Infill Infrastructure Grant Program of 2019

Qualifying Infill Project Small Jurisdiction Set-Aside Guidelines

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Table of Contents

Article 1. General.

Section 100. Purpose and Scope.

These Infill Infrastructure Grant Program of 2019 – Qualifying Infill Project Small Jurisdiction Set-Aside Guidelines (Guidelines) implement and interpret Part 12.5 (commencing with Section 53559) of Division 31 of the Health and Safety Code (HSC), which establishes the Infill Infrastructure Grant Program of 2019 (IIG-2019 or Program). The Guidelines shall govern funding for Qualifying Infill Projects in Small Jurisdictions pursuant to HSC section 53559, subdivision (e), under which the Department is authorized to accept and evaluate applications via an over-the-counter process.

The primary objective of IIG-2019 is to promote infill housing development by providing financial assistance for Capital Improvement Projects[1], that are an integral part of, or necessary to facilitate the development of, a Qualifying Infill Project or Qualifying Infill Area.

Under the Program, grants are available as gap funding for infrastructure improvements, Factory-Built Housing components, and Adaptive Reuse necessary for specific residential or mixed-use infill developments. The site of the Qualifying Infill Projects must have either been previously developed or be largely surrounded by sites that are developed with Urban Uses. Eligible improvements include, but are not limited to, the creation, development or rehabilitation of Parks or Open Space; water, sewer, or other utility service improvements; streets; roads; parking structures; transit linkages or facilities; facilities that support pedestrian or bicycle transit; traffic mitigation, sidewalk, or streetscape improvements; Factory-Built Housing components; Adaptive Reuse; and site preparation or demolition. Eligible use of funds is fully described in Section 203.

(a) Nothing in these Guidelines is intended to be, nor should be, interpreted to amend or repeal rules, regulations or requirements set forth in prior versions of Program guidelines or their amendments; these Guidelines shall have no retroactive application. These Guidelines shall, however, replace all prior versions of guidelines for the purposes of applying to the funding offered subsequent to their publication.

(b) These Guidelines are authorized by HSC section 53559, subdivisions (i) and (k).

(c) All rules, criteria, and other matters set forth within these Guidelines shall also govern Tribal Entities, unless and except to the extent expressly provided to the contrary by the terms of these Guidelines and subject to any potential modification or waiver under or pursuant to HSC section 50406, subdivision (p) (Assembly Bill No. 1010 (Chapter 660, Statutes of 2019)).

(d) Pursuant to HSC section 53559.1, subdivision (e)(3)(B), the Department may modify or waive requirements of Division 31 of the HSC consistent with HSC section 50406, subdivision (p) in order to allow Tribal Entities to access funding.

[1] All capitalized terms are defined in Section 102.

Section 101. Uniform Multifamily Regulations (UMRs) and Other Authorities Incorporated by Reference.

(a) The Uniform Multifamily Regulations (UMRs) (Cal. Code Regs., tit. 25, § 8300 et seq.), effective November 15, 2017, and as subsequently amended, are hereby incorporated herein by reference, and shall be deemed to have the same force and effect as if set forth in full herein, with the exceptions of UMR Section 8304(c) and any UMR provision that would be inconsistent with these Guidelines.

(b) The following administrative notices, policies, and guidance are hereby incorporated herein by reference, and shall be deemed to have the same force and effect as if set forth in full herein:

(1) The Department's "Disencumbrance Policy" (Administrative Notice No. 2022-02), dated March 30, 2022, as amended on December 19, 2022, and as may be subsequently amended;

(2) The Department's "Negative Points Policy" (Administrative Notice No. 2022-01), dated March 31, 2022, as amended on November 9, 2022, and April 3, 2023, and as may be subsequently amended; and

(3) The Department's "Repeal of Stacking Prohibition of Multiple Department Funding Sources" (Administrative Notice No. 21-06), dated August 20, 2021, and as may be subsequently amended.

Section 102. Definitions.

The following definitions apply to the capitalized terms used in these Guidelines:

(a) "Accessible Housing Unit(s)" refers collectively to "Housing Units with Mobility Features" and "Housing Units with Hearing/Vision Features" as defined below:

(1) A "Housing Unit with Mobility Features" means and refers to a Unit that is located on an accessible route and complies with the requirements of 24 C.F.R. § 8.22 and all applicable provisions of Uniform Federal Accessibility Standards (UFAS) or the comparable provisions of the Alternative Accessibility Standard, including but not limited to Sections 809.2 through 809.4 of the 2010 Standards for Accessible Design. A Housing Unit with Mobility Features can be approached, entered, and used by persons with mobility disabilities, including individuals who use wheelchairs. Such Units must also comply with California Building Code (CBC) 11B.

(2) A "Housing Unit with Hearing/Vision Features" means and refers to a Unit that complies with 24 C.F.R. Section 8.22, and all applicable provisions of UFAS or the comparable provisions of the Alternative Accessibility

Standard, including but not limited to Section 809.5 of the 2010 Standards for Accessible Design. Such Units must also comply with CBC 11B.

(b) "Adaptive Reuse" is defined, in accordance with HSC 53559.1 (a), to mean the repurposing of building structures (e.g., offices, commercial spaces, business parks) for residential purposes. When referring to building structures, Adaptive Reuse means the retrofitting and repurposing of existing buildings to create new residential rental Units, and expressly excludes a Capital Improvement Project that involves rehabilitation of any construction affecting existing residential Units that are, or have been, recently occupied.

(c) "Affirmatively Furthering Fair Housing" is defined, in accordance with Government Code (GC) Section 8899.50, subdivision (a)(1), to mean taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, Affirmatively Furthering Fair Housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to Affirmatively Further Fair Housing extends to all of a public agency's activities and programs relating to housing and community development.

(d) "Affordable Housing Development" means either "Rental Housing Development" or "Homeownership Housing Development" defined below.

(e) "Affordable Unit" means a Unit that is made available at an affordable rent, as defined in HSC Section 50053, to a household earning no more than 60 percent of the Area Median Income or at an affordable housing cost, as defined in HSC Section 50052.5, to a household earning no more than 120 percent of the Area Median Income. Rental Units shall be subject to a recorded Covenant ensuring affordability for a duration of at least 55 years. Ownership Units shall initially be sold to and occupied by a qualified household and shall be subject to a recorded Covenant that includes either a resale restriction for at least 30 years or equity sharing upon resale.

(f) "Alternative Accessibility Standard," also referred to as the U.S. Department of Housing and Urban Development (HUD) Deeming Notice (HUD-2014- 0042-0001), means the Alternative Accessibility Standard for accessibility set out in HUD's notice at 79 Fed. Reg. 29671 (May 23, 2014), when used in conjunction with the requirements of 24 C.F.R. pt. 8, 24 C.F.R. Section 8.22, and the requirements of 28 C.F.R. pt. 35, including 28 C.F.R. Section 35.151 and the 2010 Standards for Accessible Design as defined in 28 C.F.R. Section 35.104.

(g) “Applicant” or “Eligible Applicant” means the entity or entities applying to the Department for the Program funding, as defined in Section 201. Upon receiving an Award of funds, the Applicant or co-Applicants will, both individually and collectively, be referred to as the “Recipient” in the Department’s legal documents.

(h) “Area Median Income” or “AMI” means the most recent applicable county median family income published by the California Tax Credit Allocation Committee (TCAC). For Tribal Entity Applicants, if the HUD income for a county/parish located within a Tribal Entity’s service area is lower than the United States median, the Tribal Entity may use the United States median income limit.

(i) “Article XXXIV” means Article XXXIV, Section 1 of the California Constitution. This constitutional provision requires local voter approval before a state public body can develop, construct, or acquire a low rent housing project in any manner.

(j) “Assisted Unit” means a Unit that is subject to Rent and/or occupancy restrictions, as specified in the operative Covenant, as a result of an Award to the Capital Improvement Project under the Program.

(k) "Award" means a commitment of money in the form of a Program grant that is made by the Department to an Applicant.

(l) “Bus Hub” means an intersection of three or more bus routes, where one route or a combination of routes has a minimum scheduled headway of 10 minutes or at least six buses per hour during peak hours. Peak hours are limited to the time between 7 a.m. to 10 a.m., inclusive, and 3 p.m. to 7 p.m., inclusive, Monday through Friday or the alternative peak hours designated for the transportation corridor by the transit agency. This level of service must have been publicly posted by the provider in the 12 months preceding the Program application due date.

(m) “Bus Transfer Station” means an arrival, departure, or transfer point for the area’s intercity, intraregional, or interregional bus service having a permanent investment in multiple bus docking facilities, ticketing services, and passenger shelters.

(n) “Capital Asset" means a tangible physical property with an expected useful life of 15 years or more. Capital Asset also means a tangible physical property with an expected useful life of 10 to15 years for costs not to exceed 10 percent of the Program grant. Capital Asset includes major maintenance, reconstruction, demolition for purposes of reconstruction of facilities, and retrofitting work that is ordinarily done no more often than once every 5 to 15 years or expenditures that continue or enhance the useful life of the Capital Asset. Capital Asset also includes equipment with an expected useful life of two years or more. Costs allowable under this definition include costs incidentally but directly related to construction or acquisition, including, but not limited to, planning, engineering, construction management, architectural, and other design work, environmental impact reports

and assessments, required mitigation expenses, appraisals, legal expenses, site acquisitions, and necessary easements.

(o) "Capital Improvement Project" is defined, in accordance with HSC 53559.1 (b), to mean the construction, Rehabilitation (as that term is defined below), demolition, relocation, preservation, acquisition, or other physical improvement of a Capital Asset that is an integral part of, or necessary to facilitate the development of, a Qualifying Infill Project. Capital Improvement Projects that may be funded under the Program include, but are not limited to, those described in Section 200.

(p) “Commercial Space” means any nonresidential space located in or on the property of an Affordable Housing Development that is, or is proposed to be, rented, or leased by the owner of the Affordable Housing Development, the income from which shall be included in Operating Income.

(q) “Covenant” means an instrument which imposes development, use, and affordability restrictions on the real property site(s) of the Qualifying Infill Project, and which is recorded against the fee interest in such real property site(s). The Covenant is executed as consideration for the Program Award to the Recipient.

(r) “Department” means the California Department of Housing and Community Development.

(s) “Developer” means the legal entity that the Department relies upon for capacity to meet the Program obligations set forth in the Covenant and Standard Agreement, and site control of the Qualifying Infill Project. The Developer further controls the Rental Housing Development during development and through occupancy and/or controls the Homeownership Housing Development during development through sale of the Units. A nonprofit or for-profit Developer may include a Tribal Entity as defined herein.

(t) “Disability” means the definitions of disability in the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12102) or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the GC) and shall be broadly construed to include:

(1) individuals with a mental or physical disability that limits a major life activity;

(2) individuals regarded or perceived as having a mental or physical disability that limits a major life activity. This includes being perceived as having or having had a disorder or condition that has no present disabling effect but may become a mental or physical disability;

(3) individuals having a record of a mental or physical disability that limits a major life activity. A “record” of mental or physical disability includes

previously having, or being misclassified as having, a record or history of a mental or physical disability; and/or

(4) individuals who are, or are perceived as, associated with a person who has, or is perceived to have, a mental or physical disability.

(5) For purposes of this definition:

(A) "Mental disability" includes, but is not limited to, having any mental or psychological disorder or condition, intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, and chronic or episodic conditions that limits a major life activity. This includes disabilities such as autism spectrum disorders, schizophrenia, clinical depression, bipolar disorder, post-traumatic stress disorder, and obsessive-compulsive disorder.

(B) "Physical disability" includes, but is not limited to, having any physiological disease, disorder, condition, cosmetic disfigurement or anatomical loss that affects one or more of the following body systems or the operation of an individual organ within a body system: neurological; immunological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; circulatory; skin; endocrine; brain; and normal cell growth; and that limits a major life activity.

(C) "Major life activity" shall be construed broadly and includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, working, and social activities.

(D) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. A mental or physical disability "limits" a major life activity if it makes the achievement of the major life activity difficult.

(E) Disabilities also include Intellectual/Developmental Disabilities and acquired brain injuries (which have both a physical and mental disability component); chronic and recurring disabilities, and medical conditions as defined in GC Section 12926(i), such as cancer.

(u) "Disbursement Agreement" means an agreement executed by the Recipients and the Department which governs the terms, disbursement, and uses of Program funds,

and which includes, at a minimum, conditions for payment; a specific description of the Capital Improvement Project; a description of all sources and uses; and a Capital Improvement Project and Qualifying Infill Project budget containing cost items for the design, development and construction of the Capital Improvement Project and proposed affordable housing.

(v) "Efficiency Unit" means a Unit containing only one habitable room. A room in a structure that is a single-family house at the time of application will not be considered an Efficiency Unit eligible for program funds.

(w) "Eligible Households" means households whose incomes do not exceed 60 percent of AMI, as calculated in accordance with the regulations and procedures governing the low income housing tax credit program, as administered by TCAC, or other Lower Income limits agreed to by the Developer/Recipient and the Department. Household income will be calculated based on Units in accordance with TCAC rules and procedures. (The rules and procedures set forth in 25 California Code of Regulations (CCR) Section 6932 et. seq., do not apply.) For Tribal Households, incomes are calculated in accordance with the Native American Housing and Self Determination Act, using the greater of the income of the county/parish located within a Tribal Entity's service area or the United States median income.

(x) "Enforceable Funding Commitment" means a letter or other document evidencing, to the satisfaction of the Department, a commitment of funds or a reservation of funds by a Capital Improvement Project or Qualifying Infill Project funding source for construction or permanent financing, including, but not limited to, the following:

(1) Private financing from a lender other than a mortgage broker, the Applicant, or an entity with an identity of interest with the Applicant, unless the Applicant is a lending institution actively and regularly engaged in residential lending;

(2) Deferred-payment financing, residual receipts payment financing, and grants from public agencies;

(3) Funds awarded by another Department program. Proof of award must be issued prior to final rating and ranking of the Program application.

(4) A land donation in fee for no other consideration that is supported by an appraisal and/or purchase/sale agreement, or some other instrument of title transfer (e.g., land donation), or a local fee waiver resulting in quantifiable cost savings, where those fee waivers are not otherwise required by federal or state law ("Local Fee Waiver"), shall be considered a funding commitment. The value of the land donation will be the greater of either the original purchase price or the current appraised value as supported by an independent third-party appraisal prepared by a Member Appraisal Institute-qualified appraiser within one year prior to the

application deadline. A funding commitment in the form of a Local Fee Waiver must be supported by written documentation from the local public agency. A below market lease that meets the requirements of UMR Section 8316 would be considered a land donation ($1 per year).

(5) Owner equity contributions or developer funds. Such contributions or funds shall not be subsequently substituted with a different funding source or forgone if committed in the application, except that a substitution may be made for up to 50 percent of the deferred developer fee. The Applicant shall be prepared, upon Department request, to provide evidence that the proposed amount of owner equity or developer funds is actually available at the time of application.

(6) For Homeownership Housing Developments only: Construction loans which will be repaid with revenue from the sale of homes to Low Income or Moderate Income homebuyers.

(7) Funds for transportation Capital Improvement Projects, if those are an eligible Program cost (e.g., transit facilities, facilities that support pedestrian or bicycle transit), where such funds were awarded from sources other than the Department. Such funds must be programmed for allocation and expenditure in the applicable capital improvement plan consistent with the terms and timeframes of the Standard Agreement.

(8) The assistance will be deemed to be an Enforceable Funding Commitment if it has been awarded to the Qualifying Infill Project or if the Department approves other evidence that the assistance will be reliably available. The Enforceable Funding Commitment may be conditioned on certain standard underwriting criteria, such as appraisals, but may not be generally conditional. Examples of unacceptable general conditions include phrases such as “subject to senior management approval,” or a statement that omits the word “commitment,” but instead indicates the lender’s “willingness to process an application” or indicates that financing is subject to loan committee approval of the Qualifying Infill Project. Contingencies in commitment documents based upon the receipt of tax-exempt bonds or low income housing tax credits will not disqualify a source from being counted as committed.

(y) “Extremely Low Income” means households with Gross Incomes not exceeding 30 percent of AMI as set forth in HSC Section 50106.

(z) “Factory-Built Housing,” as set forth in HSC 19971, means a residential building, dwelling Unit, or an individual dwelling room or combination of rooms thereof, or building component, assembly, or system manufactured in such a manner that all concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly, damage, or destruction of the part, including

Units designed for use as part of an institution for resident or patient care, that is either wholly manufactured or is in substantial part manufactured at an offsite location to be wholly or partially assembled onsite in accordance with building standards published in the California Building Standards Code and other regulations adopted by the commission pursuant to Section 19990. Factory-Built Housing does not include a mobilehome, as defined in Section 18008, a recreational vehicle, as defined in Section 18010.5, or a commercial modular, as defined in Section 18012.5.

(aa) "Fiscal Integrity" means that the total Operating Income plus funds released from the operating reserve account is sufficient to:

(1) pay all current Operating Expenses;

(2) pay all current debt service (excluding deferred interest);

(3) fully fund all reserve accounts (other than the operating reserve account); and

(4) pay other extraordinary costs. The ability to pay any or all of the permitted annual distributions shall not be considered in determining Fiscal Integrity.

(bb) “Gross Income” means all income as defined in CCR Title 25 Section 6914.

(cc) “Homeownership Housing Development” means Adaptive Reuse, Rehabilitation, or new construction of Units which shall initially be sold to and occupied by qualified households and shall be subject to a recorded Covenant that includes either a resale restriction for at least 30 years or equity sharing upon resale. “Homeownership Housing Development” must have a minimum of five units and include subdivisions or scattered sites under common ownership, development financing, and construction.

(dd) “Housing Choice Voucher Program” or “HCV Program” means the federal government's rental assistance program for Very Low Income individuals and families.

(ee) “HUD” means the U.S. Department of Housing and Urban Development.

(ff) “Indian Country” means:

(1) All land located in “Indian Country” as defined by 18 U.S. Code (USC) 1151;

(2) All land within the limits of a rancheria under the jurisdiction of the United States government;

(3) All land held in trust by the United States for an Indian Tribe or individual; or

(4) All land that is held by an Indian Tribe or individual, and that is subject to a restriction by the United States against alienation.

(gg) "Intellectual/Developmental Disability" means a disability that is covered under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 USC Sections 15001 and 15002(8)), the implementing regulations at 45 CFR Section 1325.3), or Welfare and Institutions Code (WIC) 4512(a), and a disability that make a person eligible for services from the California Regional Center System. It includes a severe, chronic disability that:

(1) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) manifests before the age of twenty-two (22);

(3) is likely to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity:

(A) self-care;

(B) receptive and expressive language;

(C) learning;

(D) mobility;

(E) self-direction

(F) capacity for independent living; or

(G) economic self-sufficiency; and

(5) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(6) The definition includes Intellectual Disabilities, cerebral palsy, epilepsy, and autism spectrum disorder. It also includes conditions that are closely related to Intellectual Disability or that require similar treatment (WIC Section 4512(a)).

(hh) “Intellectual Disability” means a condition characterized by either significant limitations in intellectual functioning (reasoning, learning, problem-solving) or adaptive behavior (everyday social and practical skills).

(ii) “Locality” is defined, in accordance with HSC 53559.1 (f), to mean any county, city, city and county where a county means the unincorporated areas of that county, or Tribal Entity, a community redevelopment agency, or successor agency organized pursuant to Part 1 (commencing with Section 33000) of Division 24, or housing authority organized pursuant to Part 2 (commencing with Section 34200) of Division 24, and any instrumentality thereof, which is authorized to engage in or assist in the development or operation of housing for persons and families of Low Income. It also includes two or more local public entities acting jointly.

(jj) “Lower Income” or “Low Income” means households with Gross Incomes not exceeding 80 percent of AMI as set forth in HSC Section 50079.5.

(kk) “Major Transit Stop” means a site containing any of the following:

(1) An existing rail or bus rapid Transit Station.

(2) A ferry terminal served by either a bus or rail transit service.

(3) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during peak hours. Peak hours are limited to the time between 7 a.m. to 10 a.m., inclusive, and 3 p.m. to 7 p.m., inclusive, Monday through Friday, or the alternative peak hours designated for the transportation corridor by the transit agency. This level of service must have been publicly posted by the provider in the 12 months preceding the application due date.

(ll) “Moderate Income” means households with Gross Income not exceeding 120 percent of AMI as set forth in HSC Section 50093.

(mm) “Net Density” means the total number of dwelling Units per acre of land to be developed for residential or mixed use, excluding allowed deductible areas. Allowed deductible areas are public dedications of land which are for public streets, public sidewalks, public Open Space, and public drainage facilities. Non-allowed deductible areas include utility easements, setbacks, private drives and walkways, general landscaping, common areas and facilities, off street parking, and traditional drainage facilities exclusive to a Qualifying Infill Project. Mitigations required for development will not be included in the allowed deductible areas.

(nn) “NOFA” means a Notice of Funding Availability issued by the Department to announce that funds are available and that applications for that funding may be submitted.

(oo) “Open Space” means a parcel or area of land or water that is essentially unimproved and dedicated to one or more of the following purposes:

(1) the preservation of natural resources;

(2) the managed production of resources;

(3) public and/or residential outdoor recreation; or

(4) public health and safety.

(pp) “Operating Expenses” means the same as defined in UMR Section 8301(k).

(qq) “Operating Income” means all income generated in connection with operation of the Affordable Housing Development including rental income for Assisted Units and non-Assisted Units, rental income for Commercial Space or commercial use, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, other than approved reserve accounts, related to the Affordable Housing Development. "Operating Income" does not include security and equipment deposits, payments to the Developer for Supportive Services not included in the Department-approved operating budget, cash contributed by the Developer or an affiliate, or tax benefits received by the Developer an affiliate.

(rr) “Park” means a facility that provides benefits to the community and includes, but is not limited to, places for organized team sports, outdoor recreation, and informal turf play; non-motorized recreational trails; permanent play structures; landscaping; community gardens; places for passive recreation; multipurpose structures designed to meet the special recreational, educational, vocational, and social needs of youth, Senior citizens, and other population groups; recreation areas created by the redesign and retrofit of urban freeways; community swim centers; regional recreational trails; and infrastructure and other improvements that support these facilities.

(ss) “Principal” means employees of the Recipient/Developer who are in a position responsible for the oversight and management of development activities.

(tt) “Program” means the Infill Infrastructure Grant Program of 2019 (IIG-2019).

(uu) “Qualifying Infill Project” means a residential or mixed-use residential project located within an Urbanized Area on a site that has been previously developed, or on a vacant site where at least 50 percent of the perimeter of the site adjoins parcels that are developed with Urban Uses, which meets the criteria for a Qualifying Infill Project set forth in Section 200.

(vv) “Recipient” means the Eligible Applicant as defined in Section 201 receiving a conditional commitment of Program funds for an approved Capital Improvement Project.

(ww) "Rehabilitation" is defined in line with HSC Section 50096, and includes improvements and repairs made to a residential structure acquired for the purpose of preserving its affordability.

(xx) “Rent” means the same as “gross Rent,” as defined in accordance with the Internal Revenue Code (IRC) (26 USC 42(g)(2)(B)). It includes all mandatory charges, other than deposits paid by the tenant, for use and occupancy of an Assisted Unit, plus a utility allowance established in accordance with TCAC regulations, if applicable. For Units assisted under the Housing Choice Voucher (HCV) or similar rental or operating subsidy program, Rent includes only the tenant contribution portion of the contract Rent.

(yy) Rental Housing Development” means a structure or set of structures with common financing, ownership, and management, and which collectively contain five or more dwelling Units, including Efficiency Units. No more than one of the dwelling Units may be occupied as a primary residence by a person or household who is the owner of the structure or structures. For the purpose of these Guidelines, “Rental Housing Development” does not include any “health facility” as defined by HSC Section 1250 or any “alcoholism or drug abuse recovery or treatment facility” as defined in HSC Section 11834.02. A Rental Housing Development includes, without limitation, the real property, the improvements located thereon, and all fixtures and appurtenances related thereto.

(zz) “Restricted Unit” means the same as that term is defined in UMR Section 8301 excluding Units restricted at levels above 60 percent of AMI.

(aaa) “Rural Area” has the meaning set forth in HSC Section 50199.21.

(bbb) “Senior” means a housing type meeting the requirements of MHP Guidelines Section 7302(e)(3).

(ccc) “Small Jurisdiction” is defined, in accordance with HSC 53559.1 (g), to mean a county with a population of less than 250,000 as of January 1, 2019, or any city within that county.

(ddd) “Standard Agreement” means an STD 213 Standard Agreement executed by the Recipient and the Department which commits funds from the Program subject to specified conditions, in an amount sufficient to encumber the approved Program grant amount. Further criteria are described in Section 500.

(eee) “Structured Parking” means a structure in which vehicle parking is accommodated on multiple stories; a vehicle parking area that is underneath all or part of any story

of a structure; or a vehicle parking area that is not underneath a structure, but is entirely covered, and has a parking surface at least eight feet below grade. Structured Parking does not include surface parking, residential garages, or carports, including solar carports.

(fff) "Supportive Services" means social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits (UMR Section 8301(t)).

(ggg) "TCAC" means the California Tax Credit Allocation Committee.

(hhh) "Transit Station" means a rail or light-rail station, ferry terminal, Bus Hub, or Bus Transfer Station. Included in this definition are planned Transit Stations otherwise meeting this definition whose construction is programmed into a regional or state transportation improvement program to be completed no more than five years from the deadline for submittal of applications set forth in the NOFA.

(iii) "Tribal Entity" means any of the following:

(1) An Indian Tribe as defined under 25 USC Section 4103(13)(B).

(2) A Tribally Designated Housing Entity under 25 USC Section 4103(22).

(3) If not a federally recognized Indian Tribe as identified above, either:

(A) An Indian Tribe that is listed in the Bureau of Indian Affairs Office of Federal Acknowledgment Petitioner List, pursuant to 25 CFR part 83.1, and that has formed and controls a special purpose entity in compliance with UMR Section 8313.2; or

(B) An Indian Tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to GC Section 65352.3, and that has formed and controls a special purpose entity in compliance with UMR Section 8313.2.

(jjj) "Tribal Household" means a household that includes at least one (1) member of either of the following:

(1) An Indian Tribe as defined under 25 USC Section 4103(13)(B); or

(2) A non-federally recognized tribe that is either (a) listed in the Bureau of Indian Affairs Office of Federal Acknowledgment Petitioner List, pursuant to 25 CFR part 83.1; or (b) an Indian Tribe located in California that is on the contact list

maintained by the Native American Heritage Commission for the purposes of consultation pursuant to GC Section 65352.3.

(kkk) "Unit" has the same definition as UMR Section 8301(x).

(lll) "Urbanized Area" is defined, in accordance with HSC 53559.1 (i), to mean an incorporated city. For sites in unincorporated areas, the site must be within a designated urban service area that is designated in the local general plan for urban development and is served by the public sewer and water.

(mmm) "Urban Uses" is defined, in accordance with HSC 53559.1 (j), to mean any residential, commercial, industrial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(nnn) "Very Low Income" means households with Gross Incomes not exceeding 50 percent of AMI as set forth in HSC Section 50105.

(ooo) "Workforce Housing Opportunity Zone" or "Zone" means an area of contiguous or noncontiguous parcels identified on a city or county's inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of GC Section 65583 established pursuant to Section 65621.

Article 2. Administration of Funds.

Section 200. Eligible Capital Improvement Projects.

(a) To be eligible for funding, a Capital Improvement Project must be an integral part of, or necessary to facilitate the development of, the Qualifying Infill Project identified in the Program application.

(b) The Qualifying Infill Project for which a Capital Improvement Project grant may be awarded must meet all of the following conditions, except where specified otherwise:

(1) Include not less than 15 percent of Affordable Units, both existing and pending, as follows:

(A) For Qualifying Infill Projects that contain both rental and ownership Units, Units of either or both product types may be included in the calculation of the percentage of the affordability criteria.

(B) To the extent included in a Capital Improvement Project grant application, for the purpose of calculating the percentage of Affordable Units, the Department may consider the entire master development in which the development seeking grant funding is included.

(C) Where applicable, an Eligible Applicant may include a replacement housing plan to ensure that dwelling Units for persons and families of Low Income or Moderate Income are not removed from the Low Income and Moderate Income housing market. Residential Units to be replaced shall not be counted toward meeting the affordability threshold required for eligibility for funding under this section.

(2) Include Net Densities on the parcels to be developed that are equal to or greater than the densities set forth in GC 65583.2 (c)(3)(B) and described below[2]:

(A) For an incorporated city within a nonmetropolitan county and for a nonmetropolitan county that has a micropolitan area: Net Densities of at least 15 Units per acre.

(B) For an unincorporated area in a nonmetropolitan county not included in clause (A): Net Densities of at least 10 Units per acre.

(C) For a suburban jurisdiction: Net Densities of at least 20 Units per acre.

(D) For a jurisdiction in a metropolitan county: Net Densities of at least 30 Units per acre.

(E) For a Rural Area: Net Densities of at least 10 Units per acre.

(F) A city with a population greater than 100,000 in a standard metropolitan statistical area or a population of less than 2 million may petition the Department for, and the Department may grant, an exception to the density requirements set forth in this subsection if the city believes it is unable to meet the density requirements described herein. The city shall submit the petition with its application and shall include the reasons why the city believes the exception is warranted. The city shall provide information supporting the need for the exception, including, but not limited to, any limitations that the city may encounter in meeting the density requirements specified in this subsection (2). Any exception shall be for the purposes of this section only. This subdivision shall become inoperative on January 1, 2026.

(3) Be located in an area designated for mixed-use or residential development pursuant to one of the following adopted plans (Qualifying Infill Projects in Indian Country are exempt from this requirement):

[2] Applicants may wish to reference the Default Density Standard Option – 2020 Census Update (ca.gov) which is available on the Department's website https://www.hcd.ca.gov for assistance in determining where Applicant's project fits among the listed categories.

(A) A general plan adopted pursuant to GC Section 65300.

(B) A sustainable communities strategy adopted pursuant to GC Section 65080.

(C) A specific plan adopted pursuant to GC Section 65450

(D) A Workforce Housing Opportunity Zone established pursuant to GC Section 65620.

(E) A Housing Sustainability District established pursuant to GC Section 66201.

(4) Demonstrate that any awarded funds will supplement, rather than supplant, other available funding.

(A) Applicants must fully complete the Development Budget tab of the application workbook and submit financial documentation which demonstrates the requested grant is gap financing needed for the Capital Improvement Project.

(B) Applicants applying for Capital Improvement Project funding linked to the Qualifying Infill Projects located in unincorporated areas of a county may satisfy this requirement by submitting copies of one or more applications for other sources of state or federal funding in connection with the Qualifying Infill Project.

(5) The Eligible Applicant must identify a mechanism, such as a minimum density ordinance or a recorded, binding covenant or other use restriction, acceptable to the Department to reliably ensure that the Qualifying Infill Project will occur at an overall Net Density equaling or exceeding that set forth in Section 200(b)(2). This mechanism must be in effect and legally enforceable prior to the initial disbursement of Program funds.

(6) Eligible Applicants shall designate the proposed residential Units in the Qualifying Infill Project that the Eligible Applicant intends to utilize for the purpose of establishing the maximum Program grant amount pursuant to Section 205.

(7) The Program application must certify that the percentage of Affordable Units, as well as the Units restricted to other income limits and Rents as designated for the purpose of determining the maximum Program grant amount in Section 205, shall be maintained or exceeded for the duration of the affordability period as defined in the Standard Agreement and the Covenant.

(8) At the time of the application due date, the construction of the Capital Improvement Project and Qualifying Infill Project has not commenced, except for emergency repairs to existing structures required to eliminate hazards or threats to health and safety.

(c) The Capital Improvement Project and the Qualifying Infill Project shall meet accessibility requirements pursuant to Section 300 below. The Qualifying Infill Projects associated with the Capital Improvement Project must also provide a preference for Accessible Housing Unit(s) to persons with disabilities requiring the accessibility features of those Units in accordance with CCR, Title 4, Section 10337(b)(2). Qualifying Infill Projects located in Indian Country are exempt from these requirements. However, Qualifying Infill Projects located in Indian Country must comply with tribal building codes that are at least as stringent as state or local building codes. If the Indian Tribe exercising jurisdiction over such Qualifying Infill Project has not adopted tribal building codes, then such Qualifying Infill Project must comply with building codes from another source, such as those of other Tribes or Localities, that are at least as stringent as state or local building codes.

(d) For purposes of evaluating applications via an over-the-counter process, the Department requires the following pursuant to HSC Section 53559(e)(2):

(1) Applications must include a complete description of the Qualifying Infill Project and the Capital Improvement Project along with requested grant funding for the Capital Improvement Project. Applications must further describe how the Capital Improvement Project is necessary to support the development of housing. In addition, applications must include the following information:

(A) Documentation that specifies how the requirements of Section 200(b)(1) – (4) are met.

(B) Documentation of all necessary entitlements and permits, and a certification from the Eligible Applicant that the Capital Improvement Project and Qualifying Infill Project are shovel-ready.

(i) For a Qualifying Infill Project located in the unincorporated area of the county, the Department shall allow the Eligible Applicant to meet the requirement described in this paragraph by submitting a letter of intent from a willing affordable housing developer that has previously completed at least one comparable housing project, certifying that the affordable housing developer is willing to submit an application to the county for approval by the county of a Qualifying Infill Project within the area in the event that the funding requested pursuant to the over-the-counter NOFA is awarded.

(ii) For Tribal Entity Applicants applying for a Qualifying Infill Project located in Indian Country, this requirement is satisfied by demonstrating documentation of all entitlements and permits required by applicable tribal law.

(e) In addition to the Program requirements described herein, proposals submitted by Tribal Entity Applicants must also meet the following additional requirements:

(1) The Capital Improvement Project must be located in Indian Country or on fee land within the state of California;

(2) Qualifying Infill Project occupancy will be limited to Tribal Households to the greatest extent possible; and

(3) The Applicant meets the following conditions of award funding to the extent applicable, and, subject to any modifications or waivers as provided for in HSC Section 50406, subdivision (p) (Assembly Bill 1010 (Chapter 660, Statutes of 2019)), or HSC Section 53559.1, subdivision (e)(3)(B), that shall be set forth in a Standard Agreement. It is noted that these same conditions do not need to be satisfied initially to engage in the competitive award process.

(A) BIA Consent. The Bureau of Indian Affairs (BIA) has consented to the Applicant's execution and recordation (as applicable) of all Department-required documents that are subject to 25 CFR Part 152 or 25 CFR Part162, prior to Award disbursement. This requirement does not apply to Capital Improvement Projects or Qualifying Infill Projects located on fee land not subject to a restriction by the United States against alienation.

(B) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Capital Improvement Project, Qualifying infill Project, or any matters arising from any of them is in a court of competent jurisdiction and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in a court of competent jurisdiction.

(C) Title Insurance. The Department has received title insurance for the property underlying the Qualifying Infill Project that is satisfactory to the Department. Notwithstanding the foregoing sentence, upon a showing of good cause, for Applicants unable to provide a conventional title insurance policy satisfactory to the Department, this condition may be satisfied by a title status report issued by the BIA Land Title and Records Office or pursuant to a title opinion letter

issued for the benefit of the Department but paid for by the Applicant. Such title status report may be uncertified, so long as a certified title status report is submitted to the Department prior to the disbursement of Award funds.

(D) Recordation Requirements. Where recordation of instruments is a condition of award funding or otherwise required under or pursuant to the Standard Agreement, the subject instrument is recorded with the Land Titles and Records Office at the BIA for Qualifying Infill Projects on trust or restricted land and, in all cases, in the appropriate official records of the county in which the property is located.

(f) Use of multiple funding sources on the same Units utilized in the calculation of the Capital Improvement Project grant amount is permitted, subject to the Department Repeal of Stacking Prohibition of Multiple Department Funding Sources Memo.

(1) Additional limitations on use of multiple Department funding sources may be specified in the Notice of Funding Availability (NOFA).

(g) Once an Award of Department funds is made, the Recipient's acceptance of these funds is acknowledging the Capital Improvement Project and Qualifying Infill Project as submitted to and approved by the Department are to be funded and built. Any bifurcation of the Qualifying Infill Project shall make that Award null and void.

Section 201. Eligible Applicant.

(a) "Eligible Applicant" or "Applicant" means one of the following:

(1) A nonprofit or for-profit Developer of a Qualifying Infill Project.

(2) A Tribal Entity that is the Developer of a Qualifying Infill Project.

(b) Upon Award, Recipients must maintain direct and continuing control of the Qualifying Infill Project throughout the full term of the Department's use restriction requirements as set forth in the Covenant. Alternatively, if the Department's funding disbursement is structured with or through a special purpose entity, the Recipient shall exercise direct and continuing control over such special purpose entity in accordance with UMR Section 8313.2 and throughout the full term of the Department's use restriction on the Qualifying Infill Project. Each Applicant shall certify that it will abide by this control requirement at the time of its application for the funds for the full term set forth in the Standard Agreement.

Section 202. Threshold Requirements.

Capital Improvement Projects shall be eligible for an Award of funds if the application demonstrates that all of the following threshold requirements have been met:

(a) The application involves an eligible Capital Improvement Project pursuant to Section 200.

(b) The Applicant is an Eligible Applicant pursuant to Section 201.

(c) All proposed uses of Program funds are eligible pursuant to Section 203.

(d) The application is complete pursuant to Sections 400 and 401.

(e) The Qualifying Infill Project is financially feasible as evidenced by documentation such as, but not limited to, Enforceable Funding Commitments, a market study, a project proforma, a sources and uses statement, or other feasibility documentation required in the Program application.

(f) The Qualifying Infill Project will maintain Fiscal Integrity consistent with proposed Rents in the Assisted Units. UMR Section 8310 underwriting requirements will not be used to evaluate feasibility of Qualifying Infill Projects. However, the Qualifying Infill Project shall be financially feasible as evidenced by documentation consistent with industry custom and practice, such as information regarding sources, uses, and mandatory debt service, multi-year proformas, and proposed operating budgets. Nothing in this provision shall be interpreted to void or modify application of UMR Section 8310 where incorporated or referenced elsewhere in these Guidelines. This threshold requirement is not applicable to Homeownership Housing Developments.

(g) A Phase I Environmental Site Assessment (ESA) which has been completed and dated no more than 12 months prior to the application deadline. The Phase I ESA must indicate that the Capital Improvement Project and Qualifying Infill Project sites are free from severe adverse environmental conditions, such as the presence of toxic waste.

(1) If the Phase I ESA revealed known or potential contamination, a Phase II ESA will be required.

(2) If the Phase I ESA indicates or discloses that the presence of toxic waste is economically infeasible to remove or cannot be mitigated, then the application is ineligible for a Program Award.

(3) This threshold requirement is not applicable where a Tribal Entity Applicant is proposing a Qualifying Infill Project and a Capital Improvement Project located in Indian Country.

(h) The site of the Qualifying Infill Project is reasonably accessible to public transportation, shopping, medical services, recreation, schools, and employment in relation to the needs of the Qualifying Infill Project tenants.

(i) The Qualifying Infill Project, including a Qualifying Infill Project involving new construction, acquisition, Adaptive Reuse, and/or substantial Rehabilitation, must be constructed in a manner to accommodate broadband service with at least a speed of 25 megabits per second for downloading and 3 megabits per second for uploading (25/3). The Recipient is not required to provide free or discounted internet service to the tenants.

(j) The Qualifying Infill Project complies with the restrictions on demolition as set forth in UMR Section 8302.

(k) The Qualifying Infill Project and Capital Improvement Project complies with the site control requirements as set forth at UMR Sections 8303 and 8316 with the additional requirement that the Applicant/Recipient shall maintain site control of sufficient duration to meet Program requirements.

(1) The following shall apply to the Qualifying Infill Project:

(A) Where site control is in the name of another entity, the Applicant shall provide documentation, in form and substance reasonably satisfactory to the Department, which clearly demonstrates that the Applicant has the right, either directly or indirectly (contractually or through its organizational control of the entity with site control), to acquire or lease the Qualifying Infill Project property prior to or concurrent with construction closing. Acceptable documentation may include, but is not limited to, a purchase and sale agreement, an option, a leasehold interest/option, a disposition and development agreement, an exclusive right to negotiate with a public agency for the acquisition of the site, or contractual or organizational documentation evidencing such control.

(B) Where site control will be satisfied by a long-term ground lease, Recipient is responsible for ensuring that the owner of the fee estate and the owner of the leasehold estate execute and record the Department's Covenant on the title to the Qualifying Infill Project site and the ground lease must be for a term which is no less than the term of the Covenant.

(C) Where the Capital Improvement Project and Qualifying Infill Project are developed in Indian Country, the following exceptions apply:

(i) Where site control is a ground lease, the lease agreement between the Tribal Entity and the owner of the Qualifying Infill Project is for a period not less than 50 years. The Recipient is responsible for ensuring that the Tribal Entity and owner of the Qualifying Infill Project execute the Department's Covenant; and

(ii) An attorney's opinion regarding chain of title and current title status is acceptable in lieu of a title report.

(D) If an Applicant's site control documentation (e.g., option) will or may expire prior to the anticipated date of the Program Award as specified in the NOFA, the Applicant will satisfy the threshold site control requirement so long as evidence of a valid extension is submitted during the application review period. For purposes of this paragraph, "evidence of a valid extension" means an option (and/or other applicable site control documentation) that is fully executed prior to the expiration of the site control documentation, and that extends the term of the site control documentation through the actual date of the Program award.

(2) The following shall apply to offsite work proposed and evidenced for Capital Improvement Projects through time of final disbursement:

(A) Recipient shall have a right of way or easement, which is either perpetual, or of sufficient duration to meet Program requirements, and which allows the Recipient to access, improve, occupy, use, maintain, repair, and alter the property underlying the right of way or easement; and

(B) Recipient shall have an executed encroachment permit for construction of any improvements or facilities within the public right of way or on public land.

(l) The Capital Improvement Project and the Qualifying Infill Project comply with accessibility and fair housing obligations in Section 300, as applicable.

Section 203. Eligible Use of Funds.

Funds shall be used only for approved eligible costs that are incurred on the Capital Improvement Projects as set forth in this section. In addition, the costs must be necessary and must be consistent with the lowest reasonable cost consistent with the Capital Improvement Project's scope and area as determined by the Department.

(a) Funds shall only be used for Capital Asset related expenses as required by Section 16727 of the GC.

(b) Eligible costs include the construction, Rehabilitation, demolition, relocation, preservation, acquisition, or other physical improvements of the following:

(1) Parks or Open Space.

(2) Water, sewer, or other utility service improvements (including internet and Electric Vehicle (EV) infrastructure), including relocation of such improvements.

(3) Street, road, and bridge construction and improvement.

(4) Transit Station Structured Parking spaces required to replace existing parking spaces displaced by construction of new housing identified in the application. Awarded funds may not exceed $50,000 per space and may not exceed 30 percent of the total Award amount.

(5) Transit linkages and facilities, including, but not limited to, related access plazas or pathways, and bus and transit shelters.

(6) Facilities that support pedestrian or bicycle transit, including bike lanes, crosswalk improvements, and pedestrian scaled lighting.

(7) Traffic mitigation measures, including roundabouts, turn lanes, or raised islands.

(8) Site clearance, grading, preparation, and demolition necessary for the development of the Capital Improvement Projects.

(9) Sidewalk or streetscape improvements, including, but not limited to, the reconstruction or resurfacing of sidewalks and streets or the installation of lighting, signage, or other related amenities.

(10) Storm drains, stormwater detention basins, culverts, and similar drainage features.

(11) Adaptive Reuse.

(12) Required environmental investigation/remediation (as required by the regulatory agency directing the environmental activities) and associated costs for regulatory oversight necessary for the development of the Capital Improvement Project, where the total cost of the environmental activities and associated costs for regulatory oversight of environmental investigations does not exceed 50 percent of the Award.

(A) Oversight of environmental investigations and cleanups by a regulatory agency is required for any Program funding regardless of whether funding use is directed to that funding activity. Regulatory oversight ensures environmental investigations and cleanups comply with federal, state, and local regulations and provides a higher level of certainty that a property is safe for the use or proposed reuse for human and/or ecological receptors and is required if environmental

remediation costs are being requested under this grant. Environmental regulators in California include the California Department of Toxic Substances Control (DTSC) Site Mitigation and Restoration Program, the California Regional Water Quality Control Boards (Regional Boards), and several local agencies. A list of self-certified local agencies is available on DTSC's website.

(13) Site acquisition or control for the Capital Improvement Projects including, but not limited to, easements and rights of way, and real property acquired for Adaptive Reuse. Such costs must be deemed reasonable and demonstrated by documentation that may include appraisals, purchase contracts, or any other documentation as determined by the Department.

(14) Soft costs such as those incidentally but directly related to construction or other pre-development components including, but not limited to, planning, engineering, construction management, architectural, and other design work, required mitigation expenses such as mitigation design or testing, appraisals, legal expenses, and necessary easements. Soft costs shall not exceed 10 percent of costs associated with the funding request for the Capital Improvement Projects.

(15) Other Capital Asset costs approved by the Department and required as a condition of local approval for the Capital Improvement Projects.

(16) Impact fees required by local ordinance are eligible for Program funding only if used for the identified Capital Improvement Projects. Funded impact fees may not exceed 5 percent of the Program Award.

(17) Factory-Built Housing.

(c) The following costs are not eligible:

(1) Development fees or profit.

(2) Costs of site acquisition for housing and mixed-use structural improvements, unless the site contains building structures and the Capital Improvement Project described in the application includes Adaptive Reuse of said building structures or Factory-Built Housing.

(3) Costs of new housing or mixed-use structure construction and Rehabilitation not including Adaptive Reuse and Factory-Built Housing costs.

(4) Soft costs related to ineligible costs.

(5) In-lieu fees for local inclusionary programs.

Section 204. Cost Limitations.

(a) Capital Improvement Project costs must be reasonable and necessary.

(1) Costs must be reasonable compared to similar infrastructure projects of modest design in the general area of the Capital Improvement Project.

(2) The Eligible Applicant must demonstrate no other source of compatible funding is reasonably available as evidenced in the Capital Improvement Project's development budget.

Section 205. Grant Terms and Limit.

(a) The total maximum Program Award amount shall be established by the total number of Units identified in the Qualifying Infill Project, the bedroom count of these Units, and the Net Density and affordability of the housing to be developed. Replacement housing Units may be included in the calculation of the total maximum grant amount, as specified. The Department shall publish a table listing per Unit grant limits for each NOFA based on these factors. The total eligible Award amount shall be based upon the lesser of the amount necessary to fund the Capital Improvement Project or the maximum amount permitted by the IIG-2019 Grant Amount Calculation Table provided in the NOFA.

(b) Minimum and maximum Award amounts for a Qualifying Infill Project are identified in the NOFA.

(c) Over the life of the Program (to include the Infill Incentive Grant Program of 2007, the Infill Infrastructure Grant Program of 2019, any future IIGC NOFAs, or future iterations of the Program), the total of all IIG awards for any single Affordable Housing Development, Qualifying Infill Project, Qualifying Infill Area (as defined in HSC 53559(d)(3) and (e)(3)), or Catalytic Qualifying Infill Area (as defined in HSC 53559.1(c)) shall not exceed $90 million.

(d) Where the Qualifying Infill Project is receiving low income housing tax credits, the Recipient may provide Program funds to the owner of the Qualifying Infill Project in the form of a zero percent deferred payment loan, with a term of at least 55 years for a Rental Housing Development. The loan may be secured by a deed of trust, which may be recorded with the local county recorder's office, provided the beneficiary of the loan shall not under any circumstances exercise any remedy, including, without limitation, foreclosure, under the deed of trust without the prior written consent of the Department, in its sole and absolute discretion. The loan may not be sold, assigned, assumed, conveyed, or transferred to any third party without prior written Department approval, which is at the Department's sole and absolute discretion. For Qualifying Infill Projects assisted by other Department funding programs, repayment of the loan between the Recipient and the Developer shall be limited to (1) no repayments to the

Recipient until the maturity date or (2) repayment only from Distributions from the Qualifying Infill Project within the meaning of 25 CCR Section 8301(h). The Recipient shall be responsible for all aspects of establishing and servicing the loan. The provisions governing the loan shall be entirely consistent with these Guidelines and all documents required by the Department with respect to the use and disbursement of Program funds. All documents governing the loan between the Recipient and the Developer shall contain all the terms and conditions set forth in this subdivision and shall be subject to the review and approval of the Department prior to making the loan. This subdivision shall apply to any Qualifying Infill Project receiving low income housing tax credits regardless of the date of the Program Award.

(e) Conditions precedent to the initial disbursement of Program funds shall include receipt of all required entitlements and all required funding commitments for any proposed Qualifying Infill Project supported by the Capital Improvement Project, as well as execution and, where applicable, recordation of the legal documents described in Section 500.

(f) Grant funds will be disbursed as progress payments for approved eligible costs incurred subject to the requirements of these Guidelines.

(g) Where approval by a local public works department, or an entity with equivalent jurisdiction, is required for the Capital Improvement Project, the Recipient must submit, prior to the disbursement of grant funds, a statement or other documentation acceptable to the Department, indicating that the Capital Improvement Project is consistent with all applicable policies and plans enforced or implemented by that department or entity.

(h) Awarded funds shall be recaptured where construction of the Units utilized in the calculation of the total maximum grant amount has not progressed according to the performance deadlines set forth in Section 402.

Article 3. General Requirements.

Section 300. State and Federal Laws, Rules, Guidelines and Regulations.

The Recipient must comply with all applicable local, state, and federal laws, constitutions, codes, standards, rules, guidelines, and regulations, including, without limitation, those that pertain to accessibility, construction, health and safety, labor, fair housing, fair employment practices, Affirmatively Furthering Fair Housing, nondiscrimination, and equal opportunity.

(a) Nondiscrimination and Fair Housing Requirements

To the extent applicable and subject to federal preemption, the Recipient must comply with all relevant laws, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq.); the Unruh Civil Rights Act (Civ. Code, § 51); GC section 11135 (the prohibition of discrimination

in state-funded programs); GC section 8899.50 (the duty to Affirmatively Further Fair Housing); California's Housing Element Law (Gov. Code, § 65583 et seq.); California Code of Regulations, title 2, sections 12264 – 12271 (legally permissible consideration of criminal history information in housing); Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); the Fair Housing Act (FHA) and amendments (42 U.S.C. § 3601 et seq.); the Fair Housing Amendments Act of 1988; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Architectural Barriers Act of 1968 (42 U.S.C. § 4151 et seq.); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107); and all federal and state regulations implementing these laws.

(b) Americans with Disabilities Act of 1990 and Physical Design Accessibility Requirements

To the extent applicable and subject to federal preemption, the Recipient must comply with the following requirements relative to physical design accessibility and the Americans with Disabilities Act of 1990:

(1) Recipient shall comply generally with all applicable state and federal building codes and standards, as well as with all design and accessibility laws.

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

(3) Recipient shall ensure that the Qualifying Infill Project is in compliance with the following housing and building accessibility requirements:

(A) California Building Code Chapters 11A and 11B;

(B) the Fair Housing Act (42 U.S.C. § 3601 et seq.) and its implementing regulations at 24 Code of Federal Regulations part 100, and the ANSI A117.1-1986 design and construction standard incorporated by reference at 24 Code of Federal Regulations part 100.201a;

(C) the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and its implementing regulations at 28 Code of Federal Regulations part 35 (Title 11) and part 36 (Title III);

(D) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and its implementing regulations at 24 Code of Federal Regulations part 8; and

(E) the Uniform Federal Accessibility Standards (UFAS) at 24 Code of Federal Regulations part 40, or, in the alternative, the 2010 ADA Standards for Accessible Design.

(c) Prevailing Wage Law Requirements

Recipients' use of Program funds is subject to California's prevailing wage law (Lab. Code, § 1720 et seq.). Recipients are urged to seek professional legal advice about the law's requirements. Prior to disbursing the Program funds, the Department will require a certification of compliance with California's prevailing wage law, as well as all applicable federal prevailing wage law. The certification must verify that prevailing wages have been or will be paid (if such payment is required by law), and that labor records will be maintained and made available to any enforcement agency upon request. The certification must be signed by the general contractor(s) and the Recipient (including all co-Recipients). Tribal Entity Applicants applying for Capital Improvement Projects or Qualifying Infill Projects located in Indian Country may use tribally determined wages duly adopted by the Tribal Entity exercising jurisdiction over the Capital Improvement Project or Qualifying Infill Project.

(d) Article XXXIV, Section 1 of the California Constitution

All Qualifying Infill Projects shall comply with Article XXXIV, Section 1 of the California Constitution unless they fall within one or more statutory exceptions under the Public Housing Election Implementation Law (PHEIL) (HSC Sections 37000 – 37002). Article XXXIV documentation of compliance shall be subject to review and approval by the Department prior to the announcement of Award recommendations. Even if IIG-2019 funding is awarded for infrastructure which does not come within the purview of Article XXXIV, if the Affordable Units used to calculate the maximum grant amount are financed by public sources, including other Department funding sources, governed by Article XXXIV, then IIG-2019 funding shall be conditioned upon compliance with Article XXXIV. Tribal Entities are not required to demonstrate compliance with or exemption from Article XXXIV for Qualifying Infill Projects located in Indian Country where an Indian Tribe exercises jurisdiction.

Except as indicated above, Applicants must submit documentation that shows the compliance of the Qualifying Infill Project with or exemption from Article XXXIV. If a Qualifying Infill Project is subject to Article XXXIV, the Applicant must submit an allocation letter from the relevant local jurisdiction that shows that there is Article XXXIV authority for the Qualifying Infill Project. A local government official with authority should prepare the allocation letter, and it should include the following:

(1) The name and date of the proposition and the number of Units that were approved;

(2) A copy of the referendum and a certified vote tally;

(3) The number of Units that remain in the local jurisdiction's "bank" of Article XXXIV authority (i.e., the number of Units that are still available for allocation); and

(4) The number of Units that the local jurisdiction will commit to this Qualifying Infill Project, including the manager's Unit.

If a Qualifying Infill Project satisfies a statutory exception to Article XXXIV, then the Applicant must submit an Article XXXIV opinion letter from the Applicant's legal counsel. The Article XXXIV opinion letter must demonstrate that the Applicant has considered both the legal requirements of Article XXXIV and the relevant facts of the Qualifying Infill Project (e.g., all funding provided by public bodies, including state, county, or city sources; the number of Low Income Restricted Units; and the general content of any regulatory restrictions). Any conclusion that a Qualifying Infill Project is exempt from Article XXXIV must be supported by facts and a specific legal theory for exemption that itself is supported by the Constitution, statute, and/or case law.

Section 301. Relocation Requirements.

(a) The Recipient/Developer who develops a Qualifying Infill Project or Capital Improvement Project which results in displacement of persons, businesses or farm operations shall be solely responsible for providing the assistance and benefits set forth in this section and in applicable state and federal law and shall agree to indemnify and hold harmless the Department from any liabilities or claims for relocation-related costs.

(b) All persons, businesses or farm operations that are displaced as a direct result of the development of a Qualifying Infill Project or Capital Improvement Project shall be entitled to relocation benefits and assistance as provided in Title 1, GC, Division 7, Chapter 16, commencing at Section 7260, and Title 25 CCR, Subchapter 1, Chapter 6, commencing at Section 6000. Additionally, to the extent applicable, local relocation law as well as the Federal Uniform Relocation Assistance and Real Property Acquisition Act, 49 C.F.R. Part 24, including Appendix A to Part 24, shall apply. To the extent of any variation in the applicable relocation laws, the stricter standard shall apply. Displaced tenants who are not replaced with Eligible Households under this Program shall be provided relocation benefits and assistance from funds other than Program funds.

(c) The Recipient/Developer shall prepare or update a relocation plan in conformance with the provisions of California Code of Regulations, title 25, section 6038, and any other applicable relocation laws. The relocation plan shall be subject to the review and approval by the Department prior to the execution and approval of the Standard Agreement and prior to actual displacement of persons, businesses, or farm

operations. If no persons, businesses, or farm operations will be displaced as a direct result of the development of the Qualifying Infill Project or Capital Improvement Project, then the Recipient shall execute a certification, on a form prepared by the Department, prior to execution and approval of the Standard Agreement.

Article 4. Application Requirements

Section 400. Application Process.

(a) The Department shall periodically issue a NOFA that specifies, among other things, the amount of funds available, summary application requirements, the criteria of rating points, minimum eligibility threshold point scores, the deadline for submittal of applications, the schedule for rating and ranking applications and awarding funds, and the general terms and conditions of funding commitments. A NOFA may declare as ineligible those applications for which the Department has issued, or concurrently will issue, a special NOFA pursuant to subsection (c)(4),below. Applications selected for funding shall be approved at grant amounts, terms, and conditions specified by the Department. For each Capital Improvement Project selected for funding, the Department shall issue an Award letter and Standard Agreement.

(b) Substituting previously awarded Department funds is prohibited, except as provided below.

(1) Applicants seeking to substitute previously awarded funds must request withdrawal of their prior Award in writing and provide reasonable justification that the substitution is necessary to ensure feasibility. Substitutions based solely upon Applicants' preference or convenience will not be permitted. Department approval of the withdrawal is required prior to the application due date without assurance of receiving a new Award. This prohibition applies to funds awarded under any Department program, including a prior IIG Award.

(c) In order to implement the goals and purposes of the Program, the Department may adopt measures to direct Awards to achieve state-wide goals, including, but not limited to, consideration of Rural Areas, a reasonable geographic distribution of Program funds, preserving affordability, and specified funding characteristics. These measures may include, but are not limited to:

(1) Issuing a special NOFA.

(2) Awarding bonus points within a particular NOFA.

(3) Reserving a portion of funds in the NOFA.

(4) Notwithstanding anything in these Guidelines to the contrary, a special NOFA issued pursuant to this subsection may establish an over-the-counter process for Small Jurisdiction Applications, meaning the Department continuously accepts and rates applications according to minimum threshold criteria published in a NOFA for the process, and makes Awards to applications that meet or exceed these criteria until the funding available for the process is exhausted. At a minimum, a special NOFA shall include a description of the application process and funding conditions, shall require compliance with Section 202, and shall establish minimum funding threshold criteria based on specified rating criteria.

(d) Applications selected for funding shall be approved subject to conditions specified by the Department.

(e) The Department may elect to not evaluate compliance with some or all eligibility requirements for applications that are not within a fundable range.

(f) Applications will be reviewed, and negative points assessed, consistent with the Department's Negative Points Policy. The Negative Points Policy, dated March 30, 2022, (and amended on November 9, 2022, and April 3, 2023), is published on the Department's website.

Section 401. Application Content and Application Eligibility Requirements

(a) Applicants shall use the application made available by the Department, without modification.

(b) An application is complete when it satisfies all of the following:

(1) The application meets all threshold requirements, as set forth and referenced in the NOFA, Section 202, and the application.

(2) The application provides sufficient information for the Department to assess the feasibility of the Qualifying Infill Project according to Section 202 and industry standards.

(3) The application includes organizational documents for each Applicant entity. Resolutions must be submitted within sixty (60) calendar days of the conditional Award notification and in advance of Standard Agreement execution. Applicants are strongly encouraged to submit resolutions at the time of application to ensure timely access to funds as Standard Agreements will be prioritized based on the receipt and review of all required documents.

(4) The NOFA will specify the amount of funds available, the application requirements, the date the Department will begin accepting applications, a list

of counties eligible to apply under this NOFA, and the general terms and conditions of funding commitments.

(5) The Department shall accept applications on an over-the-counter basis and evaluate them for compliance with the eligibility requirements listed in Sections 200 and 201, and the threshold requirements listed in Section 202. Applications that meet all eligibility and threshold requirements shall be selected for funding as specified in these Guidelines and the NOFA to the extent funds are available.

Section 402. Performance Deadlines.

(a) Recipients must commence construction of Capital Improvement Projects no later than two years from Award date and must complete construction and record a Notice of Completion no later than four years from Award date.

(b) Program grant funds used for the completion of the Capital Improvement Projects must be disbursed no later than the liquidation date of June 30, 2027. The Recipient must submit final disbursement requests no later than March 31, 2027.

(c) Recipients may request an extension of performance deadlines, not to exceed six (6) months, by addressing a letter to the IIG Program Manager describing the circumstances necessitating the extension and detailing a plan for meeting the extended performance deadline. An extension may be granted if the Recipient adequately demonstrates that it has reasonable capacity to meet the extended deadline. However, any proposed extension must fall within the Program's legislatively set disbursement deadlines.

(d) Additionally, the Qualifying Infill Project used as the basis for calculating the Capital Improvement Project's grant amount in the application must meet the following:

(1) Within two (2) years of any Award of Program funds, all permanent financing commitments shall be secured, and construction of the Qualifying Infill Project must be commenced.

(2) Construction of Capital Improvement Projects and Qualifying Infill Project must be complete by the Program liquidation date. Completion of construction must be evidenced by a certificate of occupancy or equivalent documentation submitted to the Department.

(e) All Recipients must demonstrate, to the Department's satisfaction, substantial compliance with the timelines set forth herein. For Recipients failing to make the required demonstration, their grant Awards shall revert to the Department, and they will be required to repay disbursed Program grant funds attributable to Units for which construction was not timely commenced or completed. The proportion of the amount to be repaid (A) to the total grant amount (B) shall be the same as the

number of residential Units where construction has not timely commenced or been completed (C) to the total number of designated residential Units (D) (Formula: A=C/D * B).

(f) In addition to (a) through (e), all Recipients will be subject to the Department's Disencumbrance Policy. The Disencumbrance Policy, Administrative Notice Number 2022-02, dated March 30, 2022, and amended on December 19, 2022, is published on the Department's website.

(g) A Standard Agreement shall be executed within two years of Award.

(h) A Disbursement Agreement shall be executed within two years of Award.

Article 5. Operations

Section 500. Legal Documents.

(a) Upon the Award of Program funds to a Qualifying Infill Project, the Department shall enter into one or more agreements with the Recipient and such other parties as the Department may require, including a Standard Agreement, which shall commit funds from the Program, subject to specified conditions, in an amount sufficient to encumber the approved Program grant amount. The Standard Agreement shall require the Recipient to comply with the requirements and provisions of these Guidelines, and generally applicable state contracting rules and requirements and all other applicable laws. The agreement or agreements shall contain the following to the furthest extent applicable and subject to federal preemption:

(1) A description of the approved Capital Improvement Project, the approved Qualifying Infill Project, and the permitted uses of Program funds;

(2) The amount and terms of the Program grant;

(3) The use restrictions to be applied to the Qualifying Infill Project as consideration for the Program grant;

(4) Provisions governing the construction of the Capital Improvement Project and Qualifying Infill Project and, as applicable, the acquisition of the Capital Improvement Project site, and the disbursement of grant proceeds;

(5) Special conditions imposed as part of Department approval of the Capital Improvement Project;

(6) Requirements for the execution and the recordation of the agreements and documents required under the Program;

(7) Terms and conditions required by federal or state law;

(8) The approved schedule of the Capital Improvement Project, including commencement and completion of construction, and, if applicable, land acquisition, Rehabilitation work, and occupancy;

(9) The approved Capital Improvement Project development budget and sources and uses of funds and financing;

(10) Requirements for reporting to the Department;

(11) Terms and conditions for the inspection and monitoring of the Capital Improvement Project and Qualifying Infill Project in order to verify compliance with the requirements of the Program;

(12) Provisions regarding compliance with California's Relocation Assistance Law (Gov. Code, § 7260 et seq.) and the implementing regulations adopted by the Department (Cal. Code Regs., tit. 25, § 6000 et seq.), or, to the extent applicable, compliance with federal Uniform Relocation Act requirements;

(13) Provisions regarding compliance with Article XXXIV;

(14) Provisions relating to the placement of a sign on or in the vicinity of the Capital Improvement Project site indicating that the Department has provided financing for the Capital Improvement Project, or provisions relating to the Department's arrangement, in its sole and absolute discretion, for publicity of the Program grant;

(15) Remedies available to the Department in the event of a violation, breach, or default of the agreement;

(16) Other provisions necessary to ensure compliance with the requirements of the Program and applicable state and federal laws; and

(17) Provisions identifying the modification or waiver of state housing finance requirements for Tribal Entities pursuant to HSC Section 50406, Subdivision (p) and HSC Section 53559.1, Subdivision (e)(3)(B).

(b) The Recipient and Department, and such third parties as required by the Department, shall enter into a Disbursement Agreement which shall govern the manner, timing, and conditions of the disbursement of Program funds, and which must be executed prior to any disbursement of Program funds. The Disbursement Agreement provisions may include general conditions to disbursement, draw request procedures, a disbursement schedule, and remedies upon an event of default.

(c) In consideration for the IIG-2019 Award to the Recipient in connection with the development of a Rental Housing Development, the Recipient shall ensure a

Covenant is recorded against the fee interest of the real property site(s) on which a Rental Housing Development is located, which shall impose development, use, and affordability restrictions upon the real property. In consideration for the IIG-2019 Award to the Recipient in connection with a Homeownership Housing Development, Recipient shall ensure that each ownership Unit is subject to a recorded Covenant that includes either a resale restriction for at least 30 years restricting ownership of the Unit to qualified households, or equity sharing upon resale.

(1) The Covenant shall be binding, effective and enforceable commencing upon its execution, and it shall continue in full force and effect for a period of not less than 55 years for Rental Housing Developments or, if necessary, 50 years for Qualifying Infill Projects in Indian Country, after a certificate of occupancy or its equivalent has been issued for the Affordable Housing Development by the local jurisdiction or, if no such certificate is issued, from the date of initial occupancy of the Affordable Housing Development. The Covenant shall be subject only to those liens, encumbrances, and other matters of record approved by the Department pursuant to UMR sections 8310(f) and 8315. The Covenant recorded in connection with a Unit in a Homeownership Housing Development shall continue in full force and effect for a period of not less than 30 years after a certificate of occupancy or its equivalent has been issued for the Unit, or if no such certificate is issued, from the date of initial occupancy of the Unit, and shall be subject only to those liens, encumbrances and other matters of record approved by the Department pursuant to UMR Sections 8310(f) and 8315.

Section 501. Defaults and Cancellations.

(a) In the event of a breach or violation by the Recipient of any of the provisions of the Standard Agreement, the Disbursement Agreement, or the Covenant, the Department may give written notice to the Recipient to cure the breach or violation within a period of not less than 15 days. If the breach or violation is not cured to the satisfaction of the Department within the specified time, the Department, at its option, may declare a default under the relevant document(s), and may seek legal remedies for the default including the following:

(1) The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the Capital Improvement and the approved Qualifying Infill Project(s) in accordance with Program requirements.

(2) The Department may seek such other remedies as may be available under the relevant agreement or any law.

(3) In the event the Qualifying Infill Project or Capital Improvement Project is or has been awarded additional Department funding, any and all such funding will be cross-defaulted to and among one another in the respective loan or,

where applicable, grant documents. A default under one source of Departmental funding shall be a default under any and all other sources of Department funding.

(b) The Department may cancel funding commitments under any of the following conditions:

(1) The objectives and requirements of the Program cannot be met;

(2) Implementation of the Capital Improvement Project or Qualifying Infill Project cannot proceed in a timely fashion in accordance with the approved plans and schedules;

(3) Special conditions have not been fulfilled within required time periods; or

(4) There has been a material change, not approved by the Department, in the Capital Improvement Project or Qualifying Infill Project or the Principals or management of the Recipient.

Upon the Recipient's demonstration of good cause for failure to comply with any or all requirements, conditions, or special conditions of funding, the Department may extend the date for compliance and shall provide the extension in writing.

(c) Upon receipt of a notice of intent to cancel the grant from the Department, the Recipient shall have the right to appeal to the Department's Director.

Section 502. Reporting Requirements.

(a) Recipients of funds shall report to the Department on the progress of Capital Improvement Projects, including, but not limited to, substantiation of grant expenditures and housing outcomes, including levels of affordability as provided in the application.

(b) Until receipt of the certificate of occupancy, and according to the deadlines identified in the Standard Agreement and the Covenant, the Recipient shall submit an annual performance report regarding the construction of the Capital Improvement Project.

(c) Upon receipt of the certificate of occupancy, the Recipient and the owner of the Qualifying Infill Project(s) will be responsible for monitoring the Qualifying Infill Project(s) to ensure and verify compliance with the requirements set forth in the Standard Agreement and/or Covenant, as applicable.

(d) To ensure adequate tracking of the Qualifying Infill Project(s) and verify compliance with the requirements of the Program, the Department retains the right to monitor

the Recipient and the owner during the term of the Standard Agreement and/or Covenant, as applicable.

(e) At any time during the term of the Standard Agreement and/or Covenant, the Department may perform or cause to be performed a financial audit of any and all phases of the Capital Improvement Project. At the Department's request pursuant to the applicable legal document, the Recipient or owner shall provide, at its own expense, a financial audit prepared by a certified public accountant.