraisal Institute within the last year (MAI) or DGS valuation will be awarded points as a percentage of TPC without adjustment.

(E). Local Government Contribution in the form of Rental Assistance

Applications will be awarded points based on the value of additional supportable hard permanent debt generated by Rental Assistance awarded at time of application as a percentage of TPC without adjustment.

(b) **“But For” Test** – 50 percent Boost.

To encourage Local Governments to help close remaining gaps in the capital stack, a point boost of up to 50 percent is available if the sum of committed Local Government Contributions is equal to the Total Project Cost less the sum of a) eligible Program award value, b) Tax Credit Equity, and c) all other committed sources. Projects with a funding gap exceeding the sum of committed Local Government Contributions are not eligible for a point boost.

(c) **Tie Breaker**

In the event of tied point scores, the Department shall rank tied applications based on the lowest weighted average affordability of all units in the Selected Project or applicable phase.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82, and 50704.83.

ARTICLE IV: PROGRAM OPERATIONS

Section 400. Award Letters and Standard Agreements

- (a) Applications recommended for funding are subject to conditions specified by the Department.
- (b) Successful Applicants will receive an Award Letter from the Department and will be awarded funds.
- (c) Program funds will become eligible for disbursement following Construction Close.
- (d) Upon the award of Program funds, the Department shall enter into one or more Standard Agreement(s) with the Applicant constituting a conditional commitment of funds, and which will set forth conditions for funding and milestones that are required to be met. This Standard Agreement shall require the parties to comply with the requirements and provisions of the Program.
- (e) The Standard Agreement shall specify, among other things, the amount of funds granted, timeline for expenditure of funds, and the approved use of funds. Expenditure report dates and other requirements will also be identified in the Standard Agreement.
- (f) The Standard Agreement shall encumber funds in an amount sufficient to fund the approved project, subject to limits established in these Guidelines, consistent with the application and award amount.
- (g) Program funds must be spent by the anticipated end of the Program term as stated in NOFA Section II(A).
- (h) Only expenses incurred after the date of issue of the Award Letter are eligible for expenditure.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 401. Program Terms and Execution

- (a) The Department will notify the Awardee if they have been selected for a Program award.
- (b) The total Program award amount shall not exceed the total eligible costs required, when considered with other available financing and assistance,

including the full amount of any Tax Credit Equity generated by the Selected Project or applicable phase.

- (c) Section 8315 of the UMRs shall apply. Applicants, Awardees and Local Governments should note that the Department's lien(s) shall not be subordinated to the liens of a local governmental entity unless:
- (1) The total local governmental assistance to the project is more than twice the amount of the Department's total assistance to the project (including both loans and grants); or
 - (2) The total local governmental assistance to the project is more than the Department's total assistance to the project (including both loans and grants) and the local government entity manages a portfolio of their own loans that includes over 10,000 rental units with rent and occupancy restrictions.
- (d) After the Standard Agreement and attachments have been finalized, the Awardee will be provided instructions for signing all required documents. The Awardee must submit all supporting materials and a signed Standard Agreement within the timeline provided in the instructions or risk forfeiting the Program funds.
- (e) The Program term begins on the day the Department and the Awardee have both signed the completed Standard Agreement.
- (f) The end of the Program term will be stated in NOFA Section II(A) and will be determined by the state based on the availability of Program funds and the administrative requirements for liquidation.
- (g) Where the Selected Project is receiving low-income housing tax credits, the Awardee may provide Program funds to the Awardee's limited partnership identified in the State's Ground Lease or Ground Lease Assignment for the applicable phase of the Selected Project in the form of a zero percent deferred payment loan, with a term of at least 55 years. The loan may be secured by a deed of trust, which may be recorded with the local county recorder's office, provided the beneficiary of the loan shall not under any circumstances exercise any remedy, including, without limitation, foreclosure, under the deed of trust without the prior written consent of the Department, in its sole and absolute discretion. The loan may not be sold, assigned, assumed, conveyed, or transferred to any third party without prior written Department approval in its sole and absolute discretion. For Projects assisted by other Department funding programs, repayment of the loan Awardee's limited partnership shall be limited to (1) no repayments to the Awardee until the maturity date or (2) repayment only

from distributions from the Project within the meaning of 25 CCR section 8301(h). The Awardee shall be responsible for all aspects of establishing and servicing the loan. The provisions governing the loan shall be entirely consistent with these Guidelines and all documents required by the Department with respect to the use and disbursement of Program funds. All documents governing the loan between the Awardee and the limited partnership borrower shall contain all the terms and conditions set forth in this subdivision and shall be subject to the review and approval of the Department prior to making the loan. This subdivision shall apply to any Selected Project receiving low-income housing tax credits regardless of the date of the Program award.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 402. Performance Requirements

- (a) If Construction Close of the Selected Project or applicable phase has not occurred by the date indicated in the Standard Agreement, Awardees will no longer be eligible for disbursement of Program funds and these funds will be disencumbered.
- (b) Recipients of Program funds shall, within the time set forth in the Standard Agreement, close on the subject property and submit requests for reimbursement for Program funds.
- (c) Recipients of Program funds shall, within the time set forth in the Standard Agreement, complete construction of the housing units that received a Program award. Completion of construction must be evidenced by a certificate of occupancy or equivalent documentation and submitted to the Department.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 403. Reporting Requirements

- (a) During the term of the Standard Agreement, and according to the annual deadlines identified in the Standard Agreement, the Awardee shall submit, upon request of the Department, a performance report that demonstrates satisfaction of all requirements identified in the Standard Agreement.
- (b) The Department shall provide Awardees with reporting forms and instructions.
- (c) Annual Reports are required from all Awardees pursuant to HSC Section

50704.83(a)(1) following the receipt of those funds and each subsequent year until the end of the Program term or as otherwise indicated in NOFA Section II(A).

(d) The Annual Report shall document the following:

- (1) The status of the uses and expenditures of the Local Government Contribution and the Program funds as listed in the funding application.
- (2) The impact of the affordable housing development on the Excess Site, based on the eligible uses specified in these Guidelines.
- (3) The status of the implementation of the community engagement plan, including documentation of engagement activities such as meeting notes, community planning documents, and/or Memorandum of Understanding of partnership with community groups.
- (4) The status of the implementation of a marketing plan and/or lease up strategy to Affirmatively Further Fair Housing and/or to advance any racial equity strategies at each stage of project design and development.

(e) The Department may request additional information as needed to meet other applicable reporting or audit requirements.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

ARTICLE V: ADMINISTRATION

Section 500. Payment and Accounting of Program Funds

- (a) The Awardee will be responsible for compiling and submitting all invoices and reporting documents. Awardees will submit for reimbursements to the Department based on actual costs incurred.

The Awardee must bill the state based on clear deliverables outlined in the Standard Agreement. Only approved and eligible costs will be reimbursable.

- (b) Work must be completed prior to requesting reimbursement.
- (c) Program fund payment will be made on a reimbursement basis; advance payments are not allowed, except where authorized in writing by the Department. The Awardee and partners must have adequate cash flow to pay all Program fund-related expenses prior to requesting reimbursement from the Department. Project invoices will be submitted to the Department by the Awardee on a quarterly basis.
- (d) In unusual circumstances, the Department may consider alternative arrangements to reimbursement and payment methods based on documentation demonstrating cost burdens, including the inability to pay for work.
- (e) Supporting documentation may include, but is not limited to, purchase orders, receipts, progress payments, subcontractor invoices, timecards, etc.
- (f) Invoices must be accompanied by reporting materials where appropriate. Invoices without the appropriate reporting materials will not be paid. The Department may withhold 10 percent of the Program funds until all Program terms have been fulfilled.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 501. Accounting Records and Audits

- (a) The Awardee must establish a separate ledger account for receipts and expenditures of Program funds and maintain expenditure details in accordance with the project budget. Separate bank accounts are not required.
- (b) The Awardee shall maintain documentation of its normal procurement policy and competitive bid process (including the use of sole source purchasing), and financial records of expenditures incurred during the course of the project in

accordance with generally accepted accounting principles.

- (c) The Awardee agrees that the state or its designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Standard Agreement.
- (d) The Awardee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment unless a longer period of records retention is stipulated.
- (e) Subcontractors employed by the Awardee and paid with moneys under the terms of this Standard Agreement shall be responsible for maintaining accounting records as specified above.
- (f) At any time during the term of the Standard Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the award. At the Department's request, the Awardee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The State of California has the right to review project documents and conduct audits during project implementation and over the project life.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 502. Remedies of Non-performance

- (a) The Department may monitor expenditures and activities of an Awardee, as the Department deems necessary, to ensure compliance with program requirements.
- (b) In the event that it is determined, at the sole discretion of the state, that the Awardee or Local Government is not meeting the terms and conditions of the Standard Agreement, immediately upon receiving a written notice from the Department to stop work, the Awardee shall cease all work under the Standard Agreement. The Department has the sole discretion to determine that the Awardee meets the terms and conditions after a stop work order, and to deliver a written notice to the Awardee to resume work under the Standard Agreement.
- (c) The Department may, as it deems appropriate or necessary, request the repayment of funds from an Awardee, or pursue any other remedies available to it by law, for failure to comply with Program requirements.
- (d) The Department's decision to approve or deny an application or request for Program funds pursuant to the Program, and its determination of the amount of funding to be provided, shall be final.

- (e) Both the Awardee and the Department have the right to terminate the Standard Agreement at any time upon 30 days written notice. The notice shall specify the reason for early termination and may permit the Awardee or the Department to rectify any deficiency(ies) prior to the early termination date. The Awardee will submit any requested documents to the Department within 30 days of the early termination notice.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

Section 503. Other terms and conditions

- (a) **Right to modify or suspend:** The Department reserves the right, at its sole discretion, to suspend, amend, or modify the provisions of these Guidelines at any time. If such an action occurs, the Department will notify all interested parties and will post the revisions to the Department's website. You may subscribe to the Department's email list here: http://www.hcd.ca.gov/HCD_SSI/subscribe-form.html.
- (b) **Conflicts:** In the event of any conflict between the terms of these Guidelines and either applicable state or federal law or regulation, the terms of the applicable state or federal law or regulation shall control. Applicants are deemed to have fully read and understood all applicable state and federal laws, and regulations pertaining to the Program, and understand and agree that the Department shall not be responsible for any errors or omissions in the preparation of these Guidelines.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.

APPENDICES

Appendix A: Definitions

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meanings of terms in HSC Section 50704.80.

- (a) “Affirmatively Further Fair Housing” has the same meaning as in Government Code section 8899.50.
- (b) “Affordable” means a housing unit affordable to lower income households as defined in Health and Safety Code section 50079.5.
- (c) “Annual Report” means a form issued by the Department and completed by an Awardee on which the Awardee documents the uses and expenditures of any allocated funds and outcomes achieved.
- (d) “Applicant” means the entity or entities applying to the Department for Program funds.
- (e) “Assisted Unit” means a Unit that is subject to the Program’s rent and/or occupancy restrictions as a result of the financial assistance provided by the Program, as specified in the Standard Agreement.
- (f) “Awardee” means an Applicant that has been awarded funds under the Program.
- (g) “Construction Close” means the execution of the ground lease associated with the Selected Project, and/or the close of construction funding associated with the Selected Project or applicable phase.
- (h) “Department of General Services” or “DGS” means the California Department of General Services.
- (i) “Development Costs” include, but are not limited to, new construction or rehabilitation expenses associated with development of the Selected Project and may also include expenses related to the development of off- and onsite improvements directly related to and required by the Selected Project.
- (j) “Enforceable Funding Commitment” means commitments for permanent financing, construction financing, or Rental Assistance, including, but not limited to, the following:
 - (1) Low-income housing Tax Credit Equity and tax-exempt bonds in connection with 4 percent and 9 percent low-income housing tax credits

evidenced by a tax credit reservation letter from TCAC.

- (2) Funds awarded from a Local Government funding source, such as a grant or loan, including residual receipt loans (“Local Funding Source”), shall be considered a funding commitment. A funding commitment in the form of a Local Funding Source must be supported by written documentation from the Local Government.
 - (3) Funds awarded by another Department program. Proof of award must be received by the Department prior to final rating and ranking of the Program application.
 - (4) A local fee waiver resulting in quantifiable cost savings for the Selected Project where those fee waivers are not otherwise required by federal or state law (“Local Fee Waiver”), shall be considered a funding commitment. A funding commitment in the form of a Local Fee Waiver must be supported by written documentation from the Local Government.
 - (5) Funds awarded by a Local Government for Rental Assistance shall be considered a funding commitment. A funding commitment in the form of Rental Assistance must be supported by written documentation from the Local Government.
- (k) “Excess Sites” means state-owned lands that exceed the needs of the agencies holding jurisdiction over those lands and which have been determined appropriate by the Department and DGS for the development of affordable housing.
- (l) “Executive Order N-06-19” or “the EO” means the Executive Order N-06-19 signed by Governor Gavin Newsom on January 15, 2019, to address California’s housing affordability crisis.
- (m) “HCD” or “Department” means the California Department of Housing and Community Development.
- (n) “Land Donation” means the transfer of title in fee from a Local Government to the State of California for activities directly related to development of the Selected Project. The value of the Land Donation will be the current appraised value of the property as supported by an independent third-party appraisal prepared by a Member Appraisal Institute-qualified appraiser within one year prior to the application deadline or DGS valuation.
- (o) “Local Government” means any city, county, city and county, or public housing authority.

- (p) "Local Government Contribution" means a commitment of support from a Local Government towards the Total Project Costs of the Selected Project. Local Government Contributions may take any form as designated in Section 302(c)(2)(A-E).
- (q) "Local Government Matching Grants", "Program", or "LGMG" means the program established pursuant to Health and Safety Code section 50704.81(a)(1) to award funds to accelerate affordable housing production on Excess Sites.
- (r) "Local Housing Trust Fund" or "Regional Housing Trust Fund" means a public, joint public and private fund or charitable nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code, which was established by legislation, ordinance, resolution (including nonprofit articles of incorporation), or a public-private partnership organized to receive specific revenue to address local or regional housing needs.
- (s) "Low or Lower Income" has the meaning set forth in Health and Safety Code section 50079.5, which is a maximum of 80 percent of AMI. Awardees shall utilize income limits issued by the Department at the following link: <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.
- (t) "Manager Unit" means a unit in which the onsite manager of the project resides.
- (u) "NOFA" means a Notice of Funding Availability.
- (v) "Other Planning Priorities" means planning, policies, programs, or investments to promote housing choices and affordability to lower and moderate-income households, the encouragement of conservation of the existing affordable housing stock and efforts to take into account current and future impacts of climate change, including hazard mitigation.
- (w) "Predevelopment Costs" include, but are not limited to, site control, engineering studies, architectural plans, application fees, legal services, permits, bonding, site preparation, and/or other developer costs necessary to secure approvals and financing to commence construction of the project.
- (x) "Rental Assistance" means committed financial support for the operation of Assisted Units provided by the U.S. Department of Housing and Urban Development (HUD) Section 8 or similar.
- (y) "Restricted Unit" means any Assisted Unit and any Unit that is subject to rent and occupancy restrictions that are comparable to those applicable to Assisted Units. Restricted Units include Units subject to a California Tax Credit

Allocation Committee (CTCAC) regulatory agreement, and all units subject to similar long-term, income- or occupancy-based restrictions imposed by other public agencies and restricted to Low or Lower Income households.

- (z) “Selected Developer” means a development partner selected in accordance with the EO to enter into a ground lease with the state to create affordable housing on one or more Excess Site(s).
- (aa) “Selected Project” means the affordable housing project proposed to HCD and DGS by a Selected Developer in response to a competitive Request for Proposals or, in the case of qualifications-based selection processes, Request for Qualifications for the implementation of the EO.
- (bb) “State’s Ground Lease or Ground Lease Assignment” means the executed legal agreement leasing the Excess Site from the state to the Selected Developer or its affiliate.
- (cc) “Tax Credit Equity” means project funding made available from an agreement with an investor regarding the use of Low-Income Housing Tax Credits under a regulatory agreement held by CTCAC.
- (dd) “Total Project Costs” means the combined value of Predevelopment Costs and Developments Costs as defined in these Guidelines.

NOTE: Authority cited: HSC Section 50704.81 subdivisions (a)(1) and (b). Reference cited: HSC Sections 50704.80, 50704.81, 50704.82 and 50704.83.