

*Community Development Administration*

*Multifamily Housing Development Programs*

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Larry Hogan

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COMMITMENT/ CONTRACT DOCUMENTS REVIEW

SUBMISSION

PACKAGE

# *Multifamily Rental Financing*

*Revised June 2020*



*The Maryland Department of Housing and Community Development pledges to foster the letter and spirit of the law for achieving equal housing opportunity in Maryland*.

INSTRUCTIONS

After an applicant has received its viability review report on a project, additional financial and construction information will be needed for the Department to undertake its **commitment review**. The purpose of the commitment review is for Department staff to complete its financial underwriting and construction document evaluation and determine the final loan terms and conditions to be recommended for approval. See next page for a flowchart illustrating stages in the underwriting and construction review process, including commitment submission and review stages.

Applicants must submit the documentation described below within 90 - 120 days of the date of the viability review report. For more information concerning the viability review, please refer to the Viability Review Submission Package. Applicants are to submit two copies of the commitment review package, including all applicable exhibits, in separate three-ring notebook binders. A narrative response to the Viability Report must be included with the Commitment Review Submission Package. Each exhibit must be clearly tabbed so that a reviewer may easily find the necessary material. Projects that do not have a commitment review package submitted within 120 days of the date of the viability review report or that have an incomplete submission may be withdrawn from active processing.

Department staff will complete its underwriting and construction evaluation within 55 days of the commitment review package submission. After completing this review, the applicant will receive a commitment report from the Department, which will include a summary of loan terms. Department staff will prepare and issue a commitment letter to the applicant detailing the final loan terms and conditions for loan closing. The Department’s goal is to complete any last minute adjustments to the summary of terms within 15 days of issuing the commitment report and to issue the commitment letter not later than 70 days after the submission of the commitment review package. If at any time the Department determines that the project is not financially feasible, is not viable as long-term affordable housing or that the project will not be carried out in accordance with the information and representations contained in the application, the reservation of funds may be withdrawn.

The documentation listed below is to be submitted by the applicant to initiate the commitment review process. Details concerning the submission requirements for each exhibit are provided on the cover forms that follow. The required information is to be placed directly behind the applicable cover form. If the information is not applicable to the project, the cover form should be marked not applicable.

CHECKLIST

**Announcement of LIHTC and RHFP Awards**

**Reservation Letter**

Issued to developer within thirty (30) calendar days of Notice of Award

**Kick-Off Meeting**

Held within thirty (30) calendar days of date of reservation letter

**Fast Track Processing**
(per [Section 6.1.4](#Underwriting and Construction Review) of the Guide)

NO

**Viability Submission Kit**

Developer submits within ninety (90) calendar days of date of kick-off (one hundred and twenty (120) calendar days maximum) maximum)

**Viability Review Report**

Staff issues to developer within sixty (60) calendar days of receipt of submission package

**Commitment Submission Kit**

Developer submits within ninety (90) calendar days of Viability Report (one hundred and twenty (120) calendar days maximum)

**Commitment Review Report**

Staff issues to developer within seventy (70) calendar days of receipt of submission

YES

**Viability / Commitment Submission Kit**

Developer submits within ninety (90) calendar days of kick-off meeting (one hundred and twenty (120) calendar days maximum)

**Viability / Commitment Report**

Staff issues to developer within seventy (70) calendar days of receipt of submission

**Initial Closing**

**UNDERWRITING AND CONSTRUCTION REVIEW PROCESS**

*Multifamily Housing Development Programs*

**COMMITMENT/CONTRACT DOCUMENTS REVIEW SUBMISSION PACKAGE**

* Exhibit A: Application For Commitment Review

**DEVELOPMENT TEAM INFORMATION**

* Exhibit B: Notification of Changes

**FINANCIAL INFORMATION**

* Exhibit C: Other Financing
* Exhibit D: Cost Estimates
* Exhibit E: Draw Schedule
* Exhibit F: Zoning
* Exhibit G: Management Agreement

**CONSTRUCTION INFORMATION**

* Exhibit H: Minority Business Enterprise Plan & Federal Section 3 Clause Procedures
* Exhibit I: Plans and Specifications
* Exhibit J: Project Rehabilitation Manual
* Exhibit K: Construction Schedule
* Exhibit L: General Contractor’s Contract
* Exhibit M: Insurance and Bonding

EXHIBIT A: APPLICATION FOR COMMITMENT/CONTRACT DOCUMENTS REVIEW

A revised CDA Form 202 Multifamily Rental Financing Application must be submitted which reflects all changes in the project, including current development and operating budgets and pro forma, since the viability submission. You should highlight those sections of the CDA Form 202 that contain information that has changed.

**ATTACHMENTS**

* CDA Form 202 Multifamily Rental Financing Application
* (form available through DHCD’s website at <http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx>)
* Certifications - A copy of the Certifications must be executed and included with the application (Attached)

***CERTIFICATIONS***

The undersigned hereby makes application to the Department for a loan and/or tax credits pursuant to one or more of the Department’s Rental Housing Financing Programs and certifies the following:

**LOAN REQUIREMENTS**

 The undersigned acknowledges the loan may be secured by the lien on the property herein described and evidenced by a promissory note. The undersigned certifies that housing produced with the proceeds of the loan will be rented to income eligible households within the income limits set by the Department for the specific period.

**PARTNERSHIP HOUSING (Local Governments Only)**

 The undersigned acknowledges that if the Local Government should fail to maintain the housing for the purposes agreed to herein or sells all or part of the project funded with the loan, the loan plus the sum of all interest paid by the State on bonds or other moneys of the State used to fund the project must be repaid to the Department.

**EQUAL OPPORTUNITY**

 The applicant agrees that it will not discriminate on the basis of race, color, religion, national origin, sex, marital status, sexual orientation, physical or mental disability, or age, except with regard to age as permitted under the federal Housing for Older Persons Act, as amended from time to time or other similar federal laws, in the leasing of or otherwise providing dwelling accommodations at the property or in any other aspect of the development, administration, operation, construction, repair or maintenance of the property or in any aspect of employment by the applicant.

 The applicant agrees that it will comply with all applicable provisions of federal, State and local laws and the Department of Housing and Community Development policies regarding discrimination, equal opportunity in employment, housing and credit practices, and drug and alcohol free workplaces including, but not limited to: Title VI and VII of the Civil Rights Act of 1964, as amended; Title VIII of the Civil Rights Act of 1968, as amended; the Fair Housing Act Amendments of 1988, as amended; Title 20 of the State Government Article of the Annotated Code of Maryland, as amended; State of Maryland Executive Order 01.01.1989.18 relating to drug and alcohol free workplaces; the Secretary's Minority Business Enterprise Program, as amended; and the Americans with Disabilities Act of 1990, as amended.

**TENANT RELOCATION**

 The undersigned certifies that no tenant living in any residential unit in the property to be rehabilitated has been forced to move by the applicant without cause in the twelve month period preceding the submission of this application and that no tenants will be forced to move without cause prior to loan closing except to rehabilitate the project in compliance with an approved relocation plan. The undersigned further agrees to comply with the relocation requirements of the Department if any residential tenant is required to be temporarily or permanently displaced as a result of the rehabilitation undertaken pursuant to this loan application.

**TAX CREDIT CERTIFICATIONS**

 The undersigned certifies that the applicant has examined and understands Section 42 of the Internal Revenue Code of 1986 (“Section 42”) relating to Low-Income Housing Tax Credits and the project described herein qualifies under Section 42 for the credits requested. The undersigned is solely responsible for compliance with Section 42 and any regulations. The undersigned is further solely

responsible for all calculations and figures relating to the determination of the eligible and qualified basis for the project and individual buildings and understands and agrees that the amount of credits is calculated by reference to the maximum figure submitted with this application as to the eligible and qualified basis.

 The undersigned further represents and certifies that the project can be completed within the time schedule set forth herein and that the information contained in this application is true, correct, and complete to the best of the undersigned’s knowledge and belief and agrees to notify the Department promptly in writing of any changes in this information, including any changes in the sources and uses of funding for the project. The undersigned agrees to immediately notify the Department of a cancellation of the project, or if the project will not be completed within the proposed time schedule.

 The undersigned understands and agrees that the Department, by accepting this application, has no obligation to reserve or allocate any or all of the credits requested and that the Department shall not be liable for any action regarding the project in reliance on this application or any credit reservation or allocation by the Department. It is further understood and agreed that the Department has the right to revoke any credit reservation or allocation after it had been made if, in the sole judgment of the

Department, the project does not qualify for the credits or the project is not likely to be placed in service in the calendar year for which the credits were requested or to meet the requirements to carry over the credits. The undersigned agrees to, at all times, indemnify and hold harmless the Department against all losses, cots, damages, expenses, and liabilities of any nature of kind (including, but not limited to attorney’s fees, litigation and court costs, amounts paid in settlement, amounts paid to discharge judgments, and any loss from judgments) arising out of, or related to acceptance, consideration, approval or disapproval of this application.

**ACCESS TO PUBLIC ACT NOTICE AND WAIVER**

 Applicants should give specific attention to the identification of information furnished to the Department under this application which they deem confidential, commercial or financial information, proprietary information, or trade secrets and provide any justification of why this information should not be disclosed under the Maryland Public Information Act, State General Provisions Article, Title 4 of the Annotated Code of Maryland. Applicants are advised that, upon request from a third party, the Department is required to make an independent determination as to whether the information may or must be divulged to that third party.

 The information in this application will be disclosed to appropriate staff of the Department or the public officials for purposes directly connected with the administration of the programs for which its use is intended. Such information may be shared with State, Federal, or local government agencies that have a financial role on the project.

 The Department intends to make available to the public certain information regarding projects submitting applications regardless of whether or not the project is recommended for reservation of funds by the Department. Some of this information may not be disclosed under Maryland’s Access to Public Records Act. By signing and delivering this application to the Department, you hereby AGREE TO WAIVE ANY RIGHTS TO OBJECT TO OR PREVENT THE DISCLOSURE TO THE PUBLIC OF THE FOLLOWING INFORMATION: applicant’s and sponsor names; name and address of the project; loan and /or tax credit amounts and terms (requested and/or approved); amounts and sources of other financing; total project cost; waivers (requested and/or received); explanation of amount and reason for State Bonus Points received (if any); total number of units; population served (elderly or family); and number of units reserved for persons with disabilities or special needs.

**GENERAL**

 The undersigned hereby certifies that the development proposed in this application can be developed in accordance with the development budget set forth herein and operated in accordance with the operating budget set forth herein and further certifies that the information set forth herein and in any attachments in support hereof is true, correct, and complete to the best of his/ her knowledge and belief. The undersigned authorizes the Department to obtain credit information for the purpose of evaluating this application.

 IN WITNESS WHEREOF, the applicant has caused this document to be duly executed in its name of this \_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Full legal name of sponsor)

 Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT B: NOTIFICATION OF CHANGES

If any changes have been made to the overall structure of the project (i.e., proposed, rents, funding sources, etc.), a narrative describing the proposed changes should be provided for evaluation. If there have been any changes in the development team members or their role in the project, the name of the project or the name of the ownership entity including a significant change which may impact their financial position, applicants must provide information concerning the changes. For changes in the role of a development team member, a synopsis of the change should be provided for evaluation. In addition, if any changes have been made to the scope of work or development quality from the Viability Submission a narrative describing all changes must be provided.

 Please submit any additional information concerning the following, as applicable:

* Current financial statements for the prior fiscal year or interim statements for the previous quarter are required for the general partner, general contractor and management agent. Each financial statement must identify all contingent liabilities, guarantees on other development in process and operating deficits. Financial statements must meet the Department’s standard for the fiscal year that ended with three months of the submission period Otherwise the applicant may submit financial statements for the previous quarter.
* Environmental Clearance, if applicable.

**ATTACHMENTS**

* Overview of Changes in Project
* Synopsis of Changes is Development Team Member Role(s)
* Developer Experience, if applicable
* General Contractor Experience, if applicable
* Architect Experience, if applicable
* Management Agent Experience, if applicable
* **Not Applicable.** If there have been no changes in the project, no additional information needs to be submitted with the commitment review submission package.

**DEVELOPER EXPERIENCE**

For new development team members, the applicant must provide the following information on the new member. A CDA Form 203 Developer’s Qualifications that addresses the experience and qualifications of the team member must be submitted along with the supporting information listed below. This should contain information on the members’ experience with other projects of similar type, scale and complexity and in a similar capacity.

* Applicable organizational documents, including articles of incorporation, articles of organization, bylaws, partnership agreement, and operating agreement
* Certificate of Good Standing from the Maryland Department of Taxation and Assessment
* Most recent report filed with the Federal Securities and Exchange Commission or other federal or state agency, if applicable
* Resumes for each principal and affiliate of the development entity that will have responsibility for or involvement in the project
* Form HUD-2530—Previous Participation Certification
* Current financial statement of the development entity
* At least three business or professional references
* Contract Affidavit

### Developer Experience

* CDA Form 203 Developer’s Qualifications and supporting information (form available through DHCD’s website at <http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx>)
* Articles of Incorporation
* Articles of Organization
* Bylaws
* Partnership Agreement
* Operating Agreement
* Certificate of Good Standing
* Reports filed with the Federal Securities and Exchange Commission or other federal or state agency
* Resumes
* Form HUD-2530—Previous Participation Certification
* Financial Statements
* References
* Contract Affidavit

**GENERAL CONTRACTOR EXPERIENCE**

A resume that addresses the experience and qualifications of the general contractor must be submitted. This should contain information on the contractor’s experience with other projects of similar type, scale and complexity and in a similar capacity. In addition, please submit AIA Document A305—Contractor's Qualification Statement with the Department’s supplement as part of the application.

### General Contractor Experience

* Resume
* AIA Document A305—Contractor's Qualification Statement
* Supplement to the AIA Document A305—Contractor’s Qualification Statement (attached)
* Contract Affidavit

**ARCHITECT EXPERIENCE**

A resume that addresses the architect’s experience and qualifications must be submitted. This should contain information on the architect’s experience with other projects of similar type, scale and complexity and in a similar capacity. In addition, please submit AIA Document B305—Architect's Qualification Statement as part of the application.

### Architect Experience

* Resume
* AIA Document B305—Architect's Qualification Statement
* Contract Affidavit

**MANAGEMENT AGENT EXPERIENCE**

Please submit the CDA Form 209 Management and Marketing Agent’s Qualifications as part of the application along with the supporting information listed below. This should contain information on the management agent’s experience with other projects of similar type, scale and complexity and in a similar capacity.

* Resumes for each member of the firm or the management division that will have responsibility for or involvement in the project, including the executive officer or partner-in-charge, supervisor and resident manager
* Form HUD-2530—Previous Participation Certification
* Sample management materials, including financial statements, budgets, work order system, maintenance programs, management plans and form of lease
* Sample marketing materials, including marketing plan, rental brochure, press release, photographs of models and community spaces, newspaper advertisements and direct mail advertisements
* Current financial statements of the firm
* References of the firm, including bank, professional and client

### Management Agent Experience

* CDA Form 209 – Management Agent’s Qualifications
* Resumes
* Form HUD-2530—Previous Participation Certification
* Sample Management Materials
* Sample Marketing Materials
* Current Financial Statements
* References
* Contract Affidavit

*SUPPLEMENT TO THE AIA DOCUMENT A305—CONTRACTOR’S QUALIFICATION STATEMENT*

**SUPPLEMENTAL INFORMATION**

1. List which trades, if any, will be performed directly by the Firm’s own personnel or by identity of interest subcontractors, and not by outside subcontractors, in the construction of the proposed housing development. If none, so state.

1. Neither the contractor nor any director, stockholder, officer, employee or agent associated with the contractor nor any person, firm or corporation has any financial interest in said property, and has not received nor will receive any benefit from the acquisition of said property, including but not limited to rebate, refunds, commissions or fees, except as hereunder disclosed. If none, so state.

1. The undersigned hereby certifies that neither the Firm nor any partner, director, stockholder, officer, employee or agent associated with the Firm nor any person, firm or corporation having a financial interest in the affairs of the Firm, has agreed, or will agree, directly or indirectly, or with the Firm’s knowledge and consent, to give to any other party any payment or thing of value, profit or fee, or commission as an inducement for the granting of this contract, except as hereunder disclosed. If none, so state.

1. Has the Firm, under its present name or any previously used name, or any of its principals, ever commenced construction of a project that it has not completed, except those currently under construction? If yes, provide details. Use extra sheets if necessary.

1. In answering the following questions, the term “Principal” (as listed in paragraph 2 above) also includes any other Firm in which such person participated as a Principal.
	1. Have any of the Principals ever filed a petition of bankruptcy?

 Yes No

* 1. Has there ever been a petition of bankruptcy filed against the Firm or any of the Principals?

 Yes No

* 1. Has the Firm or any of the Principals ever made an assignment for the benefit of creditors?

 Yes No

* 1. Are there any unsatisfied judgments or liens against the Firm or any of the Principals?

 Yes No

* 1. Has the Firm or any of the Principals been a party to any litigation within the last five years?

 Yes No

If the answer to any of the questions in paragraph 5 is yes, give details. Use additional sheets if necessary.

1. Has the Firm, or any of the Principals, ever been convicted of a crime? If yes, give details including the name of the entity or person, when and where convicted, and the crime or offense involved.

1. Can the Firm obtain 100% payment and performance bonds for constructing the subject development?

**CERTIFICATION**

The undersigned hereby certifies that the information set forth in this certificate, and in any attachments in support thereof, is true correct and complete to the best of his or her knowledge and belief.

***NOTICE:*** *Section 2-207, Article 83B, Annotated Code of Maryland provides in part: A person who knowingly makes or causes false statements for the purpose of influencing the action of the Administration “…is subject to a fine not exceeding $50,000 or imprisonment not exceeding five years, or both.”*

IN WITNESS WHEREOF, the General Contractor has caused this certificate to be duly executed in its name on this day of , .

 NAME OF FIRM

 By:

 Name:

 Title:

***EXHIBIT C: OTHER FINANCING***

**LOANS AND GRANTS**

Firm letters of commitment must be provided for all other loans and grants that will be provided. Evidence of other financing also includes subsidies and insurance that will be provided by other institutions (such as, the Federal Home Loan Bank Board or Federal Housing Administration). The evidence of financing must be specific and detailed concerning its terms and conditions and must include the following:

1. Intention to finance the project
2. Amount of financing
3. Specific repayment terms and conditions (for example, interest rate, term of loan, use restrictions, repayment terms)
4. Any conditions for receiving a commitment

### LOCAL CONTRIBUTION

The commitment review submission package should include a copy of the executed agreement to provide the local contribution described in the application. If the agreement is not available, a letter from the local government’s chief executive, council or manager indicating its intention to provide the contribution and a specific description of the contribution is acceptable. The agreement or letter must detail all the terms and conditions for providing the contribution including the following, as applicable:

1. Type of contribution
2. Amount of contribution
3. Term, if the contribution is provided over a period of time (that is, monthly, annually)
4. Terms and conditions (for example, interest rate, maximum term contribution is provided, use restrictions, lien position, repayment provisions)

**EQUITY**

If the project will be syndicated, applicants must provide a firm proposal from the firm that will syndicate the project. The proposal must clearly show the following terms:

1. Amount of tax credits expected, if applicable
2. Type of investor
3. Gross equity generated from the syndication
4. Net proceeds to the project
5. Syndication related costs and charges
6. Schedule for the payment of equity
7. Interest and charges associated with any bridge loan
8. Any other terms and conditions

**ATTACHMENTS**

* Updated Letters of Intent or firm Commitment Letters for all Financing
* Updated Letter of Intent or Agreement to Provide Local Contribution
* Updated Syndication Proposal

EXHIBIT D: COST ESTIMATES

A breakdown of the construction or rehabilitation costs shown in the application’s development budget must be provided on CDA Form 212 Summary Cost Estimate and CDA Form 215 Detailed Cost Estimate. CDA Form 215 must be signed by the Sponsor/Borrower and General Contractor for the project.

**ATTACHMENTS**

* CDA Form 212 Summary Cost Estimate (form available through DHCD’s website at <http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx>)
* CDA Form 215 Detailed Cost Estimate (form available through DHCD’s website at <http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx>)***EXHIBIT E: DRAFT DRAW SCHEDULE***

The applicant must provide a schedule that shows the amount of funds to be requisitioned each month from closing to completion of the project. If more than one source of funds will be used, the draw schedule should show projected disbursements for each funding source.

For transactions involving Rental Housing Financing Programs (RHFP) funds, the Department may allow up to twenty-five percent (25%) of the projected non-deferred portion of the budgeted Developer’s Fee to be disbursed at initial closing. At substantial completion, as evidenced by the issuance of an acceptable certification of substantial completion by the project architect, the Department may allow an additional twenty-five percent (25%) of the projected non-deferred portion of the budgeted Developer’s Fee to be disbursed. The remaining non-deferred Developer’s Fee will be disbursed after the project is one hundred percent (100%) complete, cost certified, and the Department’s final closing requirements have been completed.

The Developer’s Fee may only be paid from equity, cash flow, or other non-DHCD sources of funds, and only if DHCD loans are not in default and the Developer continues to perform in a satisfactory manner.

Deferred Developer’s Fees are disbursed only after all must-pay debt and cash flow payments are made from net operating income.

 For more detailed information on the procedures and requirements applicable to the draw process please see the Multifamily Housing Development Guide to Draw Procedures (form available through DHCD’s website at <http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx>)

**ATTACHMENTS**

* Draft Draw Schedule (form available through DHCD’s website at http://dhcd.maryland.gov/HousingDevelopment/Documents/rhf/DrawSchedule.xls)
* Draw Procedures (form available through DHCD’s website at http://dhcd.maryland.gov/HousingDevelopment/Documents/mfresources/MFH-Guide-Draw-Procedures.pdf)

EXHIBIT F: ZONING

Evidence of the project’s compliance with zoning requirements for the proposed use is required at this stage of processing. Acceptable forms of evidence of zoning compliance include a letter or certification from the local zoning office, appraiser’s certification of zoning compliance or a current multifamily rental license for existing occupied projects.

**ATTACHMENTS**

* Letter or Certification from Local Zoning Office
* Appraiser’s Certification of Zoning Compliance
* Current Multifamily Rental License, if applicable
* **Not Applicable.** If evidence of zoning compliance was submitted with the initial application package, no additional information needs to be submitted with the commitment review submission package.

 EXHIBIT G: MANAGEMENT AGREEMENT

The management agreement between the owner and the management agent must be submitted for review and approval. In those cases where the Department’s form of Management Agreement is changed or not used, the Department’s form of Management Certification must be used.

**ATTACHMENTS**

* Management Agreement
* DHCD Form of Management Agent Certification (attached)

MANAGEMENT AGENT CERTIFICATION

[DATE]

[Community Development Administration]

[Department of Housing and

 and Community Development]

100 Community Place

Crownsville, Maryland 21032

 Re: [Project Name]

 Project No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 The undersigned has entered into a Management Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [the “Owner”] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [the “Management Agent”] for the management of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[the “Project”]. The fee to be paid to the Management Agent under the Management Agreement is $\_\_\_\_\_\_\_\_\_\_ per year[per month].

 We understand that [the] [a portion of the] development costs of the Project will be funded with a loan from [the Community Development Administration (“CDA”), an agency in the Division of Development Finance of] the Department of Housing and Community Development of the State of Maryland (the “Department”) to the Owner in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_ (the “Loan”). We also understand that it is a condition of the Loan that the Owner comply with, and the Project be operated in accordance with, certain requirements and restrictions contained in a Regulatory Agreement and certain other documents executed between the Owner and [the Department][CDA] evidencing the Loan (the “Loan Documents”).

We acknowledge that we have received and reviewed copies of the Loan Documents. We agree that in carrying out our responsibilities under the Management Agreement, we will manage the Project in accordance with the Loan Documents, and in compliance with the requirements and restrictions thereof, all as amended from time to time. We agree to cooperate with [the Department][CDA] in its monitoring and enforcement of those requirements and restrictions. We acknowledge and agree that in the event of any conflict between the Loan Documents and the Management Agreement, the Loan Documents shall govern.

We agree that in the event we fail to comply with any provision of the Loan Documents in our management of the Project, [the Department][CDA] shall have the right to terminate the Management Agreement between the Owner and the Management Agent upon ten days written notice to us and the Owner. We further agree that pursuant to the Regulatory Agreement, [the Department][CDA] has the right to terminate the Management Agreement without penalty and without cause, with 30 days written notice.The right to terminate the Management Agreement is in addition to, and not in limitation of, any other rights [the Department][CDA] may have against the Owner pursuant to the Loan Documents, or of any rights the Owner may have under the Management Agreement.

We understand that as part of Maryland’s continuing efforts to provide successful Welfare-to-Work opportunities, [the Department][CDA] encourages loan and grant applicants, as well as the management companies they work with, to make jobs available to Temporary Cash Assistance recipients. We understand that further information on how to reach these resources is available from the Department of Human Resources, Office of Work Opportunities at (410) 767-7976 or the Department of Labor, Licensing and Regulation, Office of Employment Training at (410) 767-2800 or the Maryland Job service at (410) 767-3416. We understand that Maryland also maintains a job bank of the internet at *http://www.careernet.state.md.us.*

 Very truly yours,

 [MANAGEMENT AGENT]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Acknowledged and agreed:

[OWNER]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT H: MINORITY BUSINESS ENTERPRISE PLAN

AND FEDERAL SECTION 3 CLAUSE

 A plan outlining the participation goals and procedures for the project should be developed at this stage. Issues that must be addressed in the minority business enterprise plan include goals for minority participation, monitoring and record keeping requirements and outreach and selection procedures.

 Projects receiving federal funding HOME or National Housing Trust Funds must complete and submit the attached Section 3 Clause form.

# ATTACHMENTS

**Minority Business Plan**

* Minority Business Enterprise Plan (attached)

**Federal Section 3**

* Federal Section 3 Clause (attached)

*(for Federal HOME or National Housing Trust Funded Projects only)*

**MINORITY BUSINESS ENTERPRISE PLAN**

Maryland Department of Housing and Community Development

 **Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. The Developer/Owner of this Project is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Contact person, Mr. /Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall be available at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The General Contractor is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_who shall be represented by Mr. /Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who shall be available at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. The minimum MBE goal established for this project is **29%**. However, we will use our best efforts to achieve MBE participation above the minimum requirements.
3. These goals will be communicated to all our potential/actual vendors and subcontractors through the mechanisms of advertisements, solicitations of bids, discussion, negotiation, and contract stipulation.
4. Our outreach efforts shall include a request for participation of MBE Associations located within the commutable vicinity and direct solicitation of identifiable minority subcontractors and vendors by mail. Notices shall be placed in local publications informing the public of these opportunities. Necessary contract documents shall be provided free to MBE Associations for the use by their members. We will maintain a “Bid Room” in our main office where those contract documents shall be made available for examination and use by any interested person during usual office hours.
5. It is expected that all contracts for this project be negotiated.
6. The Developer and the Contractor will monitor the success of these actions through a monthly review of the awarded contracts. At this time, a review of uncommitted contracts for possible participation will be conducted.
7. A monthly “Subcontractors and Vendors Report” will be submitted to CDA listing the MBE contracts awarded during the reporting period.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Developer/Owner Date General Contractor Date

Signature, Authorized Executive Signature, Authorized Executive

I have reviewed this plan and certify that it conforms with the Department’s requirements.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jacquetta Hagler Date

 DHCD MBE Liaison

Rev: June 1, 2018

**Section 3 Clause**

|  |  |
| --- | --- |
| (DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT, MARYLAND STATE) |  |
|  | **Project:** |  |  |  |  |  |  |  |  |  |  |
|  | **Address:** |  |  |  |  |  |  |  |  |  |  |

**All section 3 covered contracts shall include the following clause (referred to as the Section 3 Clause):**

A. The work to be performed under this contract is subject to the requirement of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170 1u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income person; particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD’s regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their executions of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate actions, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violations of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violations of the regulations in 24 CFR Part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR Part 135.

F. Non-compliance with HUD’s regulations in 24 CFR Part 135 may result in sanctions; termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations an Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance h section 7(b).

**Additional Requirements**

1. The Developer and Contractor will monitor the success of these actions through a monthly review of the awarded contracts. At this time, a review of uncommitted contracts for possible participation will be conducted.
2. A monthly “Contract and Subcontract Activity Report” and a “Section 3 Summary Report” will be submitted to DHCD listing the section 3 activity during the reporting period.
3. The required numerical goal is at least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization of development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and at least three (3) percent if the total dollar amount of all other section 3 covered contracts. (If the goal is not met provide documentation to support your effort).

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  .  |  |   |   |   |   |   |  |   |   |   |    |  |
|  | Signature |  | Date |  |  | Signature |  |  Date  |  |
|  | Owner/Monitoring Officer |  |  |  |  |  | Authorized Executive/Contractor |  |  |
|  | I have reviewed this document and certify that it conforms with the Department's requirements. |
|  |  |  |  |  |  |  |  |  |  |  |  |  |
|  |   |   |    |    |   |   |  |  |  |  |  |  |
|  | Gordon M. Outlaw |  |  Date |  |  |  |  |  |  |  |
|  | Section 3 Liaison |  |  |  |  |  |  |  |  |  |  |

EXHIBIT I: PLANS AND SPECIFICATIONS

Documents indicated in this section are considered minimum requirements and should be amended as required by the specific project requirements. These requirements follow generally those defined for the Construction Document Phase of the AIA Owner Architect Agreement. The contract documents shall reflect a project development of 95% of the completed construction documents. The submission shall incorporate changes required by all applicable Department comments from previous submissions. Where Department comments are not incorporated into the submission, provide a written explanation for each omitted item. Items that generally apply only to renovation projects are indicated.

**ATTACHMENTS**

* Two Sets of Plans (1 Digital Copy & 1 Hard Copy)
* Minimum Size for All Design Documents is 30”x40”
* Specifications (2 Hard Copies)
* Written statement of changes in material quality, amenities or other items which are reviewed in the Development Quality scoring.

*PLANS AND SPECIFICATIONS*

DRAWING REQUIREMENTS

# Civil Engineering Documents

* 1. Site plan
	2. Grading plan
	3. Sediment and erosion control plan
	4. Storm water management plan
	5. Demolition plan (if applicable)[[1]](#footnote-1)\*
	6. Landscape plan and schedule including benches, areas of seed and sod, etc.
	7. Utility plan(s)
	8. Utility profiles and structure schedule
	9. Site details sheet, including paving sections, sidewalk, curb sections, disabled accessibility features, dumpster pad sections, retaining walls, mail box and tot lot, etc.
	10. Public works standard details (reproduce in the construction documents)
	11. Civil Plans 1″ = 30′ scale.
1. Architectural Documents
	1. Title Sheet
* Project information including project name and address
* The names, addresses and telephone numbers of the Owner and all Consultants
* The date
* The submission level
* The CDA project number
* List of drawings
* Project area breakdown
* Unit mix and square footages
* Vicinity map
	1. Code Analysis Sheets
* Designate uses and fire areas on schematic floor plans
* Provide written code analysis
	1. Phasing Plans (if required), which apply particularly to renovation projects especially if to be completed with partial or full building occupancy\*
	2. Demolition Foundation Plan (1/8” scale min)\*
	3. Foundation Plan (1/8” Scale min)
	4. Demolition Floor Plans for Each Building Level (1/8” scale min)\*
	5. Floor Plans for Each Building Level (1/8” scale min)
	6. Demolition Roof Plan (1/16” scale min)\*
	7. Roof Plan (1/16” scale min)
	8. Demolition Attic Plan (where applicable)\*
	9. Attic Plan (where applicable), indicating draft-stopping, firewalls and attic access
	10. Demolition Plans of Individual Units (1/4” scale min)\*
	11. Individual Unit Plans (1/4” scale min)
	12. Detailed Demolition Plans of Common Areas (1/4” scale min)\*
	13. Detailed Plans of Common Areas (1/4” scale min)
	14. Demolition Reflected Ceiling Plans for Each Building Level (1/8” scale min)[[2]](#footnote-2)\*
	15. Reflected Ceiling Plans for Each Building Level (1/8” scale min)
	16. Demolition Reflected Ceiling Plans of Individual Unit (1/4” scale min)\*
	17. Individual Unit Reflected Ceiling Plans (1/4” scale min)
	18. Detailed Demolition Reflected Ceiling Plans of Common Areas (1/4” scale min)\*
	19. Detail Reflected Ceiling Plans of Common Areas (1/4” scale min)
	20. Exterior Building Elevations (1/8” scale min)
* Provide elevations of all exterior wall areas
* Provide schematic key plan indicating elevation locations
* Include Demolition information as required. Note some projects will require a complete set of Demolition Exterior Elevations separate from the New Construction Exterior Elevations.\*
	1. Interior Elevations (1/8” scale min)
* Provide elevations of interior corridor and common space wall areas where necessary to describe the project
* Provide schematic key plan indicating elevation locations
* Include Demolition information as required. Note some projects will require a complete set of Demolition Interior Elevations separate from the New Construction Interior Elevations.\*
	1. Kitchen And Bath Elevations and Details (1/4” scale min)
* Demolition Information, elevations and details as required\*

Include the following demolition information as required:

* 1. Overall Building Sections (1/2” scale min)\*
	2. Typical Wall Sections (1/2” scale min) in sufficient quantity to describe the varying building conditions\*
	3. Enlarged Construction Plan Details (3/4” scale min)\*
	4. Specific Building Details and Sections (3/4” scale min)\*
	5. Elevator Plans, Sections and Details (3/4” scale min)\*
	6. Stair Tower Plans and Details (3/4” scale min)\*
	7. Trash Chute and Compactor Details (1/2” scale min)\*
	8. Wall Type Schedules and Details (1/2” scale min)\*
	9. Floor and Ceiling Type Schedules and Details (1/2” scale min)\*
	10. Expansion Joint Details (1/2” scale min)\*
	11. Finish Schedules\*
	12. Door and Frame Schedules and Details\*
	13. Window Schedules and Details\*
	14. Hollow Metal and Aluminum Storefront and Curtain Wall Schedules and Details\*
	15. Louver, Panels and Vent Schedules and Details\*
	16. Additional Plans and Details as may be required by the Specific Project\*
1. Structural Documents
	1. Demolition Foundation Plan (1/8” scale min)\*
	2. Foundation Plan (1/8” scale min)
	3. Demolition Framing Plan for Each Floor Level (1/8” scale min)\*
	4. Framing Plan for Each Floor Level (1/8” scale min)
	5. Demolition Roof Framing Plan (1/8” scale min)\*
	6. Roof Framing Plan (1/8” scale min)
	7. Enlarged Demolition Structural Plans (as required) (1/4” Scale min)\*
	8. Enlarged Structural Plans (as required) (1/4” Scale min)

Include the following demolition information as required:

* 1. Structural Schedules (as required)[[3]](#footnote-3)\*
	2. Structural Sections (as required)\*
	3. Typical Details (as required)\*
	4. Structural Notes\*
1. Plumbing Documents
	1. General Notes and Legends
	2. Plumbing Floor Plan for Each Building Level (1/8” scale min)
* Include demolition information as required\*
	1. Plumbing Unit Plans (1/4” Scale min)
* Include demolition information as required\*
	1. Enlarged Plumbing Plans (as required) (1/4” scale min)
* Include demolition information as required\*
	1. Riser Diagrams
* Domestic
* Waste
* Heating/Cooling system piping
* Condensate systems
* Gas
* Sprinkler including standpipes, valves and tamper switches
* Include demolition information as required\*
	1. Fixture Schedules
* Include demolition information as required\*
	1. Fire Pump Details (if required)
* Include demolition information as required\*
	1. Boiler, Chiller, Hot Water Heating and Other Systems Plans As Required
* Include demolition information as required\*
1. HVAC Documents
	1. General Notes and Legends
	2. HVAC Floor Plan for Each Building Level (1/8” scale min)
* Include demolition information as required\*
	1. HVAC Unit Plans (1/4” scale min)
* Include demolition information as required.
	1. Enlarged HVAC Plans (as required) (1/4” scale min)
* Include demolition information as required\*
	1. Riser Diagrams
* Central duct systems (corridors, supply and exhaust, etc.)
* Flues
* Kitchen and bath exhaust systems
* Control systems
* Include demolition information as required[[4]](#footnote-4)\*
	1. Equipment Schedules
* Include demolition information as required\*
	1. Louver and Vent Schedules
* Include demolition information as required\*
	1. Boiler, Chiller and Other Systems Plans as required
* Include demolition information as required\*
	1. Enlarged Mechanical Room Plans and Details (1/4” scale min)
* Include demolition information as required\*
1. Electrical Documents
	1. General Notes and Legends
	2. Power Floor Plan for Each Building Level (1/8” scale min)
* Include demolition information as required\*
	1. Lighting Floor Plan for Each Building Level (1/8” scale min)
* Include demolition information as required\*
	1. Power and Lighting Unit Plans (1/4” scale min)
* Include demolition information as required\*
	1. Enlarged Power and Lighting Plans (as required) (1/4” scale min)
* Include demolition information as required\*
	1. Electrical Riser Diagrams
* Power
* Fire Alarm
* Access Control
* Systems Control
* Cable TV and master antenna systems
* Internet Access
* CCTV
* Dialers, intercoms and door entry systems
* Security systems
* Hearing Impaired systems
* Emergency call systems
* Include demolition information as required\*
	1. Schedules
* Lighting
* Panels
* Electrical equipment
* Include demolition information as required\*
	1. Fire Alarm and Other Systems Plans as required
* Include demolition information as required\*
* Fire Pump and Emergency Generator Details, etc.
	1. Site Lighting Plan and Details

SPECIFICATION REQUIREMENTS

1. Construction Document Specifications
	1. The 100% Construction Documents Specification shall include all sections of the 16 Division CSI format applicable to project.
	2. The specification shall be in CSI/Master Spec format.
	3. The Specification cover shall include the following:
* The names, addresses and telephone numbers of the Owner and all Consultants
* The project name and address
* The date
* The submissions level
* The CDA project number
	1. A complete table of contents shall be included at the front of the Specification
	2. Division I should include General Conditions and other project requirements, including those of the lender
* Bind into the specification the AIA General Condition to the Construction Contract and the CDA Supplementary and General Conditions.
* If Project is bid, bind in copies of all bidding documents.
* Include Allowance, Alternate and Unit Price Sections.
* Include Specific Renovation/Demolition related sections as required[[5]](#footnote-5)\*
	1. Divisions II (where Division II is prepared by a separate Owner-retained Consultant, bind these sections into the single Project Specification)
	2. Divisions II through XVI
* When products are specified three or more manufacturers shall be listed in addition to "or equal" clause
* Include Specific Renovation/Demolition related sections as required\*

***EXHIBIT J: PROJECT REHABILITATION MANUAL***

***Applicable to Rehabilitation Projects Only***

For projects that involve the rehabilitation of existing buildings, applicants must provide an engineering assessment of the buildings. In rehabilitating properties, developers may encounter unforeseen issues that can delay, increase the cost of, or even halt rehabilitation. To avoid this, the Department requires that an engineer complete an assessment of the property.

The following rehabilitation manual is required for all renovation projects. Documents indicated below shall be considered minimum requirements and should be amended as required for specific project conditions and requirements.

**ATTACHMENTS**

* Project Rehabilitation Manual (guidelines attached)
* **Not Applicable.** If the project does not include the rehabilitation of existing buildings, a Project Rehabilitation Manual is not applicable.

***PROJECT REHABILITATION MANUAL GUIDELINES***

Incorporate the results of the survey of 100% of the existing building and the final scope of work for the project into a complete Survey Manual, which includes the items listed below. Coordinate the development of the manual with the final scope of the completed work and the information contained in the 100% Construction Documents (drawings and specifications).

 The format for the required Final Survey Manual should relate to the specific project and include elements such as the following:

* Arranged in unit-by-unit format.
* Include subsection for all public and common areas.
* Include building exterior subsection if applicable
* Provides a tabulation by subsection and section with project totals for each work element

*EXHIBIT K: CONSTRUCTION SCHEDULE*

At the commitment review stage, applicants should have developed a detailed schedule for completing construction of the project. Include in the commitment review submission package the construction schedule in bar chart format (Gantt chart type), which must include the following elements.

* Arrange in 16 division CSI format with detailed task breakdown below each division
* Where possible relate to the trade payment breakdown detail provided for the project, the anticipated Application for Payment categories and the CDA Form 212 and CDA Form 215
* Show start and end dates and duration of each task
* Show predecessors for major tasks
* Show critical relationship between major elements
* Show float for each division. Show float as belonging neither to the Owner nor to the Contractor. Float shall be available by all parties as required by the project.
* Project time shall be shown in calendar days
* Produce schedule in color with critical elements indicated in red and all other elements indicated in black

ATTACHMENTS

* Construction Schedule

 EXHIBIT L: STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

An executed copy of the Owner/Contractor Agreement must be provided. The Department requires the Standard Form of Agreement Between Owner and Contractor/Cost Plus with negotiated maximum price, the AIA Document A102–2017 to be used. Only under certain circumstances and with prior approval of the Department will the Standard Form of Agreement Between Owner and Contractor Lump Sum, where the basis of payment is a stipulated sum, the AIA Document A101–2017 may be used. If a Lump Sum Contract is used three separate complete bids from qualified contractors are required. For all forms of contract, include the AIA Document A201–2017, General Contractor’s Conditions to the Contract for Construction and the CDA Supplementary General Conditions.

**ATTACHMENTS**

* Standard Form of Agreement Between Owner and Contract/Cost (AIA Document AIA Document A102-2017)
* Standard Form of Agreement Between Owner and Contract/Lump Sum (AIA Document A101-2017)
* General Conditions of the Contract for Construction (AIA Document A201-2017 CDA Supplementary General Conditions (form available through DHCD’s website at <http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx>)

EXHIBIT M: INSURANCE AND BONDING

The Department requires documentation that projects are adequately insured during construction and the permanent loan period. Specifically, the Department requires the following insurance coverage and security:

1) Owner’s Liability Insurance

2) Contractor’s Liability Insurance

3) Architect’s and Engineer’s Errors and Omissions Insurance

1. Owner’s Property and/or Builder’s Risk Insurance
2. Flood Insurance, if applicable

6) Payment and Performance Bond or Letters of Credit

##### Section I: General Insurance Requirements

The applicant must submit evidence that the project will be properly insured. For preliminary review purposes, the Department accepts three (3) forms of evidence of insurance:

1. Certificate of Insurance -- a one or two page summary document outlining and summarizing the insurance policy.
2. Insurance Binder -- an overview of the insurance policy. Binders are typically issued and valid for a 30 day period, and must therefore be reissued every 30 days until delivery of an Insurance Policy.
3. Insurance Policy -- the document which contains all conditions of insurance coverage.

For closing, the Department accepts only Certificates of Insurance as evidence of insurance. An ACORD 25 must be provided for Liability Insurance and Errors and Omissions Insurance and an ACORD 28 for Property and/or Builder’s Risk Insurance. The Department should be shown as the certificate-holder/additional interest. For most loans, the certificate-holder/additional interest section should be completed as follows:

 The Community Development Administration,

a Unit in the Division of Development Finance of the

Department of Housing and Community Development of the State of Maryland

7800 Harkins Road

Lanham, MD 20706

For certain loans, a certificate naming the Department of Housing and Community Development may be required.

 The applicant must also submit evidence that the Department will be adequately covered by the insurance by providing the appropriate “endorsements.” The required endorsements are as follows:

1. Owner’s Liability Insurance – Additional Insured
2. Contractor’s Liability Insurance – Additional Insured
3. Architect’s and Engineer’s Errors and Omissions Insurance – No endorsements required
4. Owner’s Property and/or Builder’s Risk Insurance – Mortgagee and Lenders Loss Payable

Notice Rights – The Department must be given at least 30 days’ notice of cancellation of insurance, which may be shortened to 10 days in the case of non-payment of premium. A statement regarding the Department’s notice rights should appear on the insurance certificate or be contained in a separate endorsement.

The types and limits of insurance coverage normally required by CDA include:

#### 1) Owner’s Liability Insurance

* Comprehensive General Liability Coverage for single limit public liability coverage of not less than $1,000,000.
* Comprehensive Automobile Liability written on vehicles owned or rented by the Borrower and used in connection with the Project in an amount for combined single limit public liability coverage of not less than $1,000,000.
* Workmen's Compensation covering, to the fullest extent required by applicable law, all Project employees employed by the Borrower.

#### 2) Contractor’s Comprehensive General Liability Insurance

* Comprehensive General Liability Coverage for single limit public liability coverage of not less than $1,000,000.
* Comprehensive Automobile Liability written on vehicles owned or rented by the general contractor and used in connection with the Project in an amount for combined single limit public liability coverage of not less than $1,000,000.
* Workmen's Compensation covering, to the fullest extent required by applicable law, all of contractor’s engaged in the work on the Project.
* Excess Liability Coverage in the form of an umbrella endorsement over all of the above in an amount of not less than $5,000,000.

#### 3) Architect’s and Engineer’s Errors and Omissions Insurance

* The architect or engineer shall provide professional liability insurance coverage in an amount equal to the greater of 10% of the total aggregate dollar amount of construction, or $1,000,000 for a period of not less than two years after the date of substantial completion.

#### 4) Owner’s Hazard or Builder’s Risk Insurance

* During construction, Builder's Risk Insurance on an all-risk basis such that for the full construction period the Project is insured in an amount not less than the full amount of the construction contract, with additional coverage for reasonable soft costsDuring occupancy, Property Insurance such that for the entire period of operation the Project is insured for not less than the replacement cost.
* Boiler Insurance (where applicable) to become effective at such time that the boiler becomes operational in an amount equal to the greater of $1,000,000 or 100% of the value of the system. Boiler Insurance coverage should cover all centralized systems, including heating, ventilation and air conditioning.

Other general requirements regarding insurance coverage are:

* Insurance providers must have a current certificate of authority or other appropriate licensure issued by the Maryland Insurance Administration.
* Any additional insured should not be liable for premium payments.
* Insurance deductibles, if any, should generally not exceed $10,000 for Liability Insurance and $25,000 for Builder’s Risk and Property Insurance. Deductibles are applicable for property damage (PD) coverage, but not bodily injury (BI) coverage.
* The Department may require the Borrower to furnish additional insurance, at Borrower's expense, for any hazards involved in the Project or the Property which, in the opinion of the Department require special endorsements.

###### *Section II: Flood Insurance Requirements*

The Department also requires documentation of adequate Flood Insurance, if applicable.

If the project is located in an area which has been identified as a "Special Flood Hazard Area" (as such term is used in the Flood Disaster Protection Act of 1973, as amended), the borrower must provide an original copy of the policy to the Department. The policy must be acceptable to the Department, and evidence of payment for a period of at least one year must be received. The policy must be maintained until the Loan has been repaid in full.

If the project is located in a flood zone C or X, as certified by the surveyor on the survey, flood insurance is not required.

***Section III: Payment and Performance Bonds or Letters of Credit***

The Department must receive an assurance of completion, which is evidence that the construction can be completed if the general contractor defaults on the contract. Acceptable forms of assurance of completion include:

* Payment and Performance Bonds each in the amount of 100% of the construction contract. A copy of the form of the Payment and Performance Bond, including the Department’s Dual Obligee Rider must be submitted. A copy of the Form of Dual Obligee Rider is included on the next page. In projects involving a HUD-insured superior loan, the Department will accept the HUD form Additional Obligee Rider.

 OR

* Two (2) unconditional, irrevocable Letters of Credit each in the amount of 25% of the construction contract (to assure both completion and payment) and an assurance of completion agreement.

ATTACHMENTS\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* Architect’s Errors and Omissions
* Builder’s Risk
* Contractor’s Comprehensive General Liability
* Owner’s Hazard and Liability
* Payment Bond and Performance Bond (AIA Document A312-2010)
* Dual Obligee Rider (attached)
* Evidence of Letter of Credit

***FORM OF DUAL OBLIGEE RIDER***

THIS RIDER is to be attached to, and form a part of, Payment and Performance Bonds No. \_\_\_\_\_\_\_\_\_\_\_\_ , issued by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[Name of Surety], as Surety, on the \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_.

WHEREAS, on or about the \_\_\_ day of \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Name of Contractor], (“Principal”) entered into a construction contract with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name of Owner] (“Primary Obligee”) for $\_\_\_\_\_\_\_\_\_\_\_\_ in connection with the construction of a \_\_\_\_ unit multifamily residential project known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_ located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Contract”); and

WHEREAS, the Principal and Surety executed and delivered to Primary Obligee Payment and Performance Bonds No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in connection with the Contract (the “Bonds”); and

WHEREAS, the Primary Obligee has requested the Principal and the Surety to execute and deliver this rider and the Principal and Surety have agreed to do so on the conditions herein stated;

NOW, THEREFORE, it is hereby understood and agreed that the above-described Bonds are hereby amended to include the following paragraphs:

1. The [Department of Housing and Community Development of the State of Maryland and/or the Community Development Administration, a unit in the Division of Development Finance of the Department of Housing and Community Development of the State of Maryland] shall be added to the Bonds as an additional named obligee (“Additional Obligee[s]”).
2. The Surety shall not be liable under the Bonds to either of the Primary Obligee or the Additional Obligee[s] (each, an “Obligee”, and together, the “Obligees”), unless [either/any] of the Obligees or [both/all] of them shall make payments to the Principal in accordance with the terms of the Contract as to payments and shall perform other obligations to be performed under the Contract at the time and in the manner therein set forth; provided, however, that neither the Principal nor the Surety shall assert a failure by an Obligee to make payments or perform obligations under said Contract unless each of the Obligees has been given written notice, by either the Principal or the Surety, of any such failure and 45 days opportunity to cure.
3. The aggregate liability of the Surety under this Bond to the Obligees is limited to the penal sum of the Bonds. The rights of any Obligee hereunder are subject to the same defenses Principal and/or Surety have against the Owner, and the total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Owner under the Contract.
4. The Surety may, at its option, make any payments under the Bonds by check issued jointly to the Primary Obligee and the Additional Obligee[s], as their interests may appear.

IT IS FURTHER UNDERSTOOD AND AGREED that except as set forth above, nothing contained herein shall be deemed to change, alter or vary the terms of the above described Bonds.

SIGNED, SEALED AND DATED this \_\_\_\_\_ day of\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_.

|  |  |  |
| --- | --- | --- |
| [NAME OF PRINCIPAL] |  | [NAME OF SURETY] |
|  |  |  |
|  |  |  |
|  |  |  |
| [Signature of Representative]  |  | [Signature of Representative]  |
| [Name of Representative][Title of Representative] |  | [Name of Representative][Title of Representative] |

1. \* Generally applies only to renovation projects. [↑](#footnote-ref-1)
2. \* Generally applies only to renovation projects. [↑](#footnote-ref-2)
3. \* Generally applies only to renovation projects. [↑](#footnote-ref-3)
4. \* Generally applies only to renovation projects. [↑](#footnote-ref-4)
5. \* Generally applies only to renovation projects. [↑](#footnote-ref-5)