

**ANN ARBOR AFFORDABLE HOUSING MILLAGE FUND
GRANT AGREEMENT
BETWEEN THE CITY OF ANN ARBOR,
THE ANN ARBOR HOUSING COMMISSSION, AND
THE ANN ARBOR HOUSING DEVELOPMENT CORPORATION**

This Affordable Housing Millage Fund Grant Agreement (“Agreement”), is entered into this _____ of _____, 2023, between the City of Ann Arbor, a Michigan municipal corporation, whose address is 301 E. Huron Street, Ann Arbor, Michigan 48103 (“City”), the Ann Arbor Housing Commission, a Michigan public body corporate, with offices at 2000 S. Industrial Hwy., Michigan 48104 (the “Commission”) and the Ann Arbor Housing Development Corporation, a Michigan non-profit corporation (“AAHDC” or “Grantee”) (individually “Party” and collectively the “Parties”).

WHEREAS, on November 3, 2020, the voters of the City approved a millage to annually levy a tax of up to one mill on all taxable real and personal property in the City for the purpose of building, maintaining, and acquiring new affordable housing units (the “Millage”), which appears in the City Charter, Section 8.25, as follows:

Funds for construction, maintenance, and acquisition of new affordable housing units for low-income individuals and families making less than 60% Ann Arbor Area Median Income, and for providing social services for the residents of such housing

SECTION 8.25. In addition to any other amount which the City is authorized to raise by general tax upon real and personal property by this Charter or any other provision of law, the City shall, in 2021 through 2041, annually levy a tax of up to one mill on all taxable real and personal property situated within the City for the purpose of building, maintaining, and acquiring new affordable housing units which are permanently affordable to low-income households making no income up to 60% of area median income and providing social services, not to exceed 20% of the millage revenues over the entire term of the millage, for the residents of such housing. No money collected pursuant to this millage shall be spent on building, maintaining, or acquiring new units located in the floodplain or floodway. (*Section 8.25 added by election of November 3, 2020.*)

WHEREAS, the Millage is expected to raise approximately Six Million Seven Hundred Thousand (\$6,700,000) in fiscal year 2024, and potentially \$160 million over the life of the millage, helping to create approximately 1500 units of affordable housing, according to City estimates; and

WHEREAS, the Commission is the preferred agent of the City in all affordable housing developments;

WHEREAS, the City provides financial support for the implementation of affordable housing in the City; and

WHEREAS, the Ann Arbor Housing Development Corporation (AAHDC), a Michigan non-profit corporation, whose sole member is the Commission, was formed with the stated purpose of relieving a shortage of decent, safe and sanitary housing for persons of low income in the City of Ann Arbor and to engage in or assist in the development, financing or operation of such low-income housing as an instrumentality of the Commission.

The Parties agree as follows:

1. **GRANT.** City agrees to grant the Millage funds to the AAHDC, less the annually budgeted expenses allocated to fund the staff salaries and benefits for those City employees working for the Commission, who are assigned to implement the Millage, working full-time on eligible affordable housing development projects, other staff time spent working on affordable housing-millage related activities, and the administrative operating costs related to Millage-funded projects, including but not limited to insurance premiums, municipal service charges and IT charges for purposes specified herein, plus a fifty percent (50%) contingency of the total budgeted salaries, benefits, and administrative operating costs for unbudgeted items that may occur, including but not limited to, pay raises, severance payments, and any additional administrative operating costs related to the Millage (the “Grant”). After the close of each fiscal year, the City may disburse to the AAHDC any unspent contingency funds related to salaries, benefits, administrative operating costs. Should the costs incurred by the City for salaries, benefits, operating costs, and contingency funds exceed the amount retained by the City in any fiscal year, the AAHDC shall reimburse the City for these costs. Grant payments will be made from the Millage subject to annual appropriations and may vary from year to year.

2. **DURATION.** The Term of this Grant Agreement shall coincide with the length of the Millage, i.e., through 2041.

3. **USE OF GRANT.** Grantee shall administer use of the Grant for the sole purpose of building, maintaining, and acquiring new affordable housing units which are permanently affordable to low-income households making no income up to 60% of area median income (“AMI”) (i.e., 60% of AMI or less) and providing social services, not to exceed 20% of the Millage revenues over the entire term of the millage, for the residents of such housing. The Grant shall not be used on building, maintaining, or acquiring new units located in the floodplain or floodway. All uses shall be consistent with the Affordable Housing Millage Guidelines promulgated by city council, as amended and approved on July 27, 2020, attached hereto as Attachment A.

4. **DISBURSEMENT.**

a. Grantee shall present to the City a proposed annual budget for use of the Grant (“Grantee’s Millage Budget”). The City may approve Grantee’s Millage Budget, in whole or in part, in its sole discretion. The AAHDC will prioritize use of the Grant in the following order:

- 1) City-owned properties the Commission or AAHDC is developing;
- 2) Renovations of existing properties the Commission or AAHDC owns;
- 3) Private properties the Commission or AAHDC is developing;
- 4) Continued annual service funding based on Millage-funded properties with prior year service funding commitments; and
- 5) New service funding commitments for new Millage-funded properties under development.

b. The City will annually adopt a budget for the Affordable Housing Millage Fund that allocates funds for the Commission staff salaries and benefits, and the administrative operating costs related to Millage-funded projects, including but not limited to insurance premiums, municipal service charges, IT charges. From the remainder of the Millage, the City will appropriate Millage funds to Grantee for use pursuant to Grantee’s Millage Budget, as approved by the City.

c. The Commission and Grantee may use Millage funds for pre-development due diligence activities, but will make good faith and reasonable efforts to secure funding for these activities from other sources to leverage Millage funds for development. The Commission and/or Grantee may use the Grant to determine the feasibility of developing a site and the Commission and/or City may determine that a property cannot or will not be developed as affordable housing. The City will not require the Commission or Grantee to reimburse the City for Millage funds that are spent on pre-development activities for a property that does not result in the development of affordable housing. Pre-development “due diligence” activities include, but are not limited to, the following:

- Environmental Studies, including Phase I ESA, Phase II ESA
- Engineering Studies
- Zoning Permits/ Variances
- Market Study
- Appraisal
- Title Commitment/Search
- Survey
- Site Plan Development
- Development of Schedules/Timelines and Budgets
- Community Engagement Plan
- Selection of Professionals (e.g., Architect, Contractor, etc.)
- Applications for Financing
- Legal Counsel
- Accounting and Financial Consultants
- Sustainability Consultants
- Other Development Consultants

d. Grant funds may be used for demolition, acquisition, new construction, and renovations of existing properties. If a property will provide housing for a mixture of incomes, including households over 60% AMI, or a mixture of uses, the Millage funds will only be used for the portion that is dedicated for households at 60% AMI or less. The formula to pro-rate the funding will be site-specific, use-specific, and consistent with any other federal, state or local regulatory requirements.

e. Grant funds that are obligated to a known project and/or contractually committed will be available without regard to fiscal year. Grant funds which are unobligated and uncommitted during the fiscal year for which they are appropriated, shall return to the control of the City at the close of the fiscal year. These unused Grant funds may be added to the available Grant for the subsequent year, at the City’s discretion. The Commission’s annual budget will include a report on the previous year’s allocations that are committed but unspent.

5. **DEED RESTRICTIONS ON GRANT-FUNDED PROPERTY.** It is the responsibility of the AAHDC to ensure that all Millage-funded developments contain a deed restriction requiring that the property will be used to house families at or below 60% of AMI. The Commission and AAHDC agree that such covenants shall run with the land and that they shall, in any event, be binding on their successors, successors in interest and assigns, to the fullest extent permitted by law and equity, for the benefit, in favor of, and enforceable by, the City, its successors, successors in interest and assigns. If a property is entirely restricted to households at 60% AMI or less, the deed restriction will apply to all units of the property. If the property is a mixed-income property, the deed restriction will designate the specific units, number of units, or percent of units that must be occupied by households at 60% AMI or less. If an occupied property is acquired, the deed restriction will include language that existing occupants will not be displaced, and vacant units will be occupied by households at 60% AMI or less to

meet the number or percent of units that are designated for households at 60% AMI or less. The deed restriction will include language that the income restriction applies to the initial occupancy of the household and does not require eviction of a household whose income later exceeds 60% AMI. If applicable, the deed restriction will include language that acknowledges the existence of any other property-specific federal, state or local regulations governing household income, age, or other regulations. The specific language of the deed restriction shall be administratively approved by the Parties prior to recording.

6. **AMENDMENTS.** This Agreement may be amended only by a written agreement executed by the Parties.

7. **GRANTEE CORPORATE STRUCTURE.** The terms of this Agreement are contingent upon the Grantee maintaining its corporate structure, effective at the time of execution of this Agreement, whereby the Commission is its sole member and the corporation's stated purpose remains to engage in or assist in the development, financing or operation of such low-income housing as an instrumentality of the Commission. Any change in corporate membership or purpose shall render this Agreement void and unenforceable.

8. **INDEMNIFICATION.**

a. Grantee hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Grantee or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Grantee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Grantee's duty to defend and indemnify City shall arise even if City is the only Party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

c. Grantee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Grantee under the terms of this indemnification obligation. The Grantee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

9. **REPORTS, MONITORING AND EVALUATION.** Grantee agrees to cooperate fully with the City to evaluate and monitor the requirements and performance of the work and the developments funded in whole or part by the Grant. Grantee agrees to provide such information and reports, oral or written, as may reasonably be required or requested during the completion of construction work and for five additional years on matters relating to the use of the Grant, performance, compliance and evaluation of the use of the Grant. The Commission shall be responsible for all public-facing reports published on the City's website, per city council directive, if any.

10. **FINANCES, AUDITS, AND INSPECTIONS.** The Commission shall supply documentation of Grant expenditures to the City upon request. The Commission and Grantee agree to securely maintain records regarding the expenditures of Millage funds for a period of five years after completion of the work for which the funds are used. Grantee shall permit examination of these records by the City upon request. The City may, at a reasonable time after giving reasonable notice, cause an audit of the records of the Grantee. The Commission agrees to complete and submit to the City annual audited financial statements and a management letter prepared by an independent auditing firm for the Grantee upon request. After giving reasonable notice to the Grantee, the City may review any of the Grantee's internal records, reports or insurance policies pertaining to this Agreement.

11. **NONDISCRIMINATION.** Grantee agrees to comply, and to require any subcontractors to comply, with the nondiscrimination provisions of MCL 37.2209 as well as the provisions of the federal Immigration Reform and Control Act of 1986. Grantee further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and treated during employment in a manner which provides equal employment opportunity.

12. **LIVING WAGE.** If a subcontractor of Grantee is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, then the Grantee agrees to require subcontractor's compliance with the living wage provisions of Chapter 23 of the Ann Arbor City Code. Grantee agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

13. **CONFLICT OF INTEREST.** No employee, officer or elected or appointed official of the City and no immediate relative (spouse, parent, sibling, or child) of any such person, has or shall have any financial interest in this Agreement. Except for salaries and expenses which may be paid with funds provided under this Agreement, no employee, officer or director of the Commission or Grantee and no immediate relative (spouse, parent, sibling or child) of any such person has or shall have any financial interest in this Agreement.

14. **PROCUREMENT.** Grantee and the Commission shall be responsible for procurement, under their own procurement rules and regulations, and in compliance with all state and federal laws and regulations, of all goods and services required for the construction, administration, and maintenance of developments for which Grant funds are used.

15. **SUSPENSION/TERMINATION.** If Grantee or the Commission fails to comply with the terms of this Agreement, the City may declare this Agreement suspended or terminated. Thereafter, the City shall have no obligation to provide further funds to the Grantee. The termination shall not relieve the Grantee of its obligations to prepare or preserve its records and to make them available for audit or inspection. The City shall provide reasonable notice to the Grantee indicating the reasons for its actions before suspension or termination.

16. **SEVERABILITY OF PROVISIONS.** Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any Party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other Parties or other circumstances.

17. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The Parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The Parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

18. **ASSIGNS AND SUCCESSORS.** This contract is binding on the City, the Commission and Grantee, their successors and assigns. The Parties agree they will not assign or transfer their interest in this contract without the written consent of the other Parties.

19. **EXTENT OF AGREEMENT.** This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Grantee with respect to the subject matter of the Agreement and it supersedes all prior representations, negotiations, agreements or understandings whether written or oral. Neither Party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Grantee and City.

20. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** Grantee lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter.

21. **SIGNATURES:** The Parties agree that signatures on this Agreement may be delivered electronically or by facsimile in lieu of a physical signature and agree to treat electronic or facsimile signatures as binding. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

Signatures appear on the following pages.

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

This ___ day of _____, 2023

Approved as to substance:

By _____
Milton Dohoney Jr., City Administrator

By _____
Marti Praschan, Chief Financial Officer

Approved as to form and content:

By _____
Atleen Kaur, City Attorney

FOR THE ANN ARBOR HOUSING COMMISSION

By: _____
Jennifer Hall
Executive Director

FOR THE ANN ARBOR HOUSING DEVELOPMENT CORPORATION

By: _____
Jennifer Hall
Executive Director, Ann Arbor Housing Commission, Its Sole Member

Attachment A

Affordable Housing Millage Guidelines

The intent of the affordable housing millage is to increase the number of units that are affordable and sustainable to provide long-term housing security for households earning zero income to 60% of Area Median Income (“AMI”).

If the millage is approved, the City’s annual budget process will include a millage budget for City Council approval for 1 mil for affordable housing development and related supportive services for residents of millage-developed housing, including the following uses and priorities:

1. Development of affordable housing that includes housing units that are restricted to households from zero income to 60% of Area Median Income
 - a. The City will utilize HUD’s annually published family income limits to determine the Area Median Income of households.
2. Housing unordered priorities include:
 - a. Housing for people experiencing homelessness
 - b. Housing for people with special needs, including but not limited to:
 - i. Seniors
 - ii. People with disabilities
 - iii. Youth aging out of foster care
 - c. Housing for persons in households earning less than 60% AMI
3. “Development” as used in these Guidelines includes both hard and soft costs related to:
 - a. New construction
 - b. Acquisition of land
 - c. Acquisition of existing buildings
 - d. Capital improvements, including but not limited to:
 - i. Infrastructure
 - ii. Utilities
 - iii. Building renovations
 - e. Demolition
4. Sustainability priorities include, but are not limited to:
 - a. Energy efficiency
 - b. Green construction materials, products and techniques
 - c. Net Zero energy consumption
5. Up to 20% of the millage revenue may be used for supportive services to increase housing stability of residents of millage-developed housing, including but not limited to:
 - a. Mental health services
 - b. Physical health services
 - c. Financial services, job skills, and employment
 - d. Daily living skills
 - e. Crisis management and conflict resolution
 - f. Youth programming
6. The City prioritizes projects that will have permanent affordability commitments, which is achievable through:
 - a. Development of publicly owned properties

- b. Public ownership through the Ann Arbor Housing Commission and its affiliated non-profit development entities
 - c. Mission-driven non-profits committed to permanent affordability restrictions
 - d. Cooperative housing or other housing ownership models with permanent affordability restrictions
7. To achieve socio-economic diversity throughout the City
- a. Development can be 100% affordable units or mixed-income with a portion of the units as market-rate that are not subsidized by the millage, for the purpose of maximizing aggregate number of millage-developed units of affordable housing.
 - b. Development can range from small group homes to apartment complexes
 - c. The City supports the inclusion of affordable housing in all neighborhoods and City Council Wards
8. To maximize the leverage of other public and private funding sources for affordable housing, the City's rent restrictions will align with the rent restrictions of other leveraged funds, such as HUD funding and Low-Income Housing Tax Credits

Sponsored by: Mayor Taylor and Councilmembers Nelson, Smith, Ramlawi and Griswold

As Amended and Approved by Ann Arbor City Council on July 27, 2020