

EXHIBIT H – CITY OF OAKLAND INSURANCE REQUIREMENTS
City of Oakland
ACQUISITION AND CONVERSION TO AFFORDABLE HOUSING PROGRAM
2022 NOFA

LOAN AGREEMENT INSURANCE REQUIREMENTS

I. Insurance Coverage Requirements

Borrower shall procure, prior to Loan closing, and keep in force for the term of this Agreement, at Borrower's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to Lender. If requested, Borrower shall provide Lender with copies of insurance policies evidencing coverage shown below. The insurance listed hereunder shall be considered minimum requirements and any and all insurance proceeds in excess of the requirements shall be made available to the Lender.

A. Commercial General Liability insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, Bodily Injury, Broad Form Property Damage, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract); Contractual Liability; XCU; and Owners and Contractor Protective Liability. Pollution Liability coverage is required if Loan proceeds are used for the remediation of Hazardous Materials. The CGL policy must contain severability of interest clause or cross liability clause or the equivalent thereof.

i. Coverage afforded on behalf of Lender shall be primary insurance and any other insurance available to Lender under any other policies shall be excess insurance (over the insurance required by this Agreement).

ii. Limits of liability: Borrower must maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. The general aggregate limit shall apply separately to this location/project or the general aggregate limit shall be twice the required occurrence limit.

B. Automobile Liability Insurance. Borrower shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 00 01.

C. Worker's Compensation insurance as required by the laws of the State of California. Coverage shall include Employers Liability coverage with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily

injury by disease. Borrower certifies that it is aware of the provisions of section 3700 of the California Labor Code, which require every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. Borrower shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

D. Professional Liability/Errors and Omissions insurance as appropriate for design/build operations with limits not less than \$2,000,000 each claim and \$2,000,000 aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:

i. The retroactive date must be shown and must be before the date of the contract or the beginning of work.

ii. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of this Agreement.

iii. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Agreement effective date, Borrower must purchase extended period coverage for a minimum of three (3) years after completion of work.

E. Builders Risk/Course of Construction Insurance (CP 10 30) covering all risks of loss in an amount equal to the completed value form with no coinsurance penalty provisions and in an amount equal to the initial contract sum, subject to subsequent modification of the contract sum. The insurance shall apply on a replacement cost basis. The insurance shall name as insured the City of Oakland, the Borrower, and all subcontractors in the work. The insurance shall cover the entire work at the site identified herein including reasonable compensation for architectural services, engineering costs, financing costs, legal fees (soft costs) and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance or regulation. The insurance shall be maintained in effect until the Project has been accepted as substantially complete. The insurer shall waive all rights of subrogation against the City.

F. Property Insurance on an all-risk coverage basis to the extent of full replacement value of the premises for the duration of the term of the Loan. Coverage amount may be adjusted for fluctuation in replacement values. This coverage is required upon completion of construction of the Project, or upon closing of this Loan if the Project is a rehabilitation project.

G. Loss of Rents Insurance Coverage in the amount of 75% of scheduled annual gross rents.

II. Terms, Conditions, and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- A. Insured Status (Additional Insured): Borrower shall provide additional insured status naming the City of Oakland, its councilmembers, directors, officers, agents, employees and volunteers as additional insureds under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to Borrower's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Borrower submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT.
- B. Loss Payee: Borrower must ensure that the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers are named as Loss Payee in the Builders' Risk Insurance and Property Insurance. Borrower shall provide appropriate Loss Payee endorsement as proof of meeting this requirement.
- C. Cancellation Notice: 30-day prior written notice of termination or material change in coverage and 10-day prior written notice of cancellation for non-payment.
- D. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors.
- E. Cross-liability coverage as provided under standard ISO forms' separation of insureds clause.
- F. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement.
- G. Insurer must carry an A.M. Best Rating of A VII, or better.

III. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, Lender may, at Lender's option, take out and maintain at the expense of Borrower such insurance in the name of Borrower as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Borrower under this Agreement.

IV. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office (ISO) as of the date of this Agreement.

V. Proof of Insurance

Borrower will be required to provide proof of all insurance required for the Loan prior to execution of the Loan Agreement, including copies of Borrower's insurance policies, if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the Loan Agreement award.

VI. Subcontractors

Should Borrower subcontract out the work required under this Agreement, they shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, Borrower may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Exhibit. If this option is exercised, both Lender and Borrower shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. Lender reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

VII. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by Lender. At the option of Lender, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects Lender, its Councilmembers, directors, officers, agents, employees and volunteers; or Borrower shall provide a financial guarantee satisfactory to Lender guaranteeing payment of losses and related investigations, claim administration and defense expenses.

VIII. Waiver of Subrogation

Borrower waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

IX. Evaluation of Adequacy of Coverage

Lender maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

INSURANCE

During development, developers must obtain comprehensive general liability and property (hazard) insurance coverage of at least \$2 million. The City also requires property damage or builder's risk insurance in an amount equal to 100% of the replacement cost of the structure, with a lender's loss payable endorsement in favor of the City. Construction contractors will be required to obtain liability and builders risk insurance in an amount equal to \$2 million. Automobile insurance, professional liability, workers compensation, and employer's liability coverage are also required. See Addendum, *Insurance* for complete insurance requirements.

After completion, similar levels of liability and hazard coverage are specified by the regulatory agreement. All policies must name the City as an additional insured; property insurance must have a lenders loss payable endorsement. For more information on insurance requirements, please contact Housing Development staff.