

PROJECT NAME: (Project Name)
PROJECT NUMBER: (Project Number)

**LOAN AGREEMENT – RENTAL HOUSING DEVELOPMENT
AHF Fund**

THIS LOAN DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of the (Date of Agreement) day of (Month of Agreement), (year) by and between, (Project LLC) a Wisconsin limited liability company (“Borrower”), whose principal business office is located at, (Address (Borrower)), and THE CITY OF MADISON, a Wisconsin municipal corporation (the “City”) whose business address for matters related to this Agreement is at its Community Development Block Grant Office (“CDBG Office”) 215 Martin Luther King, Jr. Blvd., Suite 300, Madison, Wisconsin 53703.

WITNESSETH:

WHEREAS, the City of Madison issued a Request for Proposals in June 2021 for the purpose of creating, preserving and repairing affordable housing; and

WHEREAS, the City of Madison 2022 Capital Budget approved on November (Date), 2021 allowed for the provision of funds from the Affordable Housing Fund (“AHF”) to support the development of affordable rental housing units, especially by leveraging Low-Income Housing Tax Credits; and

WHEREAS, the Common Council approved (**Project Name**), a (**number (# units)**) unit rental housing development with (**number (# units)**) affordable units (the “Project”) and awarded up to **\$(Dollar amount)** in AHF funds toward its development and authorized the execution of a loan agreement on (Date), 2021 (RES # 21-00XXX, Legistar #XXXXX); and

WHEREAS, the Borrower is to acquire and construct the real estate further described on the attached Exhibit 5 which is incorporated herein by reference (the “Property”), which will be operated as required by this Agreement as the Project; and

WHEREAS, the City has agreed to partially finance the Project with the proceeds of a loan that totals **\$(Dollar amount)** (the “Loan”). One-hundred percent (100%) of the funds shall be applied to City approved Project costs as demonstrated on the attached **Exhibit 2**. The Loan funds are evidenced by two Promissory Notes (the “Notes”) dated as of the date hereof from the Borrower to the City, and secured by a Real Estate Mortgage (the “Mortgage”) from the Borrower to the City and recorded against the Property; and

WHEREAS, the City and the Borrower are entering into a Land Use Restriction Agreement (the “Land Use Restriction”) dated as of the date hereof for the Property in favor of the City, encumbering the Property, and providing for certain restrictions on the use of the Property; and

WHEREAS, the City believes the development of the Property pursuant to this Agreement and the City’s loan are in the best interests of the City and its residents and are in accord with the intent and criteria of the AHF; and

WHEREAS, as an inducement to the City to provide the Loan to the Borrower, the Borrower warrants that it is willing and able to enter into this Agreement, to perform such housing development

upon the terms and conditions set forth herein, and that (Authority) has authority to execute this Agreement on behalf of Borrower.

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

1. THE DEVELOPMENT AGREEMENT DOCUMENTS

The terms of the Notes, Mortgage and Land Use Restriction Agreement, together with this Agreement (the "Loan Documents"), are hereby incorporated herein by reference, and noncompliance with any term or condition of any of them shall be deemed a default hereunder, after the expiration of any applicable notice, cure, or grace period(s).

This Agreement includes the following Exhibits which are attached hereto and incorporated herein by reference, all of which constitute one Agreement;

1. Project Requirements;
2. Budget and Reimbursement Request Form;
3. CDD Completion Data and Annual Report Form;
4. Other Contract Requirements;
5. Legal Property Description

For the purposes of this Agreement, the term Contractor in these Exhibits applies to the Borrower.

2. PROJECT REQUIREMENTS

The Borrower will comply with the specific Project Requirements as listed in **Exhibit 1**. All development activities shall be performed in material compliance with the applicable budget, as detailed in **Exhibit 2** of this Agreement (the "Budget"). Eligible development expenses, pursuant to the Project Requirements as detailed in **Exhibit 1** and Budget as detailed in **Exhibit 2** incurred after approval of the funding by Common Council, shall be eligible for reimbursement by the City from proceeds of the Loan.

This Agreement shall become effective upon the date first stated above. The City's agreement to provide the Borrower with AHF funds to partially finance this specific local Project is based on the Borrower having submitted documentation demonstrating that all necessary financing has been secured, an adequate budget and feasible project schedule have been established, and construction is scheduled to start, as evidenced by a building permit, within twelve (12) months of the Agreement date.

The Borrower certifies that all necessary project financing has been firmly committed at the time of execution of this Agreement.

The Borrower further agrees to furnish all information, reports, and recommendations regarding the development activities conducted under this Agreement and reasonably requested by the City including, but not limited to, financial statements and reports, reports related to development activities and beneficiaries, and any other reports or documents reasonably requested. Any other reports or documents shall be provided within ten (10) business days after the Borrower receives the City's written request, unless the parties agree in writing to a longer period.

In addition, the Borrower will respond to questions regarding the community's need for the Borrower's development activities and related services and the cost of such development activities, including questions from City officials or employees, as defined in Sec. 2.40 (3)(i), MGO.

3. USE OF FUNDS

The Borrower shall apply the proceeds of the Loan to the expense of acquiring and/or constructing the Property which includes at least **(number (# units))** units to be used as affordable housing for rent to income eligible households (the "AHF Units") within a **(number (# units))** unit project. The Loan proceeds are to be applied as shown in the Budget attached hereto as **Exhibit 2** which is incorporated herein by reference. The Borrower shall complete the Project on or before **(Project Completion Date)**, which is consistent with the Project Timetable in **Exhibit 1**.

The Borrower shall provide all funds in addition to the proceeds of the Loan which may be necessary or convenient to complete the Project.

Borrower acknowledges that its ability to obtain and receive future funding awards and loans from the City may be contingent upon satisfactory compliance with and progress toward completion and ongoing management of this Project during the Period of Affordability.

4. THE LOAN

(a) Subject to the terms and conditions of the Loan Documents and such other documents related to this transaction, the City agrees to loan the Borrower the sum of **(Dollar amount spelled out)** dollars (**\$(Dollar amount)**) for the purpose of the acquisition and/or construction of the Project. The loan amount is subject to a reduction if financial projections for the Project change from those submitted at the time of application and indicate a lesser need for City loan funds or if the project does not incur eligible expenses to utilize the full loan amount.

(b) At least seven (7) days prior to closing and prior to the City releasing the Loan funds, the Borrower shall:

- 1) Submit to the City a standard ALTA commitment for a loan policy of title insurance in the amount of the Loan for such Property, which will be subject only to municipal and zoning ordinances and any other encumbrances acceptable to the City, as more particularly described on Exhibit B to the Mortgage, and including, but not limited to, (i) a loans from _____ ("First Mortgage Lender") in the approximate aggregate amount of _____ (ii) Land Use Restriction Agreements in favor of First Mortgage Lender (the "Permitted Encumbrances"); and
- 2) Provide evidence of property insurance as required by the Mortgage listing the City as mortgagee. Borrower agrees to provide evidence of property insurance annually by February 10th or before expiration of current policy.
- 3) At the expense of Borrower, the City shall have the right to request removal of exceptions to the title commitment, and request title policy endorsements reasonably determined necessary to secure City's mortgage at the expense of Borrower.

(c) Borrower shall execute a Mortgage, Promissory Notes and a Land Use Restriction Agreement for the Property, each in a form acceptable to the City. The Mortgage and Land Use Restriction Agreement shall be recorded by the Borrower. Failure to record either the Mortgage or the Land Use Restriction Agreement shall be considered an Event of Default.

- (d) The Land Use Restriction Agreement shall be recorded on the Property before any other documents creating an encumbrance upon the Property, except the documents evidencing the first mortgage or construction loan to the Borrower, and other documents if determined necessary or acceptable by the City. Borrower shall provide the City a list of the proposed final order of recording all documents no less than seven (7) business days before closing on the Property. All recording fees shall be paid by the Borrower.
- (e) In advance of Closing, the Borrower shall provide the CDD with the original Promissory Note(s), and within fifteen (15) days of financial closing, the following in electronic format:
1. Copy of final signed Settlement Statement
 2. Copy of recorded Mortgage
 3. Copy of recorded Land Use Restriction Agreement
 4. Copy of the recorded Subordination Agreement in favor of First Mortgage Lender
 5. Other related closing documentation signed at closing.

5. REQUESTS FOR DISBURSEMENTS/PAYMENT

Each draw request shall be submitted with **Exhibit 2** of this document, an Owners Sworn Statement, and detailed documentation of the related expense, such as invoices, at least ten (10) business days prior to the City's release of funds. All requests for payment of construction costs shall include an affidavit or certification (which shall be in the form of an AIA completion certificate) from the architect stating that construction has been completed in all material respects in accordance with the Plans and Specifications. Progress reports documenting the extent of completed services shall be prepared by the Borrower and submitted to the City in electronic format along with each draw request. An architect's report may be submitted as a progress report monthly when funds are not requested to be drawn. The Borrower shall not request reimbursement of Loan proceeds until such funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

The CDD shall withhold at least 10% of the total amount of AHF funds awarded (unless a lesser amount is authorized by the CD Grants Supervisor) until such time as: (i) a certificate of occupancy for the Project has been issued by the City, (ii) the Borrower has submitted to the CDD all required documentation and reports detailed in **Exhibit 1**; and (iii) the Borrower is otherwise in compliance with the Loan Documents. Final payment will be processed within thirty (30) days of satisfaction of the requirements set forth in this paragraph.

6. PROGRAM REQUIREMENTS

- (a) General Requirements. The Project shall be operated as "affordable housing" as defined in **Exhibit 1**. The Borrower is required to rent or sell each AHF Unit to a household which meets the eligibility and related compliance requirements further described in **Exhibit 1**.

The Period of Affordability is **40** years. The Period of Affordability shall terminate on the anniversary of the date of project completion, defined as the date final payment is issued by the City. Prepayment of the Loan prior to the expiration of the Period of Affordability shall not relieve the Borrower of the application of the Period of Affordability requirements detailed in this Agreement, except as provided in the Land Use Restriction Agreement.

- (b) Other Requirements. The Borrower shall carry out its responsibilities hereunder in compliance with all state and local laws and regulations as detailed in the attached Exhibit 4.

- (c) Policies and Procedures. The Borrower understands the City has discretion to establish and revise policies and procedures necessary to administer the AHF program. In the event of a conflict between the City policies and procedures and State and/or the Wisconsin Housing and Economic Development Authority (WHEDA) policies and procedures in connection with the low-income housing tax credits allocated to the Borrower, which shall include but not be limited, to the requirements of Section 42 of the Internal Revenue Code, as amended, and the regulations issued pursuant thereto (collectively, the "Tax Credit Laws"), the more stringent regulations shall apply as determined by the City, provided that in no event shall the City enforce any AHF policy and procedure which would result in a violation by Borrower of any Tax Credit Laws or loan documents.

7. RECORDS AND REPORTS

The Borrower shall, without charge to the City, maintain such records and shall make such reports related to the Project available as the City may reasonably require from time to time during the term of this Agreement. The Borrower shall, without charge to the City, make such records available for inspection and copying by the City, and shall make the Property available to the City for inspection, at any time during normal business hours and upon reasonable advance notice from the City to the Borrower of the City's wish to make any such inspection.

8. EVENTS OF DEFAULT

Any one or more of the following events is an Event of Default under this Agreement:

- (a) If payment due required under any of the Loan Documents is not paid when due and the nonpayment continues for fifteen (15) days after written notice to Borrower and Borrower's investor member ("Investor Member") as is listed in paragraph 24, as applicable;
- (b) Material nonperformance by Borrower of any covenant, agreement, term or condition in this Agreement not involving the payment of money and where no other time period for cure is specified, and the continuation thereof for a period of thirty (30) days after receipt by the Borrower and Investor Member of written notice from the City specifying such nonperformance and demanding that it be corrected, provided, however, if such nonperformance is not a health or safety violation, and if the nature of the nonperformance reasonably requires more than thirty (30) days to fully cure, the defaulting party shall not be deemed to be in default if it commences and diligently proceeds to cure within a reasonable period of time;
- (c) Failure of Borrower to materially perform any covenant, agreement, term or condition of any of the Loan Documents and any addendum or amendment thereto which is not described in paragraph 8(b) above, and Borrower has failed to cure such default within the applicable required time period as provided in the Loan Documents;
- (d) Borrower becomes insolvent or the subject of insolvency proceedings and such actions are not dismissed within 90 days thereof fails to pay debts as they become due or makes an assignment for the benefit of creditors; or a receiver, trustee, custodian or other similar official is appointed for, or takes possession of any substantial part of the property of Borrower.

Upon the occurrence and continuance of an Event of Default, the City by written notice to Borrower and the Borrower's Investor Member, may declare the Loan and Note to be immediately due and payable and/or may pursue any available remedy by suit at law or in equity to insure or realize the payment of the principal under the Note, including such remedies as are provided in the Mortgage. The Investor Member shall have the right (but not the obligation) to

cure any breaches or events of default by Borrower hereunder; any cure tendered by the Investor Member shall be accepted upon the same terms as if tendered by Borrower.

No remedy conferred upon, or reserved to the City hereunder, is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power occurring upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Section, it shall be necessary to give only such notice as may be herein expressly required.

In the event Borrower should default under any of the provisions of this Agreement, and the City should employ or assign attorneys or incur other expenses for the collection of the Loan or the enforcement of performance of any obligation or covenant on the part of Borrower under this Agreement, Borrower will on demand pay to the City the reasonable costs, charges or fees of such attorneys and such other expenses so incurred, provided the default is not contested or, if contested, provided the City is the prevailing party.

Nothing in this Section or this Agreement shall constitute a waiver of the City's rights and protections under Wis. Stat. §893.80.

9. DURATION OF THE AGREEMENT

This Agreement shall continue in full force and effect until the Loan is repaid and the expiration of the Period of Affordability, provided, however that if the Loan is repaid prior to the expiration of the Period of Affordability, Borrower's obligations hereunder for the remainder of the Affordability Period shall be limited to compliance with the LURA and the applicable provisions of Exhibit 1.

10. APPLICABLE LAWS

This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

The Borrower shall at all times comply with and cause the Project to be in compliance with, all federal, state, county and city laws and regulations, and any amendments or notices thereto which may be subsequently enacted, including related regulatory guidance, which are applicable to the Project or applicable to Borrower as recipient of AHF funds for the Project. The Borrower shall independently determine which such laws and regulations are applicable to the Project or Borrower, and is not, and shall not, rely upon the City, or the City's officers, officials, employees or agents, in making any such determination. The specific references to particular statutes, regulations, and related regulatory guidance referenced in this Agreement and Exhibits mean those which are in effect on the date hereof. Any amendments or notices thereto which may be subsequently enacted shall be applied as required by the City.

11. SIGN/CITY LOGO

Within 30 days of the start of any construction or rehab of the Project, the Borrower shall provide and erect a sign on the Property that is easily visible from the street and sidewalk which credits

the City with financing a portion of the Project. The Borrower shall credit the City of Madison and use the City's current logo for inclusion in publications, publicity or site signs related to this Project.

12. NO THIRD PARTY RIGHTS

Nothing in this Agreement or any other agreement between Borrower and the City, and no act by the Borrower or City, shall be deemed or construed by the Borrower or City or any other person or entity to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture or any association or relationship involving the City.

13. REPRESENTATIONS

(a) Corporate Status. The Borrower represents and warrants to the City as of the date hereof that the Borrower is a (Corporate Status). The Borrower is in good standing under the laws of the State of Wisconsin, and has all requisite power, licenses and authority necessary to conduct its business, including operating the Project, and that the Loan Documents constitute the legal, valid and binding obligations of Borrower, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally. The Borrower shall maintain its existence and will not dissolve, assign or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into, except as provided in Section 20 below or in the Note, another business entity or permit one or more business entities to consolidate with or merge into it or suffer, cause or permit any modification of its equity structure without the express written approval of the City. Notwithstanding the foregoing, neither the withdrawal, removal, replacement, and/or addition of the Managing Member of Borrower or the Investor Member of the Borrower pursuant to the terms of that certain First Amended and Restated Operating Agreement of Borrower dated as of the first date written above (the "Operating Agreement"), nor the withdrawal, replacement, and/or addition of any of Investor Member's general partners or members, nor the transfer of the Investor Member's interest in the Borrower, shall constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan.

If the Borrower is a Limited Liability Company, the Borrower represents and warrants to the City that its Managing Member is an LLC and is in good standing under the laws of the State of Wisconsin and has all requisite power, licenses and authority necessary to conduct its business, including operating the Project.

(b) Development Team and Property Management Experience. The Borrower certifies that it has sufficient development experience amongst its paid staff, development team, including and not limited to Property Management, and organizational capacity to complete, operate and manage the Project under the terms of this Agreement conforming to all current requirements, regulations and subsequent amendments or changes in a timely fashion for the duration of Period of Affordability.

14. INDEMNIFICATION

The Borrower shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of personal injury, bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Borrower's and/or its Contractor's and/or

Sub-contractor's acts or omissions in the performance of this Agreement. Negligence on the part of the City does not relieve the Borrower of its obligations under this paragraph. The obligations of Borrower under this paragraph shall survive the expiration or termination of this Agreement.

15. INSURANCE

The Borrower will insure and will require Contractor and/or Sub-contractor to insure, as indicated, against the following risks to the extent stated below. The Borrower shall not commence work under this Agreement, nor shall the Borrower allow its general contractor to commence work pursuant to the agreement between Borrower and Borrower's general contractor, until the insurance required of the Borrower as outlined below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

- (a) Commercial General Liability. The Borrower shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Borrower's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. The Borrower shall require its Owner's general contractor to procure and maintain insurance meeting the above criteria.
- (b) Automobile Liability. The Borrower shall procure and maintain during the life of this Agreement Automobile Insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. The Borrower shall require its general contractor to procure and maintain insurance meeting the above criteria.
- (c) Worker's Compensation. The Borrower shall require all Contractors and/or Sub-contractors under this Agreement (if any) to procure and maintain during the life of this contract statutory Workers' Compensation insurance as required by the State of Wisconsin. The Borrower shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit.
- (d) Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. The Borrower shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. The Borrower shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. The Borrower shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

The Borrower and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.

16. ASSIGNMENT

The Borrower's obligations under this Agreement may not be assigned without the prior written consent of the City except in connection with a transfer that is permitted hereunder or under the notes without the prior written consent of the City.

17. JUNIOR LENDERS

The Borrower shall not create, suffer or permit any mortgage, lien, charge or encumbrance to attach or be recorded or filed against the Property, whether such lien is superior or inferior to the lien of the City, without the City's prior written approval, other than Permitted Encumbrances and taxes not then delinquent.

18. SUBORDINATION

The City agrees to execute a subordination agreement in a form approved by the City Attorney when requested by the First Mortgage construction and permanent lender(s) providing the first mortgage financing as the same may be modified, extended or refinanced from time to time (the "First Mortgage"). This Agreement and any interest the City may have in and to the Property pursuant to this Agreement and the Mortgage are at all times and shall remain subordinate to the First Mortgage.

19. AMENDMENT

This Agreement may be amended at any time by mutual agreement of the parties, expressed in writing. No oral statement of any person, and no written statement of any person shall modify or otherwise affect the terms and conditions of this Agreement.

20. DUE ON SALE

Owner shall use commercially reasonable effort to give the City 180 days' notice of its intent to sell the Property and 30 days' notice prior to any sale of the Property. Upon the sale, change in use, or other transfer of the Property (except as otherwise permitted herein), the Loan shall be immediately due and payable as provided in the Note(s). Furthermore, notwithstanding anything to the contrary, the following shall not require the consent of the City and shall not be deemed an Event of Default: (a) transfer by the Investor Member of its membership interest in Borrower to a limited partnership or limited liability company affiliated with Investor Member; (b) the transfer of a partner, member or other ownership interest in the Investor Member; or (c) those transfer provisions set forth under Section 13(a) of this Agreement.

21. LIMITATION ON DISBURSEMENT

Notwithstanding any other provision contained in any of the Loan Documents, the City shall be under no obligation to disburse to Borrower more than **\$(Dollar amount)** in AHF proceeds.

22. COUNTERPARTS, ELECTRONIC SIGNATURE AND DELIVERY

This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

23. EASEMENTS

The Borrower shall not allow any structure (other than paving and signage) to encroach upon any easement across the Property without the prior written consent of the City, other than

customary utility easements and Permitted Encumbrances that do not adversely impact the use of the Property.

24. NOTICES

All notices to be given under the terms of this contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY: (Project Manager), Community Development Specialist
Community Development Division
215 Martin Luther King, Jr. Blvd., Suite 300
Mail to: P.O. Box 2627
Madison, WI 53701-2627

FOR THE BORROWER: (Name), (Title)
(Development LLC)
(c/o Developer Name)
(Address)
(City, State, Zip)

WITH COPY TO
INVESTOR MEMBER: (Business)
(Address)
(City, State, Zip)
Attn: (Name), (Title)

SAMPLE

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

BY: (DEVELOPMENT LLC)
A Wisconsin Limited Liability Company

By: (Name)
Its: Managing Member

By: (Name)
Its: Manager

Signature DATE

Name and Title (Print or Type)

By: CITY OF MADISON
A Municipal Corporation

Approved:

Satya Rhodes-Conway, Mayor DATE

Eric T. Veum, Risk Manager DATE

Maribeth Witzel-Behl, City Clerk DATE

Approved:

Approved as to Form:

David P. Schmiedicke, Finance Director DATE

Michael Haas, City Attorney DATE

Approved:

Linette S. Rhodes, CD Grants Supervisor DATE

Exhibit 1

**Project Requirements
Rental Housing**

Borrower:	(Project Owner LLC)
CDD Project Name:	(Project Name)
Project Number:	(Project Number)
CDD Project Manager:	(CDD Project Manager)
Total Project Budget	\$(Total Project Budget)
CDD Funds (by source & year):	\$(CDD Funds)

1. Project Description:

(Project Description: type of capital project, # units total, # units affordable, income targeting, etc)

2. Legal Entity of Borrower:

The Borrower is acting in the following capacity for this Project:

- Owner
- Sponsor
- Developer

3. Target Population:

(Project Name) will serve low-income individuals and families in need of affordable housing. A total of (number (# units)) of the units (the "AHF Units") will be affordable to households earning at or below 60% of the Area Median Income (AMI); (number (# units)) units will be designated as market rate, with no explicit income or rent restrictions. (Number (# units)) of the AHF Units will be targeted to households with incomes at/below 30% AMI; (Number (# units)) of the AHF Units at/below 50% AMI; (Number (# units)) of the AHF Units at/below 60% AMI. (Number (# units)) of the AHF Units will be targeted as supportive housing units (the "SH Units") for households that include a member or members who are (Target Population). (Number (# units)) of the SH Units will receive Project-based Section 8 ("PBV") housing assistance payments pursuant to a Housing Assistance Payments Contract ("HAP Contract"), with rent levels for such units consistent with the HAP Contract requirements. Preference will be given to households at/below 30% CMI on the Dane County Housing Authority's PBV waiting list for these (Number (# units)) units. The remaining (Number (# units)) SH units will be set aside for occupancy by households with incomes at/below 30% CMI. Supportive service coordination will be made available to these households as detailed below.

4. Address(es) of Project: (Address(es) of Project)

5. Reporting Requirements and Schedule:

The Borrower, or its Contractor and Subcontractors, must submit the following reports to the City's Department of Civil Rights (DCR) within the timeframes and methods outlined below.

- a) Submit WHEDA's Emerging Business Enterprise (EBE) Participation Plan before construction begins to contractcompliance@cityofmadison.com.
- b) Submit a list of all subcontractors before construction begins using DCR's standard form to the email address above: <https://www.cityofmadison.com/civil-rights/documents/SubcontractorListforNonpublicWorks.xlsx>. DCR must be notified of subcontractors added after the start of construction by submitting an updated subcontractor list within 30 days of subcontractor award.
- c) The City's Committed Cost Status Report (CCSR) and the City's Monthly Employee Utilization Report (MEUR) must be entered online by the 15th of each month through [Citizen Access](#) during the construction or rehab period. The first reports are due the month after construction begins. Reporting information and instructions can be found on the DCR website at <https://www.cityofmadison.com/civil-rights/contract-compliance>.

6. Project Timetable:

This project is anticipated to be completed within the following timetable. The Borrower shall contact the CDD in writing to request an extension if any segment of the timetable is, or will become, more than two months behind schedule.

If at any time the Borrower believes that the time for final completion of the work should be extended because of unavoidable delays caused by an unexpected event or because of a delay attributable to the City, the Borrower shall notify the CDD as soon as possible, but no later than seven (7) calendar days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work. Work by the Borrower shall proceed continuously and expeditiously through completion of each phase of the work.

Description	Projected Dates (Mo/Yr)
Acquisition/Real Estate Closing	(Mo/Yr)
Rehab/Construction Bid Publishing	(Mo/Yr)
Construction/Rehab Start	(Mo/Yr)
Initiate SH Unit Lease-Up Coordination Meetings	(Mo/Yr)
Begin Lease-Up/Marketing	(Mo/Yr)
Construction/Rehab Completion (Certificate of Occupancy)	(Mo/Yr)
Complete Lease-Up	(Mo/Yr)
Submit Completion Report/Final Draw Request	(Mo/Yr)

7. Energy Efficiency, Renewable Energy and Sustainable Design Requirements:

- a) The Borrower affirms that the project has been designed to include the energy efficiency strategies recommended by Focus on Energy’s Energy Design Assistance program **Bundle (#X)**. The Borrower further agrees to use best efforts to incorporate additional recommendations included in higher bundles and/or alternative options that maximize energy efficiency utilizing available construction contingency funds to the greatest extent feasible, subject to investor and lender approval.
- b) The Borrower affirms the following regarding PV solar array:
 - i. Project construction plans include installation of a PV solar array with a generator size of at least **(# kW)**;
 - ii. The Borrower will use best efforts to install a larger solar array to the extent feasible, subject to investor and lender approval; and
 - iii. The Project has been designed to allow for additional solar arrays in the future to the extent feasible.

8. Project Requirements:

The Borrower shall comply with the Program Requirements set forth in this Agreement.

- a) The project shall contain a total of **(total number of units (#))** units of which **(# of AHF Units)** (the “AHF Units”) will be income and rent restricted affordable units as detailed in the chart under 7(f) below.
- b) Of the AHF Units identified in a) above **# of SHU units** units will be set-aside as SH Units for [revise as needed] veterans and/or people with disabilities, including individuals and/or families experiencing homelessness taken from the Homeless Services Consortium Housing Priority List (the “HSC Priority List”). (Supportive Service Manager) (the “Supportive Services Manager”) will coordinate the provision of supportive services for tenants in the SH units including **# of SHU units** of units from the HSC Priority List. Vacant SH units shall be held open until the Property Management agent (“Property Manager”) finds a tenant meeting the target definition and requisite income qualifications to lease the unit or for a minimum of 30 days, whichever comes first. Before the vacancy occurs and during the 30 day soft set-aside period, Borrower shall cause the property management agent to make reasonable affirmative marketing efforts to lease the unit to the target population. After the 30 days, the unit may be leased to any otherwise income qualifying family or individual.

Supportive services will be made available to tenants that desire to receive such services. Tenants will have a choice in the selection of service provider(s) and will not be required to receive supportive services as a condition of tenancy. Borrower will provide the CDD with a copy of the Agreement with the above named Supportive Services Manager. The Agreement should at a minimum, include the type of services and service coordination to be offered and the process for connecting residents for these services. The Borrower

shall submit a Supportive Services Annual Report by February 10th of each year from the Supportive Service Manager summarizing the services offered and provided to the tenants of the supportive housing units. A change in the designated Supportive Service Manager must be approved by the City.

In the event that the capacity of the approved Supportive Services Manager to deliver and/or coordinate services is reduced below an adequate level for the target population, Borrower will make every reasonable attempt to secure new or increased partnership(s) with another comparable service provider. In the event that the approved Supportive Service Manager goes into default, or if the Borrower and the Supportive Service Manager mutually decide to cancel their agreement, Borrower shall have thirty (30) days to identify a new Supportive Service Manager. Selection of the new Supportive Service Manager is contingent on City approval, which shall not be unreasonably withheld.

- c) The Period of Affordability (POA) is **40** years from the anniversary of the date of project completion.
- d) Gross annual income is based on the Section 42 definition of annual income. The Borrower, or designee, shall perform income verifications to certify income eligibility according to the Section 42 requirements.
- e) The Borrower will be responsible for obtaining and maintaining the most up-to-date information on LIHTC INCOME and RENT Limits for the Project.
- f) The maximum rent (including utilities) and income levels for the AHF Units may be no more than allowed by Section 42 of the Internal Revenue Code, including, but not limited to, rent limits allowed by the Section 8 voucher program. The unit mix at initial occupancy shall be as detailed below. The unit mix must be maintained in accordance with Section 42 of the Internal Revenue Code for the Period of Affordability.

Total Project Unit Mix					
# of units	# of Bedrooms	Income Level (% AMI)	Actual Contract Rent	Monthly Utility Allowance	Total Monthly Rent (including utilities or utility allowance)

- g) After initial occupancy, the Borrower will use commercially reasonable efforts to limit annual contract rent increases on lease renewals to 2% per year, excluding parking or utility charges. This applies to lease renewals and not new lease agreements. Notwithstanding the foregoing, the Borrower and its Property Manager may increase rents no more than once per year in accordance with the lease agreement.

After initial occupancy, in the event the rent increase is greater than 2%, then such rent increase shall be limited as follows:

- i. Contract rents for renewed leases of 30% AMI AHF Units may not increase by greater than 5% over the previous year's contract rent.
- ii. Contract rents for renewed leases for all other AHF Units may not increase by greater than 10% over the previous year's contract rent.
- iii. Exceptions: City shall grant an exception under the paragraph if Borrower can demonstrate that the limits would do the following: (a) Result in the debt coverage ratio below an investor- or lender-required level; or (b) violate WHEDA, first lien lender, or investor requirements. The City's determination under this exception shall be reasonable and Borrower's evidence shall be viewed in a light most favorable to Borrower. City and Borrower shall cooperate in setting new limits if necessary based on market conditions.

- h) Additional fees not included in the Total Monthly Rent (i.e., application, parking, laundry, pets, etc.) may not be a barrier to low income households accessing the affordable units. Security deposits may not exceed one month's rent. All fees, including parking, must be consistent with the submarket in which the Property is located, and are subject to City approval.

- i) **(Property Management Company)**, which Borrower certifies has adequate training, experience and capacity to manage this Project, will be the Property Manager for the Project. Borrower will not change Property Manager without the prior written notification to the CDD, subject to City approval.
- j) **At least 45 days prior to the earliest proposed financial closing on the property or, at the discretion of CDD, the City releasing any funds for this Project, the Borrower shall submit to CDD the complete due diligence package in accordance with the CDD-provided due diligence checklist.**
- k) **At least 45 days before financial closing, the Borrower and/or Property Management Agent shall provide the following to the CDD unit:**
 - i. A copy of their Affirmative Marketing Plan (“AMP”), subject to City approval, based on review for consistency with the CDD’s AMP Best Practices Guidance available on the City’s website at http://www.cityofmadison.com/cdbg/doc_library.htm.
 - ii. A copy of the Tenant Selection Plan (“TSP”) and Tenant Grievance Procedure, subject to City approval, based on review for consistency with the CDD’s TSP Best Practices Guidance dated as of 5/14/2020, the most recent version of which is available on the City’s website at http://www.cityofmadison.com/cdbg/doc_library.htm.
 - iii. A copy of the Annual Lease, including all addendums, subject to City approval.

City approval will be contingent upon the above documents consistent with City of Madison General Ordinances and the contract requirements detailed in Exhibit 4 of this contract.

- l) **At least seven (7) days before closing on the property for this Project, in accordance with the CDD-provided due diligence checklist, the Borrower shall:**
 - i. Provide the CDD with an accurate legal description via the Commitment for Title Insurance, which lists the City of Madison as a Mortgagee.
 - ii. Provide the CDD with evidence of property insurance as required by the Mortgage listing the City of Madison as a Mortgagee.
 - iii. Execute the final Mortgage, Note, and a Land Use Restriction Agreement for the Property, each in a form acceptable to the City.
 - iv. Provide the CDD with a draft Settlement Statement with the final copy to be delivered at Closing.
 - v. Provide the CDD a draft copy of the Amended and Restated Operating Agreement for this project with the final copy to be delivered at Closing.
 - vi. Submit a request for funds via Exhibit 2 if CDD funds are to be used for acquisition costs at the time of closing.
 - vii. Submit the final Sources and Uses Statement.
 - viii. Submit the final 30-year operating pro forma.
- m) **Before occupancy of this Project the Borrower shall:**
 - i. At least 6 months before projected Certificate of Occupancy, initiate facilitation of a Lease-Up Coordination Team for SH Units including the development, property management and the supportive services teams in consult with the CDD. This includes developing a detailed pre- and post-initial SH Unit referral and lease up processes designed to screen-in prospective tenants from these target population(s) as well as coordinating with all relevant community partners (e.g., CDA, DCHA, VASH, CE).
 - ii. Provide, or cause its Property Management Agent to provide, to the City a copy of any advertisement or related materials, subject to City approval, marketing the development at least 14 days before marketing any units and at least 120 days before projected Certificate of Occupancy, whichever is earlier. Marketing for SH units must begin at least 30 days before marketing to the general population. Marketing must be representative of the likely diversity of the targeted populations for the housing development and include information regarding income and rent-restricted units, e.g., income ranges, rent ranges, etc.
 - iii. Ensure that the Property meets all state and local building code requirements.
 - iv. Provide the CDD a Certificate(s) of Occupancy issued by the City of Madison for the project.
 - v. Ensure that the program is accessible under Federal Regulations at 24 CFR Part 8 and 24 CFR Part 100 and City MGO 39.05 which require, in part, that the overall program be accessible and

ensure that the project meets physical accessibility standards.

n) Before final payout the Borrower shall submit:

- iv. Exhibit 2 Final statement of actual project uses including completed the Actual Project Cost Column.
- v. An executed Owner's Sworn Statement, or equivalent document acceptable to the City.
- vi. A final AIA G704 substantial completion certificate from the project architect certifying that all construction has been finally and substantially completed in accordance with the Plans and Specifications.
- vii. Exhibit 3 CDD Completion Data and Annual Report.
- viii. Final compliance documentation that is acceptable to the Department of Civil Rights, as detailed in Section 5 above.

Final request for payment will not be authorized unless all reports have been submitted in an acceptable manner and format. Required reports may be submitted in a CDD-approved WHEDA format.

o) During the Loan Term and Period of Affordability for this Project, the Borrower shall:

- i. Ensure that all AHF Units are occupied by income-eligible households in accordance with this Exhibit.
- ii. Ensure that the rents, including utilities or a utility allowance, do not exceed rent limits in accordance with Section 42 of the Internal Revenue Code, including, but not limited to, rent limits allowed by the Section 8 voucher program.
- iii. Submit the following by February 10th of each year:
 - a. CDD Completion Data and Annual Report
 - b. Supportive Service Annual Report
 - c. Year-end financial statements, including operational income and expense statement
 - d. Proof of property insurance
 - e. An Affirmative Marketing Plan, if revised from the initially approved plan
 - f. A Tenant Selection Plan, if revised from the initially approved plan.
- iv. Maintain the AHF Units and property as an attractive, decent, and safe living environment in compliance with all state and local building codes and requirements.
- v. Facilitate on-site tenant file and physical inspections if required by the CDD.
- vi. Use the following leasing standards in accordance with the CDD's TSP Best Practices Guidance referenced above:
 - a. Security deposits may be equal to no more than one-half month's rent for all prospective tenants, except as provided in section b below;
 - b. For prospective tenants with conditional credit, limited rental histories, or other limiting factors that would negatively affect such tenant's ability to rent, security deposits may be equal to one-half month's rent with a cosigner, or, if no cosigner, a security deposit may equal no more than one month's rent;
 - c. For units and/or tenants with rental payments guaranteed through an operating subsidy (e.g. Housing Choice Vouchers, VASH Vouchers, or Project-Based Vouchers), a security deposit equal to a maximum of one-half month's rent may be required, regardless of conditional credit, limited rental history, or other limiting factors that would negatively affect such relevant tenant's ability to rent; a cosigner shall not be required for such units and/or tenants.

The CDD may require additional reporting to demonstrate ongoing compliance with the requirements of this Agreement.

p) After such time as the Loan for this Project is fully repaid, but while the Period of Affordability is still in effect, the Borrower shall:

- i. Ensure that all AHF Units are occupied by income-eligible households in accordance with this Exhibit.
- ii. Ensure that the rents, including utilities or a utility allowance, for the units do not exceed rent limits in accordance with Section 42 of the Internal Revenue Code.
- iii. Submit a signed copy of the most recent AHTC Form 100 Owner's Certificate of Continuing

Compliance, or comparable report acceptable to the City, to the CDD by February 10th of each year for desk review and approval.

- iv. Maintain the AHF Units and property as an attractive, decent, and safe living environment in compliance with all state and local building codes and requirements.
- v. Use the security deposit standards outlined in 8(o)(vi) above.

SAMPLE

EXHIBIT 2

PROJECT DEVELOPMENT BUDGET & REIMBURSEMENT REQUEST FORM

AGENCY/BORROWER _____ PROJECT # _____
(e.g., DN 025 2013)

PROJECT NAME _____ REQUEST # _____

	Total Project Budget	Total City AHF Funds	Current Request	Requested to Date	Balance	Total Project Actual <small>(Submit w Final Request)</small>
A. Property Acquisition	\$0	\$0	\$0	\$0	\$0	
B. Construction Costs						
Construction/Rehabilitation	\$0	\$0	\$0	\$0	\$0	
Construction Contingency	\$0	\$0	\$0	\$0	\$0	
Construction Fees (Profit & Overhead)	\$0	\$0	\$0	\$0	\$0	
General Conditions/General Requirements	\$0	\$0	\$0	\$0	\$0	
Payment & Performance Bond/Letter of Credit	\$0	\$0	\$0	\$0	\$0	
Construction Interest	\$0	\$0	\$0	\$0	\$0	
Construction Origination/Loan Fee	\$0	\$0	\$0	\$0	\$0	
Construction Insurance	\$0	\$0	\$0	\$0	\$0	
Site Work, Landscaping, Play Lots, Signage	\$0	\$0	\$0	\$0	\$0	
Permits & Fees	\$0	\$0	\$0	\$0	\$0	
Construction Costs Sub-total	\$0	\$0	\$0	\$0	\$0	\$0
Total Hard Costs (A+B)	\$0	\$0	\$0	\$0	\$0	\$0
C. Soft Costs						
Title Ins., Recording, Closing	\$0	\$0	\$0	\$0	\$0	
Appraisal	\$0	\$0	\$0	\$0	\$0	
Predev./Feasibility/Market Study	\$0	\$0	\$0	\$0	\$0	
Survey/Environmental	\$0	\$0	\$0	\$0	\$0	
Marketing	\$0	\$0	\$0	\$0	\$0	
Relocation	\$0	\$0	\$0	\$0	\$0	
Developer Fee	\$0	\$0	\$0	\$0	\$0	
Architect / Engineering	\$0	\$0	\$0	\$0	\$0	
Application/Origination Fees	\$0	\$0	\$0	\$0	\$0	
Accounting/Cost Certification	\$0	\$0	\$0	\$0	\$0	
Legal	\$0	\$0	\$0	\$0	\$0	
Inspection Fees	\$0	\$0	\$0	\$0	\$0	
Real Est. Taxes during Const.	\$0	\$0	\$0	\$0	\$0	
Rent up Reserve	\$0	\$0	\$0	\$0	\$0	
Operating Reserve	\$0	\$0	\$0	\$0	\$0	
Replacement Reserve	\$0	\$0	\$0	\$0	\$0	
Tax Credit Fees	\$0	\$0	\$0	\$0	\$0	
Syndication	\$0	\$0	\$0	\$0	\$0	
Park Impact Fees	\$0	\$0	\$0	\$0	\$0	
Other:	\$0	\$0	\$0	\$0	\$0	
Other:	\$0	\$0	\$0	\$0	\$0	
Other:	\$0	\$0	\$0	\$0	\$0	
Soft Costs Sub-total	\$0	\$0	\$0	\$0	\$0	\$0
Total Project Costs	\$0	\$0	\$0	\$0	\$0	\$0

BUDGET ADJUSTMENTS AND METHOD OF REIMBURSEMENT

- Agency may alter this budget within 10% of each major category item by formal notification to the CD Project Mgr. Changes which would result in modifications in excess of 10% of any original line item of CDD funds budgeted must receive CDBG Supervisor (or designee) written approval prior to contractor commitment of funds.
- Costs for this project will be reimbursed pending approval by the CDBG Supervisor (or designee) upon submission of required documentation:
 - An appropriate signed request for reimbursement (Exhibit 2) complete with any supporting documentation; include an expense breakdown, supporting invoices and/or receipts.
(e.g., Post-rehab Appraisal, Commitment for title insurance, evidence of property insurance)
 - A completed CD Activity Report Form (see Exhibit 3, et al) describing sources and uses of funds, project accomplishments, project beneficiaries, and/or other required reports as specified in Exhibit 1.
- Any funds not expended by the termination date of the Agreement are not eligible for reimbursement per Section 2 of the Agreement.

I certify that the above information is true and accurate.

Borrower Representative _____ Date _____ CD Specialist _____ Date _____

OTHER CONTRACT REQUIREMENTS

A. LOBBYING REGULATED

The Contractor agrees to abide by the Madison General Ordinance 2.40, which outlines procedures whereby persons acting as lobbyists are required to provide to the public full information as to their identity, the identity of their principal, their expenditures, and their lobbying activities.

B. CONFLICT OF INTEREST REQUIREMENTS

The Contractor hereby agrees to comply with City of Madison General Ordinances Section 946.13 Wis. Stats. regarding conflict of interest.

The Contractor warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this Agreement. The Contractor shall not employ or contract with any person currently employed by the City for any services included under the provision of this Agreement.

C. AUDIT REQUIREMENTS

Contractor will submit a copy to CDD of any audit produced for WHEDA and /or the equity investor within 7 days of receipt of the audit.

D. EQUAL OPPORTUNITY, ACCESSIBILITY, AND FAIR HOUSING REQUIREMENTS

Non-Discrimination

Consistent with Federal regulations and City ordinance, the Contractor may not, directly or through contractual licensing or other arrangements, take any of the following actions on the grounds of race, national origin or ancestry, citizenship status, color, religion or atheism, sex, age, handicap/disability, marital status, source of income, arrest record (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), conviction record (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), social security number (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), less than honorable discharge, physical appearance, sexual orientation, gender identity, genetic identity, political beliefs, familial status, student status, domestic partnership status, receipt of rental assistance, homelessness, unemployment status (limited to actions regarding employment but not applicable to actions regarding housing or public accommodations), credit history (limited to actions regarding employment but not applicable to actions regarding housing or public accommodations), status as a victim of domestic abuse, sexual assault or stalking, as defined in MGO 39.03:

1. Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity;
2. Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form, from that provided to others under the program or activity;
3. Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to receipt of any service or benefit under the program or activity;
4. Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;
5. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions which individuals must meet in order to be provided any facilities, services or other benefit provided under the program or activity;
6. Deny an individual an opportunity to participate in a program or activity as an employee;
7. Aid or otherwise perpetuate discrimination against an individual by providing Federal financial assistance to an agency, organization, or person that discriminates in providing any housing, aid, benefit, or service;
8. Otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other individuals receiving the housing, aid, benefit, or service;
9. Use criteria or methods of administration that have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons who are members of the protected classes defined in MGO 39.03; or
10. Deny a person the opportunity to participate as a member of planning or advisory boards.

In determining the site or location of housing, accommodations, or facilities, the Contractor may not make selections that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, national origin or ancestry, citizenship status, color, religion or atheism, sex, age, handicap/disability, marital status, source of income, arrest record (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), conviction record (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), social security number (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), less than honorable discharge, physical appearance, sexual orientation, gender identity, genetic identity, political beliefs, familial status, student status, domestic partnership status, receipt of rental assistance, homelessness, status as a victim of domestic abuse, sexual assault or stalking, as defined in MGO 39.03. The Contractor may not make selections that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Section 109 of Title I of the Housing and Community Development Act of 1974, 24 CFR part 6 and of this Attachment.

The Contractor may classify employees or applicants for employment, volunteers or applicants for volunteer service, applicants for or consumers of services, or applicants for board or committee membership in the Contractor's organization on the basis of membership

in any of the protected classes defined in the MGO 39.03, only in those certain instances where such classification is a bona fide qualification reasonably necessary to the proper performance of the services contracted for.

Equal Opportunity and Fair Housing

Specifically, the Contractor hereby agrees to comply with the following as applicable:

1. The requirements of the Fair Housing Act (42 U.S.C. 3601-et seq) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 USC 2000d (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;
2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;
3. The requirements of Executive Order 11246 (Equal Employment Opportunity), as amended by Executive Order 13279, and the implementing regulations issued at 41 CFR Chapter 60;
4. The requirements of City of Madison Equal Opportunities Ordinance 39.03; and
5. The requirements of City of Madison Landlord and Tenant Law, MGO Chapter 32, where appropriate.

Nondiscrimination Based on Disability

Contractor shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and Activities." Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance.

Contractor hereby makes the following assurances: Contractor assures and certifies that it will comply with Section 39.05 of the Madison General Ordinances, "Nondiscrimination Based on Disability in City Facilities and City-Assisted Programs and Activities," and agrees to ensure that any subcontractor who performs any part of this agreement complies with Sec. 39.05, where applicable. This includes but is not limited to assuring compliance by the Contractor and any subcontractor, with Section 39.05(4) of the Madison General Ordinances, "Discriminatory Actions Prohibited."

Contractor may not, in providing any aid, benefit or service, directly or through contractual, licensing or other arrangements, violate the prohibitions in Section 39.05(4), listed below:

Discriminatory Actions Prohibited: Contractor assures that, in providing any aid, benefit, or service, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

1. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
3. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
4. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
6. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

Contractor shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

Employment Provisions

1. No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance from the Department.
2. A Contractor shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant with handicaps or employee with handicaps, unless the Contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its program.
3. A Contractor may not use any employment test or other selection criterion that screens out or tends to screen out individuals with handicaps or any class of individuals with handicaps unless the Contractor demonstrates that the test score, or other selection criteria, as used by the Contractor is job related for the position in question.

Accessibility

The Contractor agrees to comply with the provisions of local, State and Federal law regarding accessibility including, but not limited to the Rehabilitation Act, the Fair Housing Amendments Act, the Architectural Barriers Act, the Americans with Disabilities Act, Madison General Ordinance 39.05, the Wisconsin Open Housing Law and all applicable implementing regulations thereto.

E. VULNERABLE POPULATIONS REQUIREMENTS

Pursuant to Resolution No. 53,279, adopted by the City of Madison Common Council on May 21, 1996, Contractors whose programs deal with vulnerable populations, including, but not limited to, young children, youth, elderly, and people with disabilities, shall develop and implement policies and procedures to ensure the lowest possible degree of risk of victimization, abuse, or exploitation by employees and volunteers of the Contractor. The Contractor will use reasonable application and screening tools to select employees and volunteers who work directly with vulnerable clients. Use of all application and screening tools must be in a manner consistent with the Equal Opportunities Ordinance and the Fair Employment Act.

Application and screening tools must be allowable and consistent with the City of Madison Equal Opportunities Ordinance, Section 3.23 of the Madison General Ordinances.

Note: As referenced in Resolution No. 53,279, some common components of screening include, but are not limited to: disclosure of criminal convictions and pending criminal charges, criminal background checks, reference checks, driving records checks, interviews, and testing procedures.

F. CONSUMER INVOLVEMENT AND PUBLIC ACCESSIBILITY

The Contractor will cooperate with other community agencies and groups engaged in activities related to the operations of the housing and supportive services for tenants.

G. REQUIREMENTS REGARDING LEAD-BASED PAINT

Contractor will comply with State and local laws regarding lead paint.

City of Madison MGO 7.49	Applies whenever exterior painting or remodeling is being done to <u>any property</u> built before 1978.	Establishes standards for paint removal and safe work conditions.
State of Wisconsin Code HFS 163	Applies to any person performing, supervising or offering to perform or supervise a lead-based paint activity involving housing or a child-occupied facility constructed prior to 1978 (unless the property is occupied by the elderly or the disabled or is a zero-bedroom dwelling unit.)	Requires certification of all inspectors, supervisors and workers. Establishes work practice standards.

1. The State of Wisconsin Department of Health and Family Services (DHFS) adopted rules to reduce lead paint hazards. A summary of the major State requirements affecting CD projects is as follows:
 - a. All lead inspectors, project designers, risk assessors, workers and supervisors must be accredited by DHFS.
 - b. A person certified as a supervisor of lead hazard reduction must be on the site at all times when work designed to reduce lead-based paint hazards is being performed and must have her/his certification card on the premises.
 - c. All workers must be individually certified and have their certification cards on the premises.
 - d. The supervisor of the lead hazard reduction work must notify the Wisconsin DHFS a minimum of ten (10) days prior to commencing the work.
2. The City of Madison adopted rules to reduce lead paint hazards. A summary of these standards for paint removal and safety procedures, MGO 7.49, is as follows:
 - a. Scope.
Owners of buildings and structures built before 1978 shall paint or remodel or cause to be painted or remodeled any painted exterior surface of such buildings or structures in conformity with the standards set forth in this section. These standards also apply if the age of the building or structure cannot be established by the owner to the satisfaction of the Department of Public Health.
 - i. Painting or remodeling includes but is not limited to work involving construction, alteration, repair, painting, paint removal or decorating.
 - ii. A painted exterior surface means an exterior surface covered with a paint or other surface coating material.
 - iii. An exterior surface may include but is not limited to walls; windows, window assemblies and trim; soffit; fascia; doors, door assemblies and trim; porch and balcony floors and ceilings; column, handrails, and guardrails; and foundations.
 - b. Standards for Paint Removal Methods.
 - i. The following methods shall not be used to remove paint or other surface coating materials without the use of adequate engineering controls:
 - 1) Open flame burning;
 - 2) Power tool cleaning including but not limited to machine sanding or machined grinding;
 - 3) Open-air abrasive blasting or stripping using sand, steel grit, steel shot, aluminum oxide, water or other abrasive media.
 - ii. The methods listed in Subdivision 1) above may be used only with adequate engineering controls to the extent feasible to reduce public exposure to lead. Adequate engineering controls include but are not limited to vacuum attachments equipped with high efficiency particulate accumulator (HEPA) filters, partial containment structures, total containment structures under negative pressure or other method approved by the Director or Department of Public Health.

- c. Safety Procedures.
 - i. All windows, doors, HVAC intake vents and other entry ways into the building or structure shall be kept closed, or sealed if necessary, while work is being performed.
 - ii. Plastic sheeting shall be used to prevent accumulation of dust and debris on the soil, vegetation or other surfaces adjacent to the work area. At a minimum, plastic sheeting shall be securely attached to the building or structure and extend the length of the work area.
 - iii. All visible dust and debris in and around the work area and all waste work materials such as tape, plastic sheeting, mop heads, cleaning cloths, sponges, disposable clothing, filters and other disposable work materials must be cleaned up at the end of each work day during the entire painting or remodeling project. The dust, debris and disposable work materials must be placed in double 4 mil or single 6 mil plastic bags.
 - iv. Waste generated during the project shall be disposed of in conformance with all applicable local, state and federal laws and regulations. Waste shall be transported and disposed of in such a manner as to prevent lead from becoming airborne.
- d. Warning Notice. At least two warning signs shall be conspicuously posted adjacent to the work area. The signs shall be posted at the beginning of the project and remain posted until the project has been completed. The signs shall measure at least eleven (11) inches by eight (8) inches and display the following wording:
Caution – Paint Removal Work Area
Danger to Children and Pregnant Women
- e. Exemption. Persons are exempt from this ordinance if there is no lead-bearing paint present on the surfaces to be painted or remodeled or if there is no lead-bearing paint disturbed by the painting or remodeling process. Lead-bearing paint means any paint or other surface coating material containing more than 0.06% lead by weight, or showing a lead concentration of more than 0.7 milligrams of lead per square centimeter (0.7 mg/cm²) of surface area. This determination must be made prior to removing or disturbing the paint by a laboratory certified to do lead analysis through the Environmental Lead Laboratory Accreditation Program. Paint chip samples must be collected according to instructions provided by the accredited laboratory. Acceptable paint chip samples must include all layers of paint and omit any surface material such as wood, masonry, etc. A Finding of no lead-bearing paint must be supported with written documentation showing who performed the testing specifying the company or lab name and address and technician name, the date of testing, the test method used, the location and type of surface tested and the test result for each sample.
- f. Penalties. Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) and each day or fraction of a day on which any provision of this ordinance is violated shall be deemed a separate offense.
(Sec. 7.49 Cr. by Ord. 10,886, 4-14-94)

H. DISPLACEMENT, RELOCATION AND ACQUISITION REQUIREMENTS

In the event any tenants (residential or business) will be temporarily or permanently displaced the Contractor must submit a completed relocation plan to the State of Wisconsin for approval, along with a copy to the CD Division. Contractor must also submit to the CDD any correspondence from the State regarding this plan or the project. Any offer to purchase a property must be contingent upon State and CDD approval of such a plan.

The Contractor further agrees to adhere to all requirements of the City of Madison and the State of Wisconsin including but not limited to the following::

1. Notify the CD Division of the identification of a potential site prior to the initiation of negotiations resulting in the acquisition and/or rehabilitation of a property.
2. Inform in writing each owner at the time of the initiation of negotiation of such a property of their rights and responsibilities under the Relocation Act.
3. Inform in writing each tenant at the time of the initiation of negotiation of such a property, or at the time rehabilitation is considered in the case of an agency who already owns the property, of the potential for displacement or non-displacement, conditions of continued occupancy, or potential eligibility for relocation assistance and cautioning the tenant not to move in order to avoid jeopardizing potential relocation benefits if the project does proceed and individuals are displaced.
4. Inform all prospective tenants, as of the date of initiation of negotiations, that the project is taking place and that they would not be eligible for relocation assistance if they choose to lease a unit.
5. Issue all notices and provide all services and payments to tenants that are temporarily or permanently displaced from their housing as required by the State of Wisconsin.
6. Maintain all records as required by the State of Wisconsin.

I. AFFIRMATIVE ACTION

1. The following language applies to all Contractors employing fifteen (15) or more employees (MGO 39.02(9)(c)):

The Contractor agrees that, within thirty (30) days after the effective date of this Contract, Contractor will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the Contract is still in effect, or if the City enters into a new Agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this Contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be

considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines, shall be provided to the City by the opening date of advertisement and with sufficient time for the City to notify candidates and make a timely referral. The Contractor agrees to interview and consider candidates referred by the Department, or an organization designated by the Department, if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

2. The Department will determine if a contractor is exempt from the above requirements (Sec. 1.1.) at the time the Request for Exemption in 1.2.(b)) is made.

Articles of Agreement, Request for Exemption, and Release of Payment:

The "ARTICLES OF AGREEMENT" beginning on the following page, apply to all contractors, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$50,000 Aggregate Annual Business with the City*	\$50,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

*As determined by the Finance Director

**As determined by the Department of Civil Rights

- a. Exempt Status: In this section, "Exempt" means the Contractor is exempt from the Articles of Agreement in section 1.3. of this Contract and from filing an Affirmative Action plan as required by Section IV of the Articles of Agreement. The Department of Civil Rights ("Department") makes the final determination as to whether a contractor is exempt. If the Contractor is not exempt, section 1.3. shall apply and Contractor shall select option A. or B. under Article IV therein and file an Affirmative Action Plan.
- b. Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.) Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Contract.
- c. Exemption – Annual Aggregate Business: (MGO 39.02(9)(a)c.): The Department will determine, at the time this Contract is presented for signature, if the Contractor is exempt because it will have less than \$50,000 in annual aggregate business with the City in the calendar year. **CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC. 1.3. UPON REACHING \$50,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR, BEGINNING IN 2019.**
- d. Release of Payment: (MGO 39.02(9)(e)1.b.) All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article IV below on file with the Department within thirty (30) days of the effective date of this Contract and prior to release of payment by the City. Contractors that are exempt based on number of employees agree to file a Request for Exemption with the Department within thirty (30) days of the effective date and prior to release of payment by the City.

3. Articles of Agreement:

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this Contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this Contract.

ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin.

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other Contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison (MGO 39.02) including the Contract compliance requirements. The Contractor warrants and certifies that one of the following paragraphs is true (**check one**):

- A. Contractor_has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this Contract, Contractor will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this Contract, it will complete a model affirmative action plan approved by the Madison Common Council.
- C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.
- D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract takes effect is less than fifty thousand dollars (\$50,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

ARTICLE V

(This Article applies only to public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the Contract compliance requirements. The Contractor agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

ARTICLE VI

The Contractor will maintain records as required by Section **39.02(9)(f)** of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section **39.02(9)(f)**. The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this Contract or Sections 39.03 and **39.02** of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this Contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the Contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the Contract price, or ten thousand dollars (\$10,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

The Contractor shall include the above provisions of this Contract in every subcontract so that such provisions will be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this Contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

J. WEAPONS PROHIBITION

The Borrower shall prohibit, and shall require its Contractor and Subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Agreement, other than while at the Borrower's, Contractor's or Subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Agreement, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).

K. BAN the BOX – ARREST AND CRIMINAL BACKGROUND CHECKS. (Sec. 39.08, MGO. Applicable to contracts exceeding \$25,000)

A. DEFINITIONS.

For purposes of this section, "Arrest and Conviction Record" includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

"Conviction record" includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

"Background Check" means the process of checking an applicant's arrest and conviction record, through any means.

B. REQUIREMENTS> For the duration of this Contract, the Contractor shall:

(1) Remove from all job application forms any questions, check boxes, or other inquiries regarding an applicant's arrest and conviction record, as defined herein.

(2) Refrain from asking an applicant in any manner about their arrest or conviction record until after conditional offer of employment is made to the applicant in questions.

(3) Refrain from conducting a formal or informal background check or making any other inquiry using any privately or publicly available means of obtaining the arrest or conviction record of an applicant until after a conditional offer of employment is made to the applicant in question.

(4) Make information about this ordinance available to applicants and existing employees, and post notices in prominent locations at the workplace with information about the ordinance and complaint procedure using language provided by the City.

(5) Comply with all other provisions of Sec. 39.08, MGO.

C. EXEMPTIONS: This section does not apply when:

(1) Hiring for a position where certain convictions or violations are a bar to employment in that position under applicable law, or

(2) Hiring a position for which information about criminal or arrest record, or a background check is required by law to be performed at a time or in a manner that would otherwise be prohibited by this ordinance, including a licensed trade or profession where the licensing authority explicitly authorizes or requires the inquiry in question.

To be exempt under sec. C(1) or (2) above, Contractor must demonstrate to the City that there is a law or regulation that requires the hiring practice in question. If so, the contractor is exempt from this section for the position(s) in question.

L. ORGANIZATIONS WITH A RELIGIOUS-AFFILIATION

Borrower agrees not to engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services occurring in location(s) within the development, or portions thereof, funded under this Agreement. If an organization conducts such activities, the activities must be offered separately, in time or location, from any City-funded programs or services funded under this Agreement, and participation must be voluntary for the beneficiaries of the City-funded programs or services. Notwithstanding the foregoing, faith-based organizations may use space in their facilities to provide City-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a City-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

City funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Where a structure is used for both eligible and inherently religious activities, City funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to these funds.