

MINNESOTA HOUSING FINANCE AGENCY DEFERRED LOAN AGREEMENT

This Deferred Loan Agreement is between the Minnesota Housing Finance Agency (“MHFA”) and **[GIVE THE FULL NAME OF THE BORROWER INCLUDING ITS ADDRESS]** (the “Borrower”).

Recitals

1. Under [Minn. Stat. §462A.39](#), MHFA is empowered to enter into this Deferred Loan Agreement.
2. The MHFA is in need of the development of rental housing to serve the employees of local businesses (“Workforce Housing”) in **[COUNTY]**, City of **[CITY]** pursuant to MHFA’s Workforce Housing Development Program (the “Program”).
3. The Borrower represents that it is duly qualified and agrees to perform all activities described in this Deferred Loan Agreement to the satisfaction of MHFA. The Borrower agrees to minimize administrative costs as a condition of this Deferred Loan Agreement.

Deferred Loan Agreement

1 Term of Deferred Loan Agreement

1.1 *Effective date:*

[SPELL OUT FULL DATE (e.g., July 1, 2020)], the Borrower must not begin work until this Deferred Loan Agreement is fully executed and MHFA's Authorized Representative has notified the Borrower that work may commence. No funds will be disbursed to the Grantee until this Deferred Loan Agreement is fully executed.

1.2 *Survival of Terms.*

The following clauses survive the expiration or cancellation of this Deferred Loan Agreement: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

2 Duties and Contracts

2.1

Borrower’s Duties

The Borrower has made application to MHFA for the purpose of administering a Workforce Housing Development Program Project in the manner described in the Borrower's Application (the “Project”) which is incorporated into this Deferred Loan Agreement by reference.

The Borrower, who is not a state employee, is awarded funds to provide financial assistance to address the need for Workforce Housing. The Project includes: **[INSERT BRIEF DESCRIPTION OF PROJECT INCLUDING TYPE (NEW CONSTRUCTION/ADAPTIVE REUSE, ETC.), AND NUMBER OF UNITS]**.

The Borrower will comply with all requirements as further described in **Exhibit A** attached to this Deferred Loan Agreement and incorporated by reference.

The Borrower will be in compliance with the Workforce Housing Development Program Guide, as amended (the “Program Guide”), which is incorporated into this Deferred Loan Agreement by reference.

2.2 Provisions for Contracts and Sub-grants.

(a) Contract Provisions. The Borrower must include in any contract and sub-grant, in addition to provisions that define a sound and complete agreement, such provisions that require contractors and sub-Borrowers to comply with applicable local, state and federal laws, rules, regulations and ordinances, as well as any applicable MHFA policies.

(b) Use of Program Funds. The Program Funds (as defined below) awarded under this Deferred Loan Agreement may only be used by the Borrower or awarded by the Borrower to third parties as grant funds or loans in accordance with the terms of the Program Guide. All Program Funds must be used by an Eligible Project Area for the Qualified Expenditures of a Market Rate Residential Rental Property (as such terms are defined in the Program Guide). If awarded as a loan, any fees or interest charged cannot unduly enrich any parties involved beyond the approximate cost of the administrative costs associated with the Project.

3 Time

The Borrower must comply with all time requirements described in this Deferred Loan Agreement and the Program Guide. In the performance of this Deferred Loan Agreement, time is of the essence. Project construction must begin within 12 months upon signing this Deferred Loan Agreement. Construction completion must occur within 2 years of construction start.

4 Loan

4.1 Loan Amount.

The total principal loan amount by MHFA to the Borrower under this Deferred Loan Agreement will not exceed \$[ENTER AWARD AMOUNT] (the "Program Funds").

4.2 Repayment

The Borrower promises to pay to MHFA the Program Funds with simple interest, if any, of 0% per annum accruing on such amounts of principal as may be advanced from time to time.

Further, the Program Funds and all accrued interest, if any, less any amounts previously paid or forgiven, are due and payable in one lump sum on the earlier to occur of: (i) a Default (as defined below) (the "Default Date"); or (ii) the ____ day of ____, 20__ (the "Maturity Date").

A Default occurs upon written notice by MHFA to the Borrower of noncompliance with this Deferred Loan Agreement or the Program Guide and failure of the Borrower to cure the noncompliance to the satisfaction of MHFA within 30 days of such notice.

Repayment of the Program Funds will be forgiven upon the Maturity Date provided the Borrower is in full compliance with this Deferred Loan Agreement and the Program Guide.

All amounts due are payable at the offices of MHFA, 400 Wabasha Street North, Suite 400, St. Paul, MN 55102-1109, or such other place as MHFA may designate in writing.

If a failure to pay the amounts due under this Deferred Loan Agreement occurs, and if the same is submitted for collection by MHFA, its successor and assigns, the Borrower to pay all costs of collection, including reasonable attorney's fees.

All parties to this Deferred Loan Agreement, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest and notice of dishonor.

4.3

Disbursement

For all disbursements of Program Funds, the Borrower must be in compliance with the Program Guide and complete and submit a Workforce Housing Development Program Disbursement Request Form, attached to this Deferred Loan Agreement as **Exhibit B**, to MHFA for review and approval. MHFA will promptly pay the Borrower up to one third of the Program Funds on or after closing. The Borrower may request an additional one third of the Program Funds as needed upon providing evidence of a grant or loan agreement relating to the Project with a subrecipient. The remaining one third of the Program Funds will be withheld for final disbursement and will not be released until construction completion of the Project and upon completion of all reporting and monitoring requirements pursuant to this Deferred Loan Agreement.

4.4 *Unexpended Funds*

The Borrower must promptly return to MHFA any unexpended Program Funds that have: (i) not been accounted for annually in a financial report to MHFA due at Deferred Loan Agreement closeout; or (ii) not been used in compliance with the Program Guide.

4.5 *Contracting and Bidding Requirements*

This award is subject to the prevailing wage requirements of [Minn. Stat. § 116J.871](#) unless the award is for rehabilitation of existing housing or for new housing construction at a single project site which is less than \$100,000. In addition, the statute does not apply if the award from MHFA is less than \$200,000 for a grant or \$500,000 for a loan. If the project is within the scope of Minn. Stat. § 116J.871, the recipient must certify to the commissioner of the Department of Labor and Industry that laborers and mechanics at the project site during construction, installation, remodeling, and repairs for which the award was provided will be paid the prevailing wage rate as defined in [Minn. Stat. § 177.42](#), subd. 6. According to [Minn. Stat. § 116J.871](#), subd. 2, MHFA cannot provide financial assistance to a recipient unless the required certification has been made.

Per [Minn. Stat. §471.345](#), grantees that are municipalities as defined in Subd. 1 must follow the law.

If applicable, for projects that are publicly owned or leased and include construction work of \$25,000 or more, prevailing wage rules also apply per [Minn. Stat. §§177.41](#) through [177.44](#); consequently, the bid request must state the project is subject to *prevailing wage*. These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole. According to [Minn. Stat. §177.42](#), the term “project” is defined as the “erection, remodeling, or repairing of a public building or other public work financed in whole or in part by state funds”. This state prevailing wage requirement may be affected if federal prevailing wage requirements also apply to the same project.

The Borrower must not contract with vendors who are suspended or debarred in MN:
<http://www.mmd.admin.state.mn.us/debarredreport.asp>

5 **Conditions of Payment**

All activities performed by the Borrower under this Deferred Loan Agreement must be performed to MHFA’s satisfaction, as determined at the sole discretion of MHFA’s Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Borrower will be responsible for repaying any Program Funds found by MHFA to be noncompliant with this Deferred Loan Agreement or used in violation of federal, state, or local law.

6 **Authorized Representative**

MHFA's Authorized Representative is **Sara Bunn, Program Manager, 651.296.9827, sara.bunn@state.mn.us, 400 Wabasha St N, Suite 400, St. Paul, MN 55102** or her successor, and has the responsibility to monitor the Borrower's performance under this Deferred Loan Agreement.

The Borrower's Authorized Representative is **[NAME, TITLE, ADDRESS, TELEPHONE NUMBER, EMAIL]**. If the Borrower's Authorized Representative changes at any time during this Deferred Loan Agreement, the Borrower must immediately notify MHFA.

7 Assignment Amendments, Waiver, and Deferred Loan Agreement Complete

7.1 Assignment

The Borrower shall neither assign nor transfer any rights or obligations under this Deferred Loan Agreement without the prior written consent of MHFA, approved by the same parties who executed and approved this Deferred Loan Agreement, or their successors in office.

7.2 Amendments

Any amendments to this Deferred Loan Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Deferred Loan Agreement, or their successors in office.

7.3 Waiver

If MHFA fails to enforce any provision of this Deferred Loan Agreement, that failure does not waive the provision or MHFA's right to enforce it.

7.4 Deferred Loan Agreement Complete

This Deferred Loan Agreement contains all negotiations and agreements between MHFA and the Borrower. No other understanding regarding this Deferred Loan Agreement, whether written or oral, may be used to bind either party.

8 Liability

The Borrower must indemnify, save, and hold MHFA, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by MHFA, arising from the performance of this Deferred Loan Agreement by the Borrower or the Borrower's agents or employees. This clause will not be construed to bar any legal remedies the Borrower may have for MHFA's failure to fulfill its obligations under this Deferred Loan Agreement.

9 State Audits

Under [Minn. Stat. § 16B.98](#), Subd.8, the Borrower's books, records, documents, and accounting procedures and practices of the Borrower or other party relevant to this Deferred Loan Agreement or transaction are subject to examination by MHFA and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Deferred Loan Agreement, receipt and approval of all final reports, or the required period of time to satisfy all MHFA and program retention requirements, whichever is later.

10 Government Data Practices and Intellectual Property Rights

10.1 Government Data Practices

The Borrower and MHFA must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by MHFA under this Deferred Loan Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Borrower under this Deferred Loan Agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either the Borrower or MHFA. If the Borrower receives a request to release the data referred to in this Clause, the Borrower must immediately notify MHFA. MHFA will give the Borrower instructions concerning the release of the data to the requesting party before the data is released. The Borrower's response to the request shall comply with applicable law.

10.2 *Intellectual Property Rights*

In the event that the Borrower secures a copyright protection on any of the work product created as part of the Project, the Borrower agrees to and does hereby grant to MHFA and its officers, agents, and employees acting within the scope of their official duties, a royalty-free, non-exclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so for the use by MHFA, its divisions, instrumentalities, and local subdivisions, all materials, reports, writings, sound recordings, pictorial reproductions, drawings, or other graphical representations, and works developed and/or used in connection with the Project now or hereafter covered by copyright.

11 **Workers Compensation**

The Borrower certifies that it is in compliance with [Minn. Stat. § 176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Borrower's employees and agents will not be considered MHFA employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way MHFA's obligation or responsibility.

12 **Publicity and Endorsement**

12.1 *Publicity*

Any publicity regarding the subject matter of this Deferred Loan Agreement must identify MHFA as the sponsoring agency and must not be released without prior written approval from MHFA's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Borrower individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Deferred Loan Agreement.

12.2 *Endorsement*

The Borrower must not claim that MHFA endorses its products or services.

13 **Governing Law, Jurisdiction, and Venue**

Minnesota law, without regard to its choice-of-law provisions, governs this Deferred Loan Agreement. Venue for all legal proceedings out of this Deferred Loan Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Termination

MHFA may immediately terminate this Deferred Loan Agreement if MHFA finds that there has been a failure to comply with the provisions of this Deferred Loan Agreement or the Program Guide, that reasonable progress has not been made or that the purposes for which the funds were loaned have not been or will not be fulfilled. MHFA may take action to protect the interests of MHFA, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

15 Data Disclosure

Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, the Borrower consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to MHFA, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Borrower to file state tax returns and pay delinquent state tax liabilities, if any.

16 Fraud

Fraud is any intentionally deceptive action made for personal gain or to damage another. Any person or entity (including its employees and affiliates) that enters into an agreement with MHFA and witnesses, discovers evidence of, receives a report from another source, or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report to:

- MHFA's Chief Risk Officer
- Any member of MHFA's [Servant Leadership Team](#)
- [EthicsPoint](#), the state's hotline reporting service vendor

17 Suspension

By entering into any agreement with MHFA, a contracting party represents that the contracting party (including its employees or affiliates that will have direct control over the subject of the agreement) has not been suspended from doing business with MHFA. Please refer to MHFA's website for a list of suspended individuals and organizations (<http://www.mnhousing.gov/sites/np/suspensions>).

18 Responsible Contractor Requirement

The Borrower agrees that it and its contractors will fully comply with all applicable provisions contained in [Minn. Stat. §16C.285](#), as amended.

2. BORROWER

The Borrower certifies that the appropriate person(s) has/have executed the Deferred Loan Agreement on behalf of the Borrower as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

3. MINNESOTA HOUSING FINANCE AGENCY

By: _____

Title: _____

Date: _____

Distribution:

Agency

Borrower

MHFA's Authorized Representative

SAMPLE

EXHIBIT A

Borrower agrees to comply with the following additional provisions:

1 Reporting

The Borrower will be required to complete an annual report which will include such information and will be in the format provided by MHFA. Once the Project is complete and the rental units are suitable for occupancy, the Borrower will be required to complete a final report which will include such information and will be in the format provided by MHFA.

2 Accounting

For all expenditures of Program Funds made pursuant to this Deferred Loan Agreement, the Borrower must keep financial records, including properly executed contracts, invoices, and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures. Accounting methods must be in accordance with generally accepted accounting principles.

3 Records Retention

The Borrower is responsible for the records retention requirements of all third parties.

4 Monitoring

The Borrower will be monitored annually. This will take place at the time of annual reporting. Monitoring could include a phone call and/or a site visit by MHFA staff.

Prior to termination of this Deferred Loan Agreement, MHFA will also ask to review the most recent disbursement records. This will include a reconciled account balance showing when Program Funds were received by the Borrower and disbursed to the third party. MHFA reserves the right to ask for additional information.

5 Compliance with Local, State and Federal Laws

The Borrower and any third parties must comply with all local, state and federal laws, rules, regulations and ordinances, as well as any applicable MHFA policies, including, but not limited to, the following:

(a) Recipients and subrecipients must comply with Visitability requirements at [462A.34](#)

EXHIBIT B

Workforce Housing Development Program Disbursement Request Form

SAMPLE

Summary

This form must be completed, signed, and submitted to MHFA prior to receiving a disbursement of funds. To complete the form, enter the amount of funds you are requesting and a summary of what the funds will be used for. Have the form signed by an Authorized Representative. Submit the completed form to Sara Bunn at sara.bunn@state.mn.us.

Disbursement Request and Justification

Amount Requested (not to exceed one-third of the total award): _____

Use the space below to document what the funds will be used for:

Authorized Representative Signature

Authorized Representative Name: _____

Authorized Representative Title: _____

Date Signed: _____

Authorized Representative Signature: _____

SAMPLE