

## Participant Conduct Certification

TO: Executive Director  
Missouri Housing Development Commission ("MHDC")  
920 Main Street, Suite 1400  
Kansas City, Missouri 64105

Development Name: \_\_\_\_\_  
Location: \_\_\_\_\_, Missouri  
Development Number: \_\_\_\_\_ (together the "Development")

Dear Executive Director:

The Development was approved by the MHDC at their meeting December 8, 2023. The Development was approved to receive funding in the form of a loan(s), bond issuance, federal Low Income Housing Tax Credits, state Low Income Housing Tax Credits or any combination of loan(s), bond issuance and/or tax credits (collectively or individually, the "Funding") conditioned upon and according to the terms set forth in the conditional reservation agreement, as may be amended from time to time and to which this Agreement is attached and incorporated into, as may be amended from time to time ("Conditional Reservation Agreement"). Furthermore, in order to induce MHDC to countersign the Conditional Reservation Agreement, MHDC requires the undersigned to execute this Participant Conduct Certification ("Agreement").

The undersigned certifies and agrees to the following:

1. That the undersigned possesses the proper authority to legally obligate the ownership entity which applied to MHDC and was selected for funding vis-à-vis the Development and is now responsible for its construction and operation. In the event the undersigned is not the proper and legal representative of the Development ownership, this Agreement shall be null and void and shall result in the failure of a condition precedent necessary to the Conditional Reservation Agreement.
2. That on September 17, 2010, the MHDC passed a revised workforce eligibility policy ("WEP"). This revised WEP replaces any and all prior MHDC policies regarding workforce eligibility, including the Workforce Eligibility Policy passed on March 17, 2006, the Policy for Bond Financed Multifamily Developments passed on May 2, 2006, the Workforce Eligibility Policy clarification memorandum passed on November 17, 2007 and all Workforce Compliance Handbooks as may be amended from time to time. The WEP is represented in the 2010 Workforce Compliance Handbook effective as of September 17, 2010 ("2010 WCH") (the WEP and 2010 WCH are collectively referred to as the "MHDC Workforce Eligibility Policy") and that to the extent there are any inconsistent provisions between the WEP and the 2010 WCH, the 2010 WCH shall prevail. Owner further acknowledges the existence of and agrees to be bound by the MHDC Workforce Eligibility Policy. The MHDC Workforce Eligibility Policy is attached hereto and incorporated herein by reference (see Appendix "A"). The undersigned acknowledge that they have reviewed the MHDC Workforce Eligibility Policy and agree to abide by its provisions during the term of the Development regardless of the form or timing of Development Funding.
3. That best efforts shall be employed to use local vendors, suppliers, contractors and laborers when available and feasible.

4. That the undersigned has disclosed all Identity of Interest relationships (for definition of Identity of Interest please see Appendix "B") which existed at the time of application for the Development. Furthermore, the undersigned agrees to disclose any Identity of Interest which may come into being during the life of the Development including, but not limited to those between any member or the Development team, including but not limited to relationships between the owner/developer and the architect, managing agent, attorneys, and syndicators as well as between the contractor and all subcontractors, suppliers and vendors. Any Identity of Interest between the contractor and any subcontractor must be identified regardless whether or not there is an Identity of Interest between the owner/developer and the contractor. All Identity of Interest relationships must be disclosed as they arise on the MHDC form FIN-101 and provided to the MHDC underwriter assigned to the Development.
5. Any individual or entity which is awarded Missouri state and/or Federal low income housing tax credits ("LIHTC") and does not buy and sell LIHTC from unrelated awardees cannot resell their ownership interest for an amount greater than their contribution to the development, unless the full gain from the sale directly benefits the development as reflected in the sources and uses. Any individual or entity which violates this provision may, in the sole discretion of MHDC, be barred from further participation in any rental production programs and from responding to future NOFAs.
6. That failure to abide by any provision in this Agreement, may, in the sole discretion of MHDC, result in the non-allocation or revocation of Funding, in whole or in part.

ATTEST/WITNESS:

**OWNER:**

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

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

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

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

\_\_\_\_\_

## Appendix "A"

### Workforce Eligibility Policy

The Missouri Housing Development Commission ("MHDC") hereby establishes a workforce eligibility policy. This policy replaces any and all prior MHDC policies regarding workforce eligibility, including the Workforce Eligibility Policy (passed on March 17, 2006), the Policy for Bond Financed Multifamily Developments (passed on May 2, 2006), the Workforce Eligibility Policy clarification memorandum (passed on November 17, 2007) and all Workforce Compliance Handbooks.

This policy is applicable to all business entities who receive funding from the MHDC in the form of a grant, tax-credit(s) or loan(s) for the purpose of developing rental housing developments (collectively "Resources"). This policy does not extend to the Missouri Housing Trust Fund, any single family program and the affordable housing assistance program.

Any Business Entity receiving Resources shall:

- 1) Provide MHDC with an original sworn affidavit which affirms, under penalty of perjury, that the Business Entity is enrolled and participating in a Federal Work Authorization Program and that the Business Entity does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services;
- 2) Require that the general contractor provides MHDC with an original sworn affidavit which affirms, under penalty of perjury, that the general contractor is enrolled and participating in a Federal Work Authorization Program, that the general contractor does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services, and that the general contractor's employees are lawfully present in the United States;
- 3) Require that their general contractor obtain, and make available for inspection by MHDC, from each subcontractor of any tier, an original sworn affidavit which affirms, under penalty of perjury, that the subcontractor is enrolled and participating in a Federal Work Authorization Program, that the subcontractor does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services, and that the subcontractor's employees are lawfully present In the United States;
- 4) Provide MHDC with documentation which shows to the satisfaction of MHDC that the Business Entity and their general contractor have enrolled in a Federal Work Authorization Program. An example of a provision of documentation which meets this requirement is a copy of the E-Verify memorandum of understanding;
- 5) Require their general contractor to obtain, make available for Inspection by MHDC, and provide copies as requested, from each subcontractor of any tier, documentation which shows to the satisfaction of MHDC that the subcontractor has enrolled in a federal work authorization program;
- 6) Require a provision which stipulates that "the Contractor shall comply with all applicable federal, state and local labor laws and Is not Knowingly in violation of *Mo.Rev.Stat*§285.530.1(2008) and shall not henceforth be in such violation" to appear in its contract with the general contractor, In contracts between the general contactor and subcontractors, and contracts between subcontractors of any tier.

The terms capitalized herein shall have the following meaning:

**Business Entity** - any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "business entity" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo

**Contractor** - a person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not *be* limited to a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity;

**Employees** - any person performing work or service of any kind or character for hire within the state of Missouri

**Federal Work Authorization Program** - any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L.99-603

**Knowingly**- a person acts knowingly or with knowledge

**Unauthorized Alien** - an alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3)

## **Workforce Eligibility Compliance Handbook**

Effective 09/17/2010, Modified 2/20/2024

### **Policy Authority and Purpose**

On September 17, 2010, Missouri Housing Development Commission (MHDC) adopted Workforce Eligibility policy. The purpose of this Workforce Eligibility Compliance Handbook (WECH) is to provide guidance for Contracting Parties in connection with MHDC funded developments.

MHDC requires that all Contracting Parties adhere to all labor laws and specifically prohibits the use of undocumented workers providing construction labor in connection with any MHDC-approved Development. In addition, MHDC requires that all Contracting Parties compel all subcontractors, mechanics, third party contractors, agents or other parties providing construction related labor on a development site to likewise adhere to all applicable labor laws and requirements set forth by MHDC. Noncompliance with the requirements set forth in the policy or in this guidance may result in very serious sanctions including but not limited to suspension and revocation of funding, rescission of tax credits, and suspension and debarment from MHDC programs.

### **Definitions**

**Contracting Parties** shall refer to any one or more of the following: the owner, mortgagor, developer, sponsor, employer, business entity, or person that performs or provides any service or labor associated with construction on an MHDC-approved Development including, but not limited to general contractors, subcontractors, independent contractors, contract employees, project managers and recruiting or staffing entities.

**E-Verify** is an electronic verification of work authorization program operated by the Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees under the Immigration Reform and Control Act of 1986 (IRCA) P.L. 99-603.

**MHDC-approved Development** shall refer to any development approved by MHDC to receive a reservation for funding for the development of rental property in the form of low-income housing tax credits, MHDC fund balance, HOME funds, National Housing Trust Fund, Section 811, or any other source of funding administered or provided by MHDC, or any combination thereof.

**Transient Employer** shall refer to any Contracting Party that meets the definition of a transient employer as defined or specified in RSMo §285.230.

### **Basic Guidelines Applying to All Requirements**

**Electronic Submission of Documentation to MHDC.** MHDC encourages the submission of required documentation in an electronic format via email or other acceptable means of electronic submission. All documentation should be in .pdf format. The electronic files should be clearly labeled with the development name and development number assigned by MHDC. In the event it is impossible or impractical to submit documentation in an electronic format, hard copies may be submitted.

**On Site Audits.** Audits of construction sites will be conducted on a periodic basis. Each construction site must have present at all times an individual designated to assist with the audit process.

## Requirements

- 1. Contract Language Required.** Specific language is required for all construction contracts executed in conjunction with MHDC-approved developments. The specific language required is attached as Exhibit 1. The required language must be included verbatim in every contract with Contracting Parties.
- 2. Use of E-Verify.** Each Contracting Party who has or will have employees that perform labor on any MHDC-approved Development must enroll and actively participate in E-Verify.
- 3. Workforce Eligibility Affidavit.** Prior to commencement of any work or providing labor in connection with any MHDC-approved Development by Contracting Parties, such Contracting Parties must complete and submit a Workforce Eligibility Affidavit.
- 4. Proof of Using E-Verify.** All Contracting Parties must submit a copy of the Contracting Party's Department of Homeland Security Memorandum of Understanding as proof of enrollment in E-Verify.
- 5. Compliance with Missouri Statutes and Transient Employers.** Contracting Parties must comply with all federal, state and local labor laws including but not limited to RSMo §285.530(1), 285.233, 285.234, 285.500 – 285.515, and 285.550.
- 6. OSHA training.** Within sixty (60) days of commencing work on any MHDC-approved Development, any person performing construction labor on any MHDC-approved Development must have completed an OSHA construction safety training program or the equivalent of such program as detailed in the Workforce Eligibility Policy. Proof of completion of such training must be made available on site during periodic audits conducted by MHDC.

## EXHIBIT 1

Effective September 17, 2010 (as may be amended from time to time)

### REQUIRED LANGUAGE FOR ALL CONSTRUCTION CONTRACTS EXECUTED IN CONJUNCTION WITH MHDC FUNDED TRANSACTIONS

The following language shall be included in all construction contracts and subcontracts including, but not limited to, those between the Owners, Contractors, Subcontractors, or independent contractors in conjunction with projects which benefit from any Missouri Housing Development Commission (MHDC) administered funding sources including, but not limited to, loans, MHDC issued bonds, and Low Income Housing Tax Credits:

#### Required Prevailing Wage Language (if applicable):

If prevailing wage rates are applicable to this Development, then the Contractor acknowledges that MHDC will monitor the Contractor's compliance with the prevailing wage requirements on a **weekly** basis. The wage determination applicable to this Development, which is bound into the Drawings and Specifications and incorporated herein by reference, applies to all laborers and mechanics employed in the development of the Development. In addition, the form HUD-4010 attached hereto as **Exhibit " " "** sets forth certain federal labor standards that apply to all laborers and mechanics employed in the development of the Development. All the terms, conditions and requirements of the HUD-4010 are hereby incorporated into this Contract as if set forth herein. The Contractor must post a notice at the job site that all laborers and mechanics are to be paid the prevailing wages in accordance with the prevailing wage determination bound into the Drawings and Specifications. The prevailing wage determination must also be posted at the job site. These postings must be placed so that all affected persons have clear access to the information. As part of the monitoring process, MHDC will make on-site inspections and conduct spot interviews of laborers and mechanics to verify that prevailing wages are being paid. In addition, the Contractor must submit weekly payroll forms to MHDC on the Department of Labor form WH-347 (or similar form containing substantially the same information). These forms must evidence payment of the prevailing wages. The Contractor is responsible for inserting the terms and requirements set forth in this paragraph, including the wage determination and form HUD-4010 incorporated herein, into all subcontracts. In addition, the Contractor is responsible for obtaining form WH-347 (or substantially similar form) from its subcontractors and ensuring that its subcontractors comply with all prevailing requirements.

#### Required WEP Language:

The contracting parties acknowledge and agree to be bound by the MHDC Workforce Eligibility Policy. If there is a violation of the MHDC Workforce Eligibility Policy, as may be amended from time to time, the contracting parties are subject to sanctions by MHDC. The imposition of sanctions will include, but is not limited to, suspension or revocation of funding provided by MHDC, rescission of credits, and suspension and debarment of the contracting parties.

The contracting parties agree that in order to adhere to the MHDC Workforce Eligibility Policy, each party to this agreement shall comply with the following:

- The contracting parties agree to enroll and actively participate in the Department of Homeland Security's E-Verify program for the purpose of verifying the workforce eligibility of employees and to provide sworn affidavits affirming that each party is

enrolled in and actively participating in E-Verify, that the affirming party's employees are lawfully present in the United States, and that the affirming party does not knowingly employ any person who is an unauthorized alien. The parties further agree to provide written documentation showing proof of enrollment in E-Verify in a form acceptable to MHDC such as a copy of the Memorandum of Understanding entered into with Department of Homeland Security. In the event a contracting party is not an employer, and is therefore unable to use E-Verify, such party, in lieu of enrolling and participating in E-Verify and providing the above listed documentation, shall provide a sworn affidavit stating that the party is unable to participate in E-Verify because the party is not an employer and does not have employees, that all independent contractors paid by such party are properly classified as independent contractors and should not be classified as employees, that all such independent contractors are lawfully present in the United States, that any such independent contractors are not unauthorized aliens, and that, if at any time, the party does employ any employees, it will immediately enroll in and begin actively using the E-Verify system and will not knowingly employ any person who is an unauthorized alien and that all such employees it does hire will be lawfully present in the United States;

- The contracting parties will comply with all applicable federal, state and local labor laws, including, but not limited to, RSMo §§ 285.530(1), 285.230, 285.233, 285.234, 285.500-285.515, and 285.550;

- The contracting parties shall require participation in or provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees and independent contractors which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program. All employees and independent contractors are required to complete the program within sixty days of beginning work and shall make documentation proving completion of the program available for inspection. **The contracting parties understand and acknowledge that the terms and provisions of RSMo Section 292.675 (2008) apply to the work being performed under this Contract and further acknowledge that, should either of the contracting parties fail to comply with the requirements of this paragraph, it shall be subject to the statutory fines set forth in Section 292.675;**

-The Contracting parties agree to permit site access to MHDC for the purpose of conducting Workforce Eligibility Policy compliance reviews and shall cooperate in providing requested documentation congruent with the terms of this Contract;

-The contracting parties agree that all contracts and subcontracts, and down the line contracts and subcontracts entered into as a part of this Development shall include this section verbatim; and,

-A copy of this entire agreement shall be made available to MHDC prior to beginning the scope of work contemplated herein.



## Appendix "B"

Identity of Interest: Any relationship which give(s) or would give the owner or its agent control or influence over the price paid to an individual or business supplying goods and/or services to the project. An identity of interest is construed to exist when any of the situations listed below exist:

- (i) When (1) the Development owner or their agent; or (2) any officer or director of the Development owner or their agent; or (3) any person who directly or indirectly controls 10 percent or more of the voting rights, or directly or indirectly owns 10 percent or more of the Development owner or their agent; is also (1) the syndicator, architect, attorney, contractor, subcontractor, supplier or materialman; or (2) a person who directly or indirectly controls 10 percent or more of the syndicator's, architect's, attorney's, contractor's, subcontractor's, supplier's or materialman's voting rights, or directly or indirectly owns 10 percent or more of the syndicator, architect, attorney, contractor, subcontractor, supplier or materialman; or,
  
- (ii) When (1) the Development owner; or (2) any officer or director of the Development owner; or (3) any person who directly or indirectly controls 10 percent or more of the voting rights, or directly or indirectly owns 10 percent or more of the Development owner; is also (1) an officer or director of the management agent; or (2) a person who directly or indirectly controls 10 percent or more of the management agent's voting rights or directly or indirectly owns 10 percent or more of the management agent. For purposes of this definition, the term "person" includes any individual, partnership, corporation, or other business entity. Any ownership, control or interest held or possessed by a person's spouse, parent, child, grandchild, brother or sister shall be attributed to such person.