AGENDA

MARCH 10, 2025

NOTICE AND CALL OF SPECIAL MEETING
CITY COUNCIL
CITY OF YUBA CITY

5:30 P.M. SPECIAL MEETING
COUNCIL CHAMBERS/VIRTUAL

MAYOR	• **Dave Shaw**
VICE MAYOR	• **Marc Boomgaarden**
COUNCILMEMBER	• **Toni Cole**
COUNCILMEMBER	• **Wade Kirchner**
COUNCILMEMBER	• **Michael Pasquale**
CITY MANAGER	• **Diana Langley**
CITY ATTORNEY	• **Shannon L. Chaffin**

1201 Civic Center Blvd
Yuba City CA 95993

Wheelchair Accessible

*The City has adopted a Reasonable Accommodations Policy that provides a procedure for receiving and resolving requests for accommodation to participate in this meeting. Please visit yubacity.net ADA & Accessibility Resources page. If you need assistance in order to attend the City Council meeting, or if you require auxiliary aids or services, e.g., hearing aids or signing services to make a presentation to the City Council, the City is happy to help. Accommodations should be requested as early as possible as additional time may be required in order to provide the requested accommodation; 72 hours in advance is suggested. Please contact City offices at (530) 822-4817 or **(TTY: 530-822-4732)**, so such aids or services can be arranged. Requests may also be made by email at cityclerk@yubacity.net or citymanager@yubacity.net or mail City Clerk, 1201 Civic Center Blvd, Yuba City, CA 95993.*

AGENDA
NOTICE AND CALL OF SPECIAL MEETING
CITY COUNCIL - CITY OF YUBA CITY
MARCH 10, 2025
5:30 P.M. SPECIAL MEETING
COUNCIL CHAMBERS/VIRTUAL

PLEASE TAKE NOTICE, that pursuant to California Government Code Section 54956, Mayor Dave Shaw has called a Special Meeting of the City Council as set forth in this Agenda.

Materials related to an item on this Agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's office at 1201 Civic Center Blvd., Yuba City, during normal business hours. Such documents are also available on the City of Yuba City's website at www.yubacity.net, subject to staff's availability to post the documents before the meeting.

The Council Chambers will be open for public attendance and participation. The meeting will also be live streamed for public viewing, but not participation, at the following link:https://yubacity-net.zoom.us/webinar/register/WN_etXDg9svRYaAeJ7GUcJPKg

Special Meeting

Call to Order

Roll Call

__ Mayor Shaw
__ Vice Mayor Boomgaarden
__ Councilmember Cole
__ Councilmember Kirchner
__ Councilmember Pasquale

Pledge of Allegiance to the Flag

Public Communication

1 Appearance of Interested Citizens

You are welcome and encouraged to participate in this meeting. Public comment is taken on action items appearing on the Consent Calendar or Business Items on the Agenda when they are called. Public comment on any other items within the scope of the City's jurisdiction, including items not listed on the Agenda will be considered at this time. Public comment is limited to three minutes per speaker. Members of the public submitting written requests at least 24 hours prior to the meeting will be allotted five minutes to comment per speaker. Repetitive comments may be limited, and large groups are encouraged to select representatives to express the opinions of the group.

Business Items

2 Homekey 3.0 - Merriment Village - Habitat for Humanity

Recommendation: Discuss project status and provide direction to staff regarding next steps

Adjournment

CITY OF YUBA CITY

Public Communication

Members of the public may address the City Council on items of interest that are within the City's jurisdiction. Individuals addressing general comments are encouraged to limit their statements.

Procedure

You are welcome and encouraged to participate in this meeting. Complete a Speaker Card located in the lobby and give to the Clerk, public comment is taken on action items appearing on the Consent Calendar or Business Items on the Agenda when they are called. Public comment on any other items within the scope of the City's jurisdiction, including items not listed on the Agenda, will be considered at this time.

When a matter is announced, wait to be recognized by the Mayor to provide your comments to the Council. Comments should begin by providing your name and place of residence. A three minute limit is requested when addressing Council.

Request for additional time to address Council

Members of the public submitting written requests at least *24 hours* prior to the meeting will be allotted 5 minutes to comment per speaker. Repetitive comments may be limited, and large groups are encouraged to select representatives to express the opinions of the group.

Procedure

When requesting to comment, please indicate your name and the topic and mail to:

City of Yuba City
Attn: City Clerk
1201 Civic Center Blvd
Yuba City CA 95993

Or email to:

Ciara Wakefield, City Clerk
cityclerk@yubacity.net

Agenda Item **2**

CITY OF YUBA CITY
STAFF REPORT

Date: March 10, 2025
To: Honorable Mayor & Members of the City Council;
From: Administration Department
Presentation By: Diana Langley, City Manager

Summary

Subject: Homekey 3.0 - Merriment Village - Habitat for Humanity
Recommendation: Discuss project status and provide direction to staff regarding next steps
Fiscal Impact: Homekey 3.0 Grant - $24,632,331

Purpose:

To provide affordable housing options through the development of Habitat for Humanity's proposed Merriment Village Apartment Project, a 217-unit apartment complex located at 428 Walton Avenue, which is on the east side of Walton Avenue, north of Franklin Road.

Council's Strategic Goal:

This item specifically relates to the City Council's goal of Fiscal Responsibility.

Background:

The California Department of Housing and Community Development (HCD) has invested millions through the Homekey program to sustain and rapidly expand housing for persons experiencing homelessness or at risk of homelessness. Homekey is an opportunity for state, regional, and local public entities to develop a broad range of housing types for permanent and interim housing.

Since early 2022, the City has partnered with Habitat for Humanity - Yuba/Sutter (Habitat) to develop affordable housing projects in Yuba City. Beginning in March 2022, Vice Mayor Boomgaarden and former Councilmember Shon Harris participated in an Ad Hoc Committee in which various sites throughout Yuba City were evaluated for a potential Homekey project. The Ad Hoc team evaluated existing hotel/motel sites for the potential to convert to affordable housing. In evaluating those sites, the owners were either unwilling to sell, were asking too much for the property, or the sites were not a good fit for conversion to affordable housing. Once it was determined that an existing developed site was not an option, consideration turned to vacant properties for new construction. The Committee looked at a couple of vacant properties that were large enough to accommodate a sizable project, and landed on a 7.47-acre property located at 428 Walton Avenue, which is on the east side of Walton Avenue north of Franklin Road.

On March 21, 2023, the City Council received a presentation on Habitat's proposed project for the site, a 217-unit apartment complex titled Merriment Village Apartments (Merriment Village). It was acknowledged that the funding available through Homekey would not be enough to fund the entire project, so Habitat was also going to prepare an application for Affordable Housing and Sustainable Communities (AHSC) Program funding. The AHSC Program, also administered by HCD, funds land-use, housing, transportation, and land preservation projects to support infill and compact development that reduce greenhouse gas emissions. Council directed staff to support Habitat in the development of co-applications for Homekey, in which the Notice of Funding Availability for Homekey 3.0 was anticipated to be issued shortly, and AHSC funding.

On April 18, 2023, the City Council directed staff to continue to work with Habitat to apply for Homekey 3.0 funds. The Homekey 3.0 program only provided $37,158,338 for the Sacramento region, which was not enough to fund the entire Merriment Village project, which was estimated to cost $75 million. Habitat proposed to split the project into multiple phases and evaluate other funding programs for the remaining phases. Phase I of the project includes the 4-story, 79-unit building fronting Walton Avenue, and the site work for the remainder of the site. In addition, Habitat requested that the City Council consider waiving fees that would be owed to the City, totaling $1,787,922, and contribute a portion of the City's Permanent Local Housing Allocation (PLHA) funds. Council authorized the City Manager to continue to work with Habitat to apply for Homekey 3.0 funds.

On May 2, 2023, the City Council adopted Resolution 23-056 authorizing a joint application with Habitat to apply for Homekey 3.0 funds, authorized the City Manager to execute the application and Homekey documents, and authorized the Mayor to submit a Funding Commitment letter for the City to contribute $1,787,922 in development fee waivers and $155,000 annually of PLHA funds, provided that the City continues to receive PLHA funds. Habitat then submitted a Homekey 3.0 grant application.

On September 19, 2023, the City Council adopted Resolution 23-118 to determine that the Merriment Village project is statutorily exempt from environmental review pursuant to Assembly Bill 140, and approved Development Plan 23-02, subject to the Conditions of Approval, for the development of a 218-unit (217 affordable units and 1 apartment manager unit) income-based apartment complex.

On November 15, 2023, City and Habitat staff received an email from the Homekey Team of HCD indicating that an amendment had been released to the Homekey 3.0 Notice of Funding Availability and that an additional approximately $114 million in supplemental funding would be provided for the purposes of funding additional existing applications. On December 12, 2023, City and Habitat staff received an email from the HCD ambassador assigned to the Merriment Village application requesting additional information. On December 14, 2023, a Zoom meeting was held with HCD and Habitat staff. Joseph Hale, CEO of Habitat, emailed the City Manager after the meeting indicating that they were informed that the Merriment Village project was being recommended for approval for the full amount. On February 13, 2024, the City and Habitat received an Award Letter indicating that the Merriment Village project was being awarded $24,632,331 in Homekey funding, broken down $22,013,906 for construction and $2,615,425 for operations.

On February 20, 2024, the City Council repealed Resolution 23-056 and adopted Resolution 24-015 authorizing a joint application with Habitat to apply for Homekey 3.0 funds for Phase I of the project. HCD reviewed the City/Habitat's Homekey 3.0 co-application and requested a modification to Resolution 23-056 requiring that the Mayor execute the application and Homekey documents rather than the City Manager, as the City does not have an Ordinance in place that allows the City Manager to execute the documents.

On March 5, 2024, the City Council adopted Resolution 24-022 authorizing the Mayor to enter into a Cooperative Agreement with Habitat for the AHSC Program. As noted previously, Habitat anticipated that additional funding would be required to supplement Homekey funds to build the Phase I project. Habitat requested that the City cooperate on the submittal of an AHSC grant application by committing to constructing specific road infrastructure improvements within five years.

On June 13, 2024, the City received the Standard Agreement from HCD, which had to be executed by July 12, 2024. The Standard Agreement established very short deadlines for construction and compliance:

- February 13, 2025: All acquisition, rehabilitation, and/or construction must be completed.
- October 13, 2024, or May 13, 2025: Capital expenditures must be completed within 8 months, October 13, 2024, or up to 15 months from the date of award if requesting an expenditure deadline extension, May 13, 2025.
- May 13, 2025: Full occupancy must be achieved by 15 months from the date of award letter.

On July 2, 2024, the City Council received a project update from Habitat and considered the terms of the Standard Agreement. There was concern about the ability to meet the Agreement deadlines, and Habitat indicated that there may be a funding gap between the grant funds programmed and the construction bids received. As the City would be the recipient of the Homekey funds and was co-signing for the same, Council expressed concern about not being able to meet the terms of the Standard Agreement, and then being held responsible for repaying the Homekey funds. Council directed staff to work with the City Attorney and Habitat to develop an agreement outlining the responsibilities of each party. On July 9, 2024, a Covenant and Loan Agreement was provided to Habitat for their review and action. Section 5b, "Conditions to Obligation to Disburse," of the Covenant and Loan Agreement stated the following:

"Habitat shall not be entitled to any disbursements of the Grant Construction Funds or funds from any other source until all the following conditions have been satisfied to the satisfaction of the City:

- **Insurance** - Habitat has provided the insurance as specified in Section 9.
- **Gap Funding** - Habitat has secured the Gap Funding as required by Section 6. If Gap Funding has not been secured prior to the first disbursement, Habitat shall furnish to City a performance bond in the amount of the Gap Funding, but not less than $7,000,000, to be conditioned upon the faithful performance of the Agreement.
- **Security** - Habitat has executed the Construciton Note and Construction Deed of Trust to City which is insured by a loan title policy pursuant to Section 7 and also provided other security agreements and documents as specified in Section 7.
- **Affordability Covenant** - The Affordability Covenant as defined in the Standard Agreement and as approved by City shall be executed and recorded against the Property.
- **No Default** - Habitat is not in default of this Agreement or the Standard Agreement. A key element of this requirement is that Habitat must meet the project timelines identified in the Standard Agreement.

On July 9, 2024, Habitat responded that they had reviewed the Covenant and Loan Agreement and were good with the language. The Covenant and Loan Agreement was executed by both parties and recorded on July 11, 2024.

On October 7, 2024, the City received the Homekey funds. As staff have not coordinated a Homekey project before, the City hired a consultant to assist in making sure that the City complies with the Standard Agreement.

On October 14, 2024, Habitat submitted a request to HCD for a timeline extension, which HCD denied.

On November 14, 2024, Habitat outlined a plan to staff to satisfy the gap in funding which stated, "Of the previous $7.3 million gap that existed, Habitat has committed to perform $2.15 million worth of construction itself as a licensed contractor. Additionally, Habitat has committed to set aside $300,000 a month for the next year in order to raise $3.6 million in cash contributions for the project, fulfilling 80% of the funding gap. The remaining gap will be filled by a $400,000 award from the PLHA program which we are currently working on as well as a $1.2 million award from the HOME program." Staff responded the same day that a performance bond would still be required in the amount of the gap funding.

On November 26, 2024, staff provided a comprehensive list of items needed by the City to comply with the requirements outlined in the Covenant and Loan Agreement. On December 16, 2024, Habitat provided a response to the requested list of items, but did not provide everything required to comply with the conditions for disbursement of funds.

In December 2024, City staff worked with Habitat to determine if the project was eligible for the Homekey+ program. It was determined that the project was not eligible for that funding program.

On January 9, 2025, Habitat submitted a gap funding and bonding strategy, in which they detailed a plan to fill the $7.3 million funding gap by saving $300,000 per month for a 12-month period to contribute $3.6 million. Habitat operating in the capacity of a general contractor to complete $2,149,338 in work, and submitting a HOME application for the remaining $1.6 million. The strategy noted that the original plan was to cover the gap with a construction loan that would be converted to a permanent loan, but due to the lien position associated with the Homekey award, they could not find a lender.

On January 7, 2025, Habitat submitted another time extension request to HCD. On January 16, 2025, HCD notified Habitat that their time extension request was approved, and the new performance milestones are as follows:

- October 13, 2026: Capital expenditures and construction must be completed.
- January 13, 2027: Occupancy deadline.

At that time, staff requested an updated project schedule that showed compliance with the revised deadlines. The updated construction schedule was provided on January 24, 2025.

On February 18, 2025, the City Council adopted Resolution 25-017 authorizing a subrecipient agreement for the City's 2020 PLHA funding with Habitat in the amount of $465,000 for Merriment Village.

On March 3, 2025, staff received a Financial Plan and Request for Loan from Habitat identifying the current funding gap as $7,047,672 and requesting an unsecured line of credit from the City of up to $7,500,000 at a 4% interest rate amortized over ten years. At the March 4, 2025, City Council meeting, the City Council indicated that they did not want Habitat's request for a $7,500,000 unsecured loan placed on the agenda for a future Council meeting for Council consideration. With the City's current financial situation, the City does not have funds to contribute to the project over the $1,787,922 in fee waiver to which it has already committed.

<u>Analysis:</u>

The mandated construction commencement deadline for Merriment Village is April 2025. The project is at a critical point where staff is requesting direction from the City Council as to next steps as Habitat has been unable to meet the terms of the Covenant and Loan Agreement with the City. Without sufficient funds to construct the project, there are limited options to proceed forward. Potential options include:

- Determine that the project is not feasible and return the Homekey funds to HCD.
- Submit a request to HCD to reduce the scope of work so that a scaled-down version of the project can be constructed within the grant award amount.

Depending on Council direction, staff will work with Habitat and HCD as appropriate.

On a separate but similar note, the City of Long Beach recently elected to return a $5.6 million Homekey grant. The grant was intended for a tiny home project, but the City of Long Beach was unable to secure a feasible site for the development even though they had already spent almost $3 million purchasing the tiny home units and other project-related costs. Due to the inability to meet the grant requirements, Long Beach had to return the grant in its entirety, including reimbursing the State from the General Fund for the funds already spent.

Fiscal Impact:

To date, no Homekey funds have been disbursed, and the City continues to hold on to the full Homekey award amount of $24,632,331 plus accumulated interest. The City has expended funds associated with considerable staff time coordinating with Habitat, and approximately $15,000 in consultant fees to assist with coordination. In addition, with Council's award of $465,000 in PLHA funds to the Merriment Village project, should the project not proceed, staff will need to determine if the funds can be reallocated elsewhere.

On March 6, 2025, Joseph Hale (Habitat) stated in an email to the City Manager that Habitat has invested over $3.7 million of their organizational funds to secure the property, conduct environmental assessments, complete design work, and navigate the permit process. If Council elects to return the Homekey funds to HCD, there will not be a mechanism for Habitat to be reimbursed with Homekey funds, unless Habitat is able to work directly with HCD on reimbursement.

Recommendation:

Discuss project status and provide direction to staff regarding next steps.

Attachments:

1. Homekey Standard Agreement
2. Covenant and Loan Agreement
3. Habitat Gap Funding and Bonding Strategy January 2025
4. Merriment Financial Plan March 2025

Prepared By:	Submitted By:
Diana Langley	Diana Langley
City Manager	City Manager

ATTACHMENT 1

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES
STANDARD AGREEMENT
STD 213 (Rev. 04/2020)

SCO ID:

AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (if applicable)
23-HK-18192	

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME
City of Yuba City, and Habitat for Humanity Yuba/Sutter, Inc.

2. The term of this Agreement is:

START DATE
Upon HCD Approval

THROUGH END DATE
Fifteen (15) years from Effective Date

3. The maximum amount of this Agreement is:
$24,632,331.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Authority, Purpose and Scope of Work	10
Exhibit B	Budget Detail and Payment Provisions	3
Exhibit C*	State of California General Terms and Conditions	GTC - 04/2017
Exhibit D	Homekey General Terms and Conditions	23
Exhibit E	Project-Specific Provisions and Special Terms and Conditions	8
	TOTAL NUMBER OF PAGES ATTACHED	44

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at *https://www.dgs.ca.gov/OLS/Resources*

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership,etc.)
See Attached

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
See Attached	See Attached	See Attached	See Attached

PRINTED NAME OF PERSON SIGNING	TITLE
See Attached	See Attached

CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED
See Attached	See Attached

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME
Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
651 Bannon Street, Suite 400	Sacramento	CA	95811

PRINTED NAME OF PERSON SIGNING	TITLE
Edona Evans	Contract Services Section Manager

CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
Edona Evans	7/11/2024

California Department of General Services Approval (or exemption, if applicable)

Exempt per; SCM Vol. 1 4.04.A.3 (DGS memo dated 06/12/1981)

CONTRACTOR

City of Yuba City

a California Government City

By: Shon Harris
Shon Harris (Jul 11, 2024 10:13 PDT)

Date: 7/11/2024

Shon Harris
Mayor

Address:

1201 Civic Center Boulevard
Yuba City, CA 95993

Habitat for Humanity Yuba/Sutter, Inc.

a California nonprofit a California nonprofit public benefit corporation

By:

Date: 07/11/2024

Joseph Hale
Chief Executive Officer

Address:

202 D Street
Marysville, CA 95901

Prep Date: 05/17/2024

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK

1. Authority

California Assembly Bill No. 140 (Chapter 111, Statutes of 2021) (“**AB 140**”) added sections 50675.1.3 and 50675.1.4 to the Multifamily Housing Program (“**MHP**”) (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code). Health and Safety Code section 50675.1.3 provides the statutory basis for the Homekey Program – Round 3 (“**Homekey**” or “**Program**”). Health and Safety Code section 50675.1, subdivision (d) authorizes the Department of Housing and Community Development (“**Department**” or “**HCD**”) to administer MHP.

The Department issued a Homekey Program Notice of Funding Availability, Round 3 on March 29, 2023 (the “**NOFA**”). The NOFA incorporates by reference the MHP, as well as the Multifamily Housing Program Final Guidelines, dated March 30, 2022 and amended on May 5, 2022 (“**MHP Guidelines**”), both as amended and in effect from time to time. The NOFA, further, incorporates by reference, the Uniform Multifamily Regulations (UMRs) (Cal. Code Regs., tit. 25, § 8300 et seq.), effective November 15, 2017, and as subsequently amended, except to the extent that any UMR provision would be inconsistent with the provisions of the NOFA. Homekey grant funds are derived primarily from the state’s direct allocation of the federal Coronavirus State Fiscal Recovery Fund (“**CSFRF**”), which was established by the American Rescue Plan Act of 2021 (“**ARPA**”) (Pub.L. No. 117-2). Homekey funds are also derived from the State of California’s General Fund.

This STD 213, Standard Agreement (“**Agreement**”) is entered under the authority and in furtherance of the Program. This Agreement is the result of an Application by the Grantee, as defined below, for funding under the Program (the “**Grant**”). As such, this Agreement shall be executed by the Grantee. Where the Grantee comprises a Public Entity or Tribal Entity, as defined below, and one or more additional entities, all entities shall execute the Agreement.

This Agreement hereby incorporates by reference the Application, as well as the project report prepared by the Department in reliance on the representations and descriptions included in that Application. This Agreement is governed by the following (collectively, the “**Program Requirements**”), and each of the following, as amended and in effect from time to time, is incorporated hereto as if set forth in full herein:

EXHIBIT A

A. AB 140;

B. The above-referenced MHP statutory scheme;

C. The NOFA;

D. The MHP Guidelines;

E. The UMRs;

F. ARPA and related federal guidance;

G. The award letter issued by the Department to the Grantee; and

H. All other applicable law.

2. Purpose

The Homekey Program is intended to provide housing for individuals and families who are homeless or who are at risk of homelessness, as defined in Part 578.3 of Title 24 of the Code of Federal Regulations, and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases ("**Target Population**").

Grantee applied to the Department for the Grant in order to conduct one or more of the activities outlined in Paragraph 4 below. By entering into this Agreement and thereby accepting the award of Program Grant funds, the Grantee agrees to comply with the Program Requirements and the terms and conditions of this Agreement.

3. Definitions

Any capitalized terms that are not defined below shall have the definitions set forth in the NOFA, the MHP statutes, and the MHP Guidelines. In the event of any conflict, the definitions in this Agreement and the NOFA are controlling.

A. **"Affordability Covenant"** means the legally binding instrument which **(i)** is recorded in first position against Project real property in consideration for the Homekey Program award to the Grantee; **(ii)** imposes use, operation, occupancy, and affordability restrictions on the real property and improvements; and **(iii)** incorporates the Homekey Program Requirements by reference. Upon

EXHIBIT A

its execution, the Affordability Covenant shall be binding, effective, and enforceable against all successors, transferees, and assignees, in accordance with Section 208 of the NOFA, after a certificate of occupancy or its equivalent has been issued for the Project, or if no such certificate is issued, from the date of initial occupancy of the Project. Interim Housing Projects, Permanent Housing Projects, and Permanent Housing Projects on tribal trust land shall be encumbered with 30-year, 55-year, and 50-year Affordability Covenants, respectively.

B. **"AMI"** means Area Median Income.

C. **"Application"** means the application for Grant funds that was submitted in response to the Department's NOFA.

D. "**Assistance Listing Number**" (ALN) formerly known as the Catalog of Federal Domestic Assistance (CFDA) Number, is a five-digit number assigned in the awarding document for all federal assistance award mechanisms.

E. **"Assisted Unit"** means a Homekey-funded residential dwelling unit that is subject to rent, income, occupancy, and other restrictions in accordance with Program Requirements. See also "**Youth Assisted Unit**."

F. **"Chronically Homeless"** is defined in accordance with Part 578.3 of Title 24 of the Code of Federal Regulations.

G. **"Co-Applicant"** means the nonprofit corporation, for-profit corporation, limited liability company, and/or limited partnership that applied for an award of Homekey Grant funds with the Eligible Applicant (i.e., a Public Entity or Tribal Entity).

H. **"Date of Award"** means the date on the award letter issued from the Department to the Grantee.

I. **"Designated Payee"** means the Co-Grantee that will serve as the payee of the Program Grant funds. If applicable, the Designated Payee is identified at Exhibit E of this Agreement.

J. **"Eligible Applicant"** means the Public Entity or Tribal Entity that applied for an award of Homekey Grant funds.

EXHIBIT A

K. **"Eligible Uses"** means the activities that may be funded by the Homekey Program Grant. Those activities are listed at Paragraph 4 below of this Agreement, and at Health and Safety Code section 50675.1.3, subdivision (a).

L. **"Expenditure Deadline for Capital Funds"** means the date by which the capital expenditure award must be fully expended. This deadline is eight (8) months from the Date of Award. or up to 15 months from the Date of Award if an expenditure deadline extension has been requested and approved by the Department.

M. **"Expenditure Deadline for Operating Funds"** means the date by which the operating subsidy award must be fully expended. This deadline is **June 30, 2026**.

N. **"Grantee or Subrecipient"** means the Eligible Applicant (and, if applicable, the Co-Applicant) that has been awarded funds under the Program, and that will be held responsible for compliance with and performance of all Program Requirements. The Grantee may comprise one or more entities, so long as the Grantee structure includes an "Eligible Applicant," as defined in the NOFA and as set forth above. "**Grantee**" refers, both individually and collectively, to the Co-Applicant and/or the Eligible Applicant that received a Homekey Grant after submitting an Application or a joint Application to the Department. When the Grantee comprises two or more entities, each entity may be referred to as a "**Co-Grantee**." On the STD 213 portion of this Agreement, the Grantee is identified as the Contractor.

O. **"Homeless Youth"** means a child, a youth, or a current or former foster youth through the age of 25 who qualifies as "homeless" under any of the relevant definitions set forth or identified at Part 578.3 of Title 24 of the Code of Federal Regulations.

P. **"Homeless Youth Project"** means a Project that was prioritized to receive set-aside Homekey funds because **(i)** at least 25 percent of its Assisted Units will be restricted to Homeless Youth or Youth at Risk of Homelessness; **(ii)** the Grantee jointly applied and/or partnered with a nonprofit corporation with experience serving the foregoing subpopulation; and **(iii)** the Project will provide Supportive Services for Youth Assisted Units using a Positive Youth Development (PYD) model and trauma-informed care. Such Project may also have been prioritized because it is located within a one-mile radius of youth-centered amenities, such as community colleges, universities, trade schools, apprenticeship programs,

EXHIBIT A

employment programs, childcare centers for parenting youth, and community centers for youth.

Q. **"Interim Housing"** means any facility whose primary purpose is to provide a temporary shelter for the Target Population and which does not require occupants to sign leases or occupancy agreements.

R. **"Local Public Entity"** is defined at Health and Safety Code section 50079, and means any county, city, city and county, the duly constituted governing body of an Indian reservation or rancheria, tribally designated housing entity as defined in Section 4103 of Title 25 of the United States Code and Section 50104.6.5, redevelopment 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 also includes any state agency, public district, or other political subdivision of the state, and any instrumentality thereof, that is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income. In addition, and in accord with this Health and Safety Code definition, the term "**Local Public Entity**" also includes two or more local public entities acting jointly.

S. **"Performance Milestones"** means the indicators and metrics of progress and performance that are identified as such at Exhibit E of this Agreement. Grantee's failure to satisfy any one of the Performance Milestones will constitute a breach of this Agreement and will entitle the Department to exercise any and all available remedies, including the recapture of disbursed Grant funds and the cancellation of this Agreement.

T. **"Permanent Housing"** means housing, dwellings, or other living accommodations where the landlord does not limit the tenant's length of tenancy, the landlord does not restrict the tenant's movements, and the tenant has a lease and is subject to the rights and responsibilities of tenancy.

U. **"Program Requirements"** means the legal authority and Program materials listed at Paragraph 1.A – H, above.

V. **"Project"** means a structure or set of structures with common financing, ownership, and management, which provides Permanent Housing or Interim

EXHIBIT A

Housing for the Target Population, and which is subject to an appropriate Affordability Covenant in accordance with Section 208 of the NOFA.

W. **"Public Entity"** is defined in accordance with Health and Safety Code section 50675.1.3, subdivision (a), and means a city, a county, a city and county, and any other state entity, regional entity, or Local Public Entity, including any council of government, metropolitan planning organization, and regional transportation planning agency designated in Section 29532.1 of the Government Code. For purposes of this Agreement, a "**Local Public Entity**" is defined in accordance with Health and Safety Code section 50079 and as set forth above.

X. **"Scope of Work"** or **"Work"** means the work to be performed by the Grantee to accomplish the Program purpose.

Y. **"Supportive Services"** means social, health, educational, income support, employment, and housing stability services and benefits; coordination of community building and educational activities; individualized needs assessment and case management; and individualized assistance with obtaining services and benefits.

Z. **"Target Population"** means individuals and families who are "homeless" or "at risk of homelessness," as those terms are defined in Part 578.3 of Title 24 of the Code of Federal Regulations, and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases. The Target Population also includes Homeless Youth or Youth at Risk of homelessness. For Grantees utilizing HOME-ARP funding as match, the "Target Population" also includes individuals and families who are "Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking" and "Other Populations" as defined in HUD Community Planning and Development (CPD) Notice 21-10.

AA. **"TCAC"** means the California Tax Credit Allocation Committee.

BB. **"Tribal Entity"** means an entity that meets any of the following criteria:

1) Meets the definition of Indian tribe under section 4103(13)(B) of title 25 of the United States Code;
2) Meets the definition of Tribally Designated Housing Entity under section 4103(22) of title 25 of the United States Code;

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3) Is not a federally recognized tribe, but is either:
   a) Listed in the petitioner list of the Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary – Indian Affairs of the Department of the Interior pursuant to Part 82.1 of Title 25 of the Code of Federal Regulations; or
   b) Is an Indian tribe located in the State of California and identified on the contact list maintained by the Native American Heritage Commission for the purpose of consultation pursuant to Government Code section 65352.3.

CC. **"Unique Entity ID"** (UEI) is a 12-character alphanumeric ID assigned to an entity by www.Sam.gov.

DD. **"Youth Assisted Unit"** means an Assisted Unit serving Homeless Youth or Youth at Risk of Homelessness. See also "**Assisted Unit**."

EE. **"Youth at Risk of Homelessness"** means a child, a youth, or a current or former foster youth through the age of 25 who qualifies as "at risk of homelessness" or "homeless" under any of the relevant definitions set forth or identified at Part 578.3 of Title 24 of the Code of Federal Regulations.

4. Eligible Uses

Grantee shall apply the Program Grant funds to one or more of the following uses. All costs in connection with such Eligible Uses must be incurred on or after March 3, 2021, by the Expenditure Deadline for Capital Funds, and by the Expenditure Deadline for Operating Funds, respectively and as applicable. Grantee's use of the funds and scope of work ("**Scope of Work**" or "**Work**") are specified at Exhibit E of this Agreement.

A. Acquisition or rehabilitation, or acquisition and rehabilitation, of motels, hotels, hostels, or other sites and assets, including apartments or homes, adult residential facilities, residential care facilities for the elderly, manufactured housing, commercial properties, and other buildings with existing uses that could be converted to permanent or interim housing.

B. Master leasing of properties for non-congregate housing.

C. Conversion of units from nonresidential to residential.

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D. New construction of dwelling units.

E. The purchase of affordability covenants and restrictions for units.

F. Relocation costs for individuals who are being displaced as a result of the Homekey Project.

G. Capitalized operating subsidies for units purchased, converted, or altered with Homekey Grant funds provided pursuant to Health and Safety Code section 50675.1.3.

5. Rent Standards

A. Permanent Housing. Rent limits for initial occupancy, and for each subsequent occupancy, of an Assisted Unit shall not exceed 30 percent of that Assisted Unit's designated income-eligibility level.

B. Interim Housing. No rent shall be charged to the Target Population residents of Interim Housing.

6. Program Deadlines

A. Acquisition, rehabilitation, and/or construction shall be completed within 12 months of the Date of Award.

B. Grantee shall expend any capital expenditure award by the Expenditure Deadline for Capital Funds.

C. The Homekey-funded portion of the operating award must be disbursed by the Department by June 30, 2025. Grantee shall expend any Homekey-funded operating subsidy award by the Expenditure Deadline for Operating Funds.

D. Full occupancy shall be achieved within 15 months of the Date of Award.

7. Performance Milestones

A. Grantee shall complete each of the Performance Milestones set forth at Exhibit E of this Agreement by the date designated for such completion therein (each, a "**Milestone Completion Date**"). The Performance Milestones shall include, but

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not be limited to, any applicable Expenditure Deadline for Capital Funds, Expenditure Deadline for Operating Funds, or occupancy deadline.

B. The Department may, in its sole and absolute discretion, approve an extension of the acquisition, rehabilitation, construction, and/or occupancy deadlines if the Grantee demonstrates, to the Department's satisfaction, that the relevant delay is caused by reasonably unforeseeable events, conditions, or circumstances.

C. In no event will the Department approve an extension request in the absence of Grantee's demonstration of good cause for said extension, along with Grantee's reasonable assurances that the extension will not result in Grantee's failure to meet other Performance Milestones or any Expenditure Deadline under this Agreement. Construction labor shortages and supply chain issues do not constitute reasonably unforeseeable events, conditions, or circumstances for purposes of an extension request.

D. The Department will not grant extensions of the Expenditure Deadline for Operating Funds.

8. <u>Reporting Requirements</u>

A. Grantee shall submit an annual Homekey Program and Expenditure Report, and comply with all additional reporting requirements, as set forth and specified at Section 601 of the NOFA, all in accordance with the Milestone Completion Date(s) set forth at <u>Exhibit E</u> of this Agreement.

B. After satisfaction of each Performance Milestone, the Grantee shall promptly report its progress, in writing, to the Department.

C. Upon the Department's request and as specified, the Grantee shall provide progress reports in connection with the development plan and any updates to the timeline for completion of the Project. The development plan should include the Project's completion milestones and any updates or substantial changes.

D. In addition, the Grantee shall submit to the Department such periodic reports, updates, and information as deemed necessary by the Department to monitor compliance and/or perform Program evaluation. Any requested data or information shall be submitted in electronic format on a form provided by the Department.

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9. Department Contract Coordinator

The Department's Contract Coordinator for this Agreement is the Deputy Director of the Division of State Financial Assistance, or the Deputy Director's designee. Unless otherwise informed, Grantee shall mail any notice, report, or other communication required under this Agreement by First-Class Mail to the Department Contract Coordinator at the following address or email to Homekey3SGM@hcd.ca.gov:

California Department of Housing and Community Development
Attention: Homekey Program – Round 3 (Homekey)
State Grant Management Section
2020 West El Camino Avenue, Suite 400, 95833
P. O. Box 952050
Sacramento, CA 94252-2050

10. Grantee Contract Coordinator

The Grantee Contract Coordinator for this Agreement may coordinate with the State Grant Management Section Manager for the Homekey Program. Unless otherwise informed, the Department shall mail any notice, report, or other communication required under this Agreement by First-Class Mail, or through a commercial courier, to the Grantee Contract Coordinator at the address specified at Exhibit E of this Agreement.

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BUDGET DETAIL AND PAYMENT PROVISIONS

1. Budget Detail

Grantee has been awarded the Grant amount set forth in this Agreement.

2. Conditions of Disbursement

The Department will disburse the full amount of the Grant award to the Grantee after this Agreement has been fully executed and after the Department receives the Grantee's request for funds, with all required supporting documents appended thereto. The Grantee shall append the following supporting documents to the request for funds, all in form and substance acceptable to the Department:

A. Payee Data Record (STD 204) or Government Agency Taxpayer ID Form, as applicable;

B. An authorizing resolution or set of authorizing resolutions that, in the Department's reasonable determination, materially comports with the Program Requirements (if the Grantee has not already submitted same);

C. Documentary evidence of any eligible costs incurred on or after March 3, 2021 and before the execution of this Agreement;

D. Certification of compliance with California's prevailing wage law, as well as all applicable federal prevailing wage law;

E. A copy of the Department-approved relocation plan for the Project, or a copy of a Department-issued Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement which has been duly executed by the Grantee and approved by the Department;

F. Evidence of the insurance coverages required under the Program and/or a written acknowledgment of self-insured status;

G. Documentary evidence of capacity to provide operating funds for the Project for at least five (5) years;

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H. A current title report (dated within 15 days of the request for funds); or for tribal trust land, a title status report ("**TSR**") or an attorney's opinion regarding chain of title and current title status;

I. A Draft Covenant or Regulatory Agreement must be submitted to the Department for review and approval;

J. Any forms, certifications, or documentation required pursuant to Paragraph 1.F– Additional Conditions Precedent to Disbursement of Exhibit E of this Agreement; and

K. Any other forms, certifications, or documentation deemed necessary by the Department prior to disbursement of Grant funds.

3. Performance

A. After disbursement of the funds, the Grantee shall meet each Performance Milestone set forth at Exhibit E by the relevant Milestone Completion Date. After satisfaction of each Performance Milestone, the Grantee shall promptly report its progress, in writing, to the Department. Grantee may apply to the Department for an extension of a Milestone Completion Date as allowed by the NOFA and this Agreement.

B. FAILURE TO SATISFY ANY ONE OF THE PERFORMANCE MILESTONES WILL CONSTITUTE A BREACH OF THIS AGREEMENT AND ENTITLES THE DEPARTMENT TO MANDATE THE GRANTEE TO RETURN TO THE DEPARTMENT ANY FUNDS DISBURSED; IN ANY SUCH INSTANCE, THE DEPARMENT MAY ALSO CANCEL THIS AGREEMENT WITHOUT OWING ANY DAMAGES OR OTHER PAYMENT TO GRANTEE.

4. Fiscal Administration

A. Grantee shall either deposit the Grant funds with an escrow company licensed to do business in the State of California and in good standing or deposit the Grant funds in an interest-bearing checking or savings account that is insured by the Federal Deposit Insurance Corporation ("**FDIC**"). All interest earned from the deposit of Grant funds shall be used for eligible Program activities.

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B. Any capital expenditure award funds that have not been expended by the Expenditure Deadline for Capital Funds must be returned to the Department with accrued interest. Any operating subsidy award funds that have not been expended by the Expenditure Deadline for Operating Funds must be returned to the Department with accrued interest. Checks shall be made payable to the Department of Housing and Community Development and shall be mailed to the Department at the address below, no later than thirty (30) calendar days after the applicable Expenditure Deadline.

Department of Housing and Community Development
Accounting Division, Suite 300
2020 W. El Camino Avenue
Sacramento, California 95833

5. <u>Duplication of Benefit</u>

Homekey funding is not required to be used as funding of last resort. However, Grantee may not use Homekey funding to cover expenditures that have already been funded through other sources. Expenses that have been or will be reimbursed under any federal program are not eligible uses of Homekey funding.

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HOMEKEY GENERAL TERMS AND CONDITIONS

Federal Grant Identification
$435 million of grant funds are derived from U.S. Department of the Treasury FAIN SLFRP3211 (Coronavirus State and Local Fiscal Recovery Fund (CSFRF) established by the Federal American Rescue Plan Act of 2021 (ARPA) (Public Law 11702). CFDA # 21.027 dated 06/04/2021 and $301 million from State General Fund.

1. Effective Date, Term of Agreement, Timing, and Deadlines

A. This Agreement, when fully executed by the Department and the Grantee, is effective upon the date of the Department representative's signature on the STD 213, Standard Agreement (such date, the "**Effective Date**").

B. This Agreement shall terminate fifteen (15) years after the Effective Date, as stated in Section 2 of the STD 213, Standard Agreement (such date, the "**Expiration Date**").

C. Grantee will receive the disbursement of Program funds after satisfying all conditions precedent to such disbursement, as set forth under Paragraph 2 of Exhibit B and, as necessary and applicable, under Paragraph 1.F – Additional Conditions Precedent to Disbursement of Exhibit E.

D. Any expenses incurred prior to March 3, 2021, after the Expenditure Deadline for Capital Funds, or after the Expenditure Deadline for Operating Funds, respectively and as applicable, are not eligible for payment under the Program, unless an alternate arrangement is legally permissible and has been approved by the Department in advance and in writing.

E. Grant funds that have not been expended by the applicable Expenditure Deadlines shall revert to the Department in the absence of an alternate arrangement that has been approved by the Department in advance and in writing.

2. Termination for Cause

The Department may terminate this Agreement for cause at any time by giving at least fourteen (14) calendar days' advance written notice to the Grantee. Upon such termination, Grantee shall return any unexpended funds to the Department within thirty

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(30) calendar days of the date on the Department's written notice of termination, unless the Department has approved an alternate arrangement in advance and in writing, as provided below. Such termination will not limit any other remedies that may be available to the Department under this Agreement, at law, or in equity. Cause shall consist of Grantee's breach of, or failure to satisfy, any of the terms or conditions of this Agreement. Cause includes but is not limited to the following:

A. Grantee's failure to satisfy the conditions precedent to disbursement or to expend Program Grant funds, as specified.

B. Grantee's failure to timely satisfy each or any of the conditions set forth in these Homekey General Terms and Conditions, the Project-Specific Provisions and Special Terms and Conditions set forth at Exhibit E of this Agreement (including any one of the Performance Milestones), or the award letter.

C. Grantee's violation of any of the Program Requirements.

D. The Department's determination of the following:

1) Any material fact or representation, made or furnished to the Department by the Grantee in connection with the Application or the award letter, shall have been untrue or misleading at the time that such fact or representation was made known to the Department, or subsequently becomes untrue or misleading; or

2) Grantee has concealed any material fact from the Department related to the Application or the Project.

E. The Department's determination that the objectives and requirements of the Homekey Program cannot be met in accordance with applicable timeframes, as memorialized by this Agreement.

In the event of this or any other breach, violation, or default by the Grantee, the Department may give written notice to the Grantee to cure the breach, violation, or default. If the breach, violation, or default is not cured to the Department's satisfaction within a reasonable time, as determined by the Department in its sole and absolute discretion, then the Department may declare a default under this Agreement and seek any and all remedies that are available under this Agreement, at law, or in equity.

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3. <u>Cancellation</u>

A. It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.

B. This Agreement is valid and enforceable only if sufficient funds are made available to the State of California by the United States Government for fiscal years 2021-2022 through 2025-2026 for CSFRF purposes. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner.

C. The parties mutually agree that if the Congress does not appropriate sufficient funds for the CSFRF, this Agreement shall be amended to reflect any subsequent reduction in CSFRF funds.

D. The Department may cancel this Agreement, in whole or in part, if **(i)** sufficient funds are not made available by the United States Government; **(ii)** Congress enacts any restrictions, limitations, or conditions that impact this Agreement or the funding of this Agreement; or **(iii)** cancellation is otherwise permitted under state contracting law.

E. To cancel this Agreement pursuant to this paragraph, the Department shall give thirty (30) calendar days' advance written notice to the Grantee. The Grantee shall return any unexpended portion of its Grant award to the Department within thirty (30) calendar days from the date on the Department's written notice of cancellation, unless **(i)** the parties have agreed upon an alternate arrangement in advance and in writing; or **(ii)** an alternate arrangement is necessary for one or both parties to remain in compliance with ARPA or other applicable law.

4. <u>Eligible Activities</u>

Grant funds awarded to the Grantee shall be applied to the eligible uses set forth at <u>Exhibit A</u> and described in greater detail at <u>Exhibit E</u>. Payment for any cost which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee.

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5. <u>Performance Milestones</u>

Grantee shall timely satisfy and complete all Performance Milestones, as identified at <u>Exhibit E</u> of this Agreement.

6. <u>Article XXXIV</u>

Per Health and Safety Code section 37001, subdivision (h)(5), article XXXIV, section 1 of the California Constitution ("**Article XXXIV**") is not applicable to Homekey-funded acquisition, rehabilitation, reconstruction, alterations work, new construction, or any combination thereof, of lodging facilities or dwelling units.

7. <u>Appraisals</u>

Grantee shall, at the request of the Department, provide an appraisal of any real property or any interest in real property that is acquired with the Grant funds. Any such appraisal shall be prepared in a form, and by a qualified appraiser, acceptable to the Department.

8. <u>Byrd Anti-Lobbying Amendment</u>

(31 U.S.C. 1352) Grantees, Subrecipients, Co-Applicants, Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

9. <u>Anti-Kickback Act of 1986</u>

Grantee shall ensure that all contracts comply with the Anti-Kickback Act of 1986 (41 U.S.C. §§ 5158) that prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind.

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10. Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

11. Contracting and Labor Standards

A. **Davis Bacon Act codified at 40 U.S.C. 3141, et seq. (as amended)**
Where funds provided through this Agreement are used for construction work or in support of construction work, the Grantee shall also ensure that the federal requirements of the Davis Bacon Act codified at 40 U.S.C. 3141, et seq. (as amended), pertaining to federal labor standards and compliance, are met and documented. Grantee recognizes that multiple labor standards (both state prevailing wage and federal Davis-Bacon Act) may apply to the project and both standards must be satisfied.

B. **Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 3701–3708)**
Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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C. For the purposes of this requirement "construction work" includes, but is not limited to, rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Grantee and a licensed building contractor, the Grantee shall serve as the "awarding body" as that term is defined in the California Labor Code. Where the Grantee will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

D. The applicable wage rate determination on construction work will be the more restrictive of the rate prescribed in the California Labor Code Sections 1770-1784, or the Davis-Bacon Wage Determination.

E. Grantee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

F. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Grantee shall ensure that the requirements of California Labor Code, Chapter 1, commencing with Section 1720, Part 7 [California Labor Code Sections 1720-1743] (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

12. Domestic Preferences for Procurement 2 CFR Part 184 § 70915

A. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

B. For purposes of this section:

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1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

13. Prohibition of Certain Telecommunications and Video Surveillance Services or Equipment 2 CFR 200.216

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

A. Procure or obtain;

B. Extend or renew a contract to procure or obtain; or

C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

2) Telecommunications or video surveillance services provided by such entities or using such equipment.

3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of

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the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

D. In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

E. See also Public Law 115–232, section 889 for additional information.

F. See also § 200.471.

14. Environmental Compliance

Grantee shall provide a Phase I Environmental Site Assessment ("**ESA**") for the Project, in conformance with ASTM Standard Practice E 1527, evaluating whether the Project is affected by any recognized environmental conditions. If the Phase I ESA discloses evidence of recognized environmental conditions and Grantee desires to proceed with the Project, the Grantee shall provide the Department with a Phase II report and any additional reports as required by the Department and in a form acceptable to the Department. Any remediation work shall be subject to Department approval. Grantee shall also provide an asbestos assessment and a lead-based paint report for the Department's approval if the Project involves rehabilitation or demolition of existing improvements.

A. Grantee shall comply with the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, as amended, and 33 U.S.C. § 1318 relating to inspection, monitoring, entry, reports, and information, and all regulations and guidelines issued thereunder.

B. Grantee shall comply with the requirements of the Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as

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amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

C. Grantee shall comply with Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50 regarding air quality protections, as amended.

D. Grantee shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4001). Grantee shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

E. Grantee shall comply with the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and Section 401(b) of the Lead-Based Paint Poisoning Prevention Act of 1971. Grantee agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR §570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all Homekey-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be required.

F. 2 CFR Part 200.323 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a

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manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. See § 200.323.

G. Grantee shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), the Archaeological and Historical Preservation Act of 1974 (Public Law 93-291), and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement. Grantee shall also comply with federal Executive Order 11593 on the protection and enhancement of the cultural environment. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

H. Grantee shall comply with all National Environmental Protection Act (NEPA) requirements as applicable to the performance of this Agreement as found in 24 CFR Part 50, 24 CFR Part 58, as applicable, and 40 CFR Parts 1500 – 1508. The CARES Act provides that funds may be used to cover or reimburse allowable costs of eligible activities to prevent, prepare for, and respond to coronavirus incurred by a Grantee after January 21, 2020. However, Grantee shall not execute this Agreement nor receive reimbursement for pre-agreement eligible activity costs until they have successfully documented compliance with the applicable NEPA requirements, including public noticing and publishing.

I. This Agreement does not constitute a commitment of funds or site approval, and the commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the Grantee of an approval of the request for release of funds and certification from the Department under 24 CFR Part 50, 24 CFR Part 58, and 40 CFR 1500 - 1508. The provision of any funds to the project is conditioned on the Grantee's determination to proceed with, modify or cancel the project based on the results of the environmental review. The Grantee will not receive appropriate notice to proceed until they have successfully documented compliance with the applicable NEPA requirements, including public noticing and publishing.

15. Insurance

A. Grantee shall obtain the insurance coverages identified in the NOFA. Grantee

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shall maintain such insurance coverages for either the term of this Agreement or the term of any required restrictive covenant or regulatory agreement, whichever applicable term is longer. Grantee shall name the State of California and the Department, as well as their respective appointees, officers, agents, and employees, as additional insureds on all such policies. Such policies shall provide for notice to the Department in the event of any lapse of coverage or insurance claim thereunder. Prior to disbursement of any Grant funds, Grantee shall provide evidence satisfactory to the Department of its compliance with these insurance requirements.

B. If Grantee is self-insured, in whole or in part, as to any of the required types and levels of coverage, the Grantee shall provide the Department with a written acknowledgment of its self-insured status prior to disbursement of any Grant funds. If the Grantee abandons its self-insured status at any time after execution of this Agreement, the Grantee shall immediately notify the Department, and shall promptly comply with the insurance coverage requirements under the Program.

16. Operating Funds

Grantee shall demonstrate its capacity to provide five (5) years of operating funds for the Project. As set forth at Exhibit B of this Agreement, Grantee shall provide documentary evidence of such capacity prior to disbursement of any Grant funds.

17. Relocation

Grantee shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, in 24 CFR Part 42, 49 CFR Part 24, and 42 U.S. §5304(d) as they apply to the performance of this Agreement. Grantee agrees to comply with 24 CFR 570.606 relating to the acquisition and disposition of all real property utilizing grant funds and to the displacement of persons, businesses, non-profit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds.

Grantee must have a relocation plan prior to proceeding with any phase of a Project or other activity that will result in the displacement of persons, businesses, or farm operations. To ensure that displaced persons and entities do not suffer a disproportionate impact as a result of Projects which benefit the public, all notices to vacate and relocation services must be provided to them in accordance with applicable law. In addition, before the Homekey award will be disbursed, Grantee must have

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either:

A. Department-approved relocation plan; or

B. Department-issued Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement, which has been duly executed by the Grantee and approved by the Department.

18. <u>One-for-One Replacement of Assisted Units</u>

One-for-one replacement of Assisted Units is permissible if approved in advance by the Department per Section 300 of the NOFA, after the Department's determination, in its sole and absolute discretion, that such replacement will not reduce the inventory of units that are already available at affordable rents to households that are at or under 30 percent AMI.

19. <u>Site Control</u>

Unless and except as otherwise expressly approved in writing by the Department or provided at <u>Exhibit E</u> to this Agreement, the Grantee shall have control of the property at all times, and such control shall not be contingent on the approval of any other party. The status and nature of the Grantee's title and interest in the property must be acceptable to the Department. Site control may be evidenced by one of the following:

A. Fee title.

B. A leasehold interest on the property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with, and satisfaction of, all Program objectives and requirements, including, without limitation, those set forth in this Agreement. If the Grantee's interest in the property is a leasehold, and the lessee and the lessor are affiliated or related parties, then the Department may require both the lessee and the lessor to execute this Agreement.

C. An executed disposition and development agreement, or irrevocable offer of dedication to a public agency.

D. A sales contract, or other enforceable agreement for the acquisition of the property. If this form of evidence was relied upon at the time of Application, the

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Department may impose additional Performance Milestones (e.g., presentation of additional or supplemental evidence of eventual site control closer to any projected close of escrow).

E. A letter of intent, executed by a sufficiently authorized signatory of the Grantee, that expressly represents to the Department, without condition or reservation, that, upon successful application, the Grantee shall purchase or otherwise acquire a sufficient legal interest in the property to accomplish the purpose of the award. The letter of intent must also be duly acknowledged by the party selling or otherwise conveying an interest in the subject property to the Grantee. If this form of evidence was relied upon at the time of Application, the Department may impose additional Performance Milestones (e.g., presentation of additional or supplemental evidence of eventual site control closer to any projected close of escrow).

F. Other evidence of site control that gives the Department assurance (equivalent to A-E above) that the Grantee will be able to complete the Project in a timely manner and in accordance with the Program's objectives and requirements, including, without limitation, those set forth or referenced in this Agreement.

20. Adaptability and Accessibility

The Project shall comply with all applicable federal, state and local laws regarding adaptability and accessibility, including, without limitation, the requirements set forth in the NOFA.

21. Title Status and Reports

Grantee shall provide a current title report for the real property on which the Project is located. If Grantee's interest in the property is leasehold, then Grantee shall provide a current title report for the leasehold interest and the fee interest. For tribal trust land, Grantee shall provide a TSR or an attorney's opinion regarding chain of title and current title status. As set forth and specified at Exhibit B of this Agreement, Grantee shall provide such title report or documentation of title status prior to disbursement of any Homekey Grant funds.

22. Title Insurance

Grantee shall provide evidence of title insurance and an ALTA As-Built Survey that are acceptable to the Department. The condition of title, the insurer, the liability amount, the

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form of policy, and the endorsements shall be subject to Department approval. The policy shall insure that Grantee holds good and marketable title (fee simple or leasehold).

23. Property Management Plan

Grantee shall submit a property management plan to the Department for its review and approval. Such management plan shall be consistent with any representations made in the Application, and it shall meet the Program Requirements (e.g., include the management, maintenance, and repair information required by the MHP Guidelines).

24. Supportive Services Plan

Grantee shall submit a Supportive Services plan to the Department for its review and approval. Such Supportive Services plan shall be consistent with any representations made in the Application, and it shall meet the Program Requirements (e.g., provide for delivery of housing stability services and benefits).

25. Nondiscrimination

Grantee shall adopt a written nondiscrimination policy requiring that no person shall, on the grounds of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition, genetic information, citizenship, primary language, immigration status (except where explicitly prohibited by federal law), arbitrary characteristics, and all other classes of individuals protected from discrimination under federal or state housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with Homekey funds.

Statutes and regulations prohibiting discrimination are applicable to this Agreement and include, without limitation, the following:

A. Grantee and any of its contractors, subcontractors, successors, transferees, and assignees shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as

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implemented by the U.S. Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the U.S. Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement;

B. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.";

C. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.); Grantee shall affirmatively further fair housing, in accordance with the Civil Rights Act of 1964 (42 U.S.C §2000a, et seq.), and the Fair Housing Act (42 U.S.C. §3601, et seq.), according to 42 U.S.C. §5306, et seq. and in compliance with California statute (Gov. Code sections 65583, et seq.). Grantee shall comply with the Fair Housing Amendment Act of 1988 (Public Law 100-430). Grantee shall develop and implement an affirmative fair housing marketing plan that is satisfactory to the Department. Appropriate aspects of the initial plan shall be incorporated into the ongoing management plan to ensure positive outreach and informational efforts to those who are least likely to know about and apply for Interim Housing or Permanent Housing. Grantee is encouraged to refer to the guidelines for Affirmative Fair Housing Marketing Plans issued by the U.S. Department of Housing and Urban Development ("**HUD**"). Grantee shall comply with all applicable state and federal fair housing laws;

D. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); prohibiting recipients of federal funds from discrimination against persons with disability; the Americans With Disabilities Act of 1990 prohibiting all public discrimination against persons with disabilities; the Age Discrimination Act of 1975 prohibiting age-based discrimination in federally funded activities; Executive Order 11063 prohibiting discrimination in disposition of properties owned or

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financed with federal funds, as amended by Executive Order 12259; and Executive Order 11246 regarding fair employment, as amended by Executive Orders 11375, 11478 and 12086; and HUD regulations heretofore issued or to be issued to implement these authorities relating to civil rights;

E. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.); The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.); prohibiting age-based discrimination in federally funded activities.

Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.); Americans With Disabilities Act of 1990 prohibiting all public discrimination against persons with disabilities. The State of California nondiscrimination statutes, regulations, and standards set forth and identified in the NOFA and at Exhibit C of this Agreement.

26. Affirmative Fair Housing Marketing Plan and Fair Housing Compliance

A. Grantee shall affirmatively further fair housing, in accordance with the Civil Rights Act of 1964 (42 U.S.C §2000a, et seq.), and the Fair Housing Act (42 U.S.C. §3601, et seq.), according to 42 U.S.C. §5306, et seq. and in compliance with California statute (Gov. Code sections 65583, et seq.). Grantee shall comply with the Fair Housing Amendment Act of 1988 (Public Law 100-430).

B. Grantee shall develop and implement an affirmative fair housing marketing plan that is satisfactory to the Department. Appropriate aspects of the initial plan shall be incorporated into the ongoing management plan to ensure positive outreach and informational efforts to those who are least likely to know about and apply for Interim Housing or Permanent Housing. Grantee is encouraged to refer to the guidelines for Affirmative Fair Housing Marketing Plans issued by the U.S. Department of Housing and Urban Development ("**HUD**"). Grantee shall comply with all applicable state and federal fair housing laws.

27. Grantee Acknowledgment of the Pet Friendly Housing Act of 2017

By executing this Agreement, Grantee acknowledges that the Pet Friendly Housing Act of 2017 (Health & Saf. Code, § 50466) requires each housing development, if it is financed on or after January 1, 2018 pursuant to Division 31 of the Health and Safety Code, to authorize a resident of the housing development to own or otherwise maintain one or more common household pets within the resident's dwelling unit, subject to applicable state laws and local governmental ordinances related to public health, animal

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control, and animal anticruelty.

28. Final Certificate of Occupancy

Grantee shall provide a final certificate of occupancy (or an equivalent form of occupancy certification or approval) issued by the local agency having jurisdiction over such certificates.

29. Occupancy

The Assisted Units shall be occupied by the Target Population, and such units shall be in decent, safe, and sanitary condition at the time of their occupancy. In addition, the Grantee shall certify, upon occupancy, that it will employ the core components of Housing First (as set forth at Welfare and Institutions Code section 8255) as part of its property management plan and Supportive Services plan.

30. Tenant Selection

Referrals to Assisted Units shall be made through the local Coordinated Entry System ("**CES**"), or another comparable prioritization system based on greatest need shall be used. All referral protocols for Assisted Units shall be developed in collaboration with the local Continuum of Care and implemented consistent with the Program Requirements.

31. Participation in Statewide HDIS/HMIS

Grantee shall support Continuum of Care participation in the statewide Homeless Data Integration System ("**HDIS**"). As required by and in accordance with state and federal law (including all applicable privacy law), Grantee shall further disclose relevant data to the local Homeless Management Information System ("**HMIS**") and comparable data collection systems.

32. Affordability Covenant

A. An Affordability Covenant shall be recorded against the Project real property in accordance with Section 208 of the NOFA and this Agreement. For Interim Housing Projects, the Department will prepare, and the Public Entity or Tribal Entity shall cause, a 30-year Affordability Covenant to be recorded against the Project real property.

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B. For Interim Housing Projects that will ultimately result in Permanent Housing, the Public Entity or Tribal Entity shall prepare and cause a 30-year Affordability Covenant to be recorded against the Project real property during the interim phase and upon conversion to permanent housing the public entity or tribal entity shall cause a 55-year affordability covenant.

C. For Permanent Housing Projects, the Public Entity or Tribal Entity shall prepare and cause a 55-year Affordability Covenant to be recorded against the Project real property. For Permanent Housing Projects located on tribal trust land, a 50-year Affordability Covenant shall be recorded against the Project real property.

D. The Affordability Covenant shall require integration of the Target Population within all entrances, common areas, and buildings that comprise the Project.

E. The Affordability Covenant shall include occupancy and rent restrictions that maintain the Project's accessibility to the Target Population over the full term of the Affordability Covenant.

F. All Affordability Covenants are subject to the advance written approval of the Department, and shall be acceptable to the Department in form, substance, and priority. Project-specific requirements and deadlines are set forth at Exhibit E of this Agreement.

33. Restrictions on Sales, Transfers, and Encumbrances

Grantee shall not, for the duration of this Agreement, sell, assign, transfer, or convey the Project, or any interest therein or portion thereof, without the express prior written approval of the Department.

34. Retention, Inspection, and Audit of Records

A. Grantee is responsible for maintaining records which fully disclose the activities funded by the Grant. Grantee shall retain all records for a period of five (5) years after the expiration of this Agreement, unless a longer retention period is stipulated. If any litigation, claim, negotiation, audit, monitoring, inspection or other action commences during this required retention period, all records must be retained until a full and final resolution of the action.

B. The Department, as well as its appointees, employees, agents, and delegates, shall have the right to review, obtain, and copy all records pertaining to performance under this Agreement. The U.S. Department of the Treasury and

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any authorized oversight body or representative, including, without limitation, the Treasury's Office of Inspector General, the Government Accountability Office, and the Pandemic Relief Accountability Committee, shall have the right of access to such records in order to conduct audits or other investigations. Grantee shall provide any relevant information requested, and shall permit access to its premises, upon reasonable notice and during normal business hours, for the purpose of interviewing employees and inspecting and copying books, records, accounts, and other relevant material.

C. At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Project. At the Department's request, the Grantee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The audit shall be performed by a qualified state, local, independent, or Department auditor. Where an independent auditor is engaged, the audit services agreement shall include a clause which permits the Department to have access to the independent auditor's relevant papers, records, and work product.

D. If there are audit findings, the Grantee shall submit a detailed response to the Department for each audit finding. The Department will review the response. If the Department determines, in its sole and absolute discretion, that the response is satisfactory, the Department will conclude the audit process and notify the Grantee in writing. If the Department determines, in its sole and absolute discretion, that the response is not satisfactory, the Department will contact the Grantee, in writing, and explain the action required to cure any audit deficiencies. Such action could include the repayment of ineligible costs or other remediation.

E. If so directed by the Department upon the termination or expiration of this Agreement, the Grantee shall deliver all records, accounts, documentation, and other materials that are relevant to this Agreement to the Department as depository.

35. <u>Site Inspection</u>

The Department reserves the right, upon reasonable notice, to inspect the Project to determine whether it meets the Program Requirements. If the Department reasonably determines that the site is not acceptable for the Project in accordance with] the Program Requirements, the Department reserves the right to rescind the award and the Grant. Nothing in this paragraph is intended to create or imply any obligation of the Department to inspect the Project.

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36. Compliance with State and Federal Laws, Rules, Guidelines, and Regulations

A. Grantee, its agencies or instrumentalities, contractors, sub-grantees, and subrecipients shall comply with all local, state, and federal laws, statutes, and regulations, as well as policies and guidelines established by the Department for the administration of the Homekey program.

B. Grantee shall comply with the requirements of 24 CFR 570.480 et seq., the Housing and Urban Development (HUD) 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, as adopted by HUD at 2 CFR 2400, Title II of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. § 12701 et seq.) and all federal regulations and policies issued pursuant to these regulations. The Grantee further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

37. Updated Information

If there is any change in the information that has been provided to the Department, Grantee shall promptly provide the Department with updated documentation (e.g., updated sources and uses). All changes shall be subject to Department approval. In addition, Grantee shall promptly notify the Department, in writing, of any changes in Grantee or Co-Grantee organization, authorization, or capacity.

38. Survival of Obligations

The obligations of the Grantee, as set forth in this Agreement, shall survive the termination or expiration of this Agreement.

39. Litigation

Grantee shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement, the Program Requirements, the interests of the Department, and the objectives of the Homekey Program.

40. Entire Agreement; Severability

This Agreement constitutes the entire agreement between the Grantee and the

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Department. All prior representations, statements, negotiations, and undertakings with regard to the subject matter hereof are superseded hereby. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

41. Modification or Waiver under AB 1010

The Department reserves the right to waive or modify any requirement under this Agreement, or any Program Requirement, as authorized by and in accordance with Assembly Bill No. 1010 (Chapter 660, Statutes of 2019) ("**AB 1010**"), which is codified at Health and Safety Code section 50406, subdivision (p).

42. Waivers

No waiver of any breach, violation, or default under this Agreement shall be held to be a waiver of any other or subsequent breach or violation thereof or default thereunder. The Department's failure, at any time, to enforce the provisions of this Agreement or to require the Grantee's performance under this Agreement shall in no way be construed as a waiver of such provisions or performance, and it shall not affect the validity of this Agreement or the Department's right to enforce this Agreement.

43. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

This Agreement is subject to the administrative requirements, cost principles, and audit requirements for federal awards to non-federal entities, which are set forth at 2 Code of Federal Regulations part 200.

A. Accounting Standards: Grantee agrees to comply with, and administer the activity in conformance with, 2 CFR Part 200.300 et seq, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Debarred contractors: It certifies that neither the Applicant or its staff are presently debarred, suspended, proposed for debarment, declared ineligible, or

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voluntarily excluded from participation in federal assistance programs, in any proposal submitted in connection with the Homekey program, per the Excluded Party List System located at https://www.sam.gov/SAM/. In addition, the Applicant will not award contracts to or otherwise engage the services of any contractor while that contractor (or its principals) is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction, in any proposal submitted in connection with the Homekey program under the provisions of 24 CFR Part 24.

Single Audit Requirements: Grantee is responsible for complying, as necessary, with the Single Audit Act and its implementing regulation at 2 Code of Federal Regulations part 200, subpart F regarding audit requirements.

44. Disputes

In the event of any conflict between this Agreement and any Grantee documents or side agreements, this Agreement and the Program Requirements shall prevail, are applicable, and shall be enforceable by the Department even if the Department provided review or approval of such documents and side agreements.

45. Consent

The parties agree that wherever the consent or approval of the Department or Grantee is required under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned, or delayed, unless the same is specified as being in that party's sole and absolute discretion, or other words of similar import.

46. Grantee Liability

Grantee shall remain liable to the Department for performance under this Standard Agreement and compliance with all Program Requirements regardless of any Department-approved transfer or assignment of interest, or of any designation of a third party for the undertaking of all or any part of the Scope of Work. Likewise, each Co-Grantee shall remain jointly and severally liable to the Department for performance under this Standard Agreement and compliance with all Program Requirements regardless of any Department-approved transfer or assignment of interest; any designation of a third party for the undertaking of all or any part of the Scope of Work; or the Co-Grantees' identification of a Designated Payee.

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47. Defense and Indemnification

Grantee agrees to defend, indemnify, and hold harmless the Department, and its appointees, agents, employees, and officers, from any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), which may arise in connection with Grantee's use of the Grant funds and performance under this Agreement. If any attorney, including the California Attorney General, is engaged by the Department to enforce, construe, or defend any provision of this paragraph, with or without the filing of any legal action or proceeding, Grantee shall, individually or jointly, pay to the Department, immediately upon demand, the amount of all attorneys' fees and costs incurred by the Department in connection therewith.

48. Time Is of the Essence

Time is of the essence under this Agreement, and in the performance of every term, covenant, and obligation contained herein.

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PROJECT-SPECIFIC PROVISIONS AND SPECIAL TERMS AND CONDITIONS

1. PROJECT-SPECIFIC PROVISIONS

Project Name: Merriment Village Apartments

Address: 428 N. Walton Avenue, Yuba City, CA 95993

Assessor Parcel Numbers (APNs): 058-120-001-000

A. Permanent Housing – Award, Disbursement, and Eligible Use(s)

Grantee received Homekey Program award letter on February 13, 2024 (the "**Award Date**"). Pursuant to that award letter, the Grantee is receiving Homekey Grant funds in the amount of $24,632,331.00 (the "**Award**"). The Payee of these funds is the City of Yuba City. Grantee will use the funds to provide Permanent Housing for the Target Population and subpopulations as specified in the unit mix chart included herein. Specifically, the Grantee will apply these funds towards the following eligible use(s):

1) New Construction of dwelling units to provide Permanent Housing for the Target Population.

The Homekey Award is comprised of:

Total Award	$24,632,331.00
Capital Award	$22,016,906.00
Acquisition	$0.00
Rehabilitation	$0.00
Master Leasing	$0.00
New Construction	$22,016,906.00
Affordability Covenants	$0.00
Relocation	$0.00
Operating Award	$2,615,425.00

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B. **Unit Mix**

# of Bedrooms	Total Homekey Units	Homekey-funded Manager Units	Homekey-Assisted Units	AMI Income Limit	Target Population or Subpopulation Restriction
2-Bedroom	79	0	79	30%	Homeless
3-Bedroom	1	1	0	N/A	Manager Unit
Totals:	80	1	79		

Grantee must use referrals to the Homekey Assisted Units through the local Coordinated Entry System (CES) or comparable prioritization system based on greatest need. All referral protocols for Homekey Assisted Units must be developed in collaboration with the local CoC and implementation consistent with the requirements set forth in the Homekey NOFA.

C. **Project Narrative**

1) Merriment Village Apartments is the Phase 1 of a larger project that will create 80 newly construction units, with 79 two-bedroom units, and one (1) three-bedroom manager's unit. The Project will provide permanent supportive housing for households with incomes equal to or less than 30% of Area Median Income (AMI). Seventy-nine (79) units will exceed federal and state accessibility requirements for persons with mobility disabilities and will include features accessible to persons with hearing or vision disabilities. Each unit will include a refrigerator, microwave, basic cooking utensils, and storage for food and kitchenware, a bed, nightstand, a desk, or table, living space seating and storage units. Off-site amenities, located within two miles of the project include transportation stops, a medical clinic, a grocery store/supermarket, a pharmacy, and a public park.

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D. **Scope of Work**

1) **Construction and Rehabilitation Detail:**

Overall, the scope of work for phase one of the Merriment Village Project involves site preparation, infrastructure development, and construction of the 79 housing units.

a) Prepare and clear the land for construction, conduct soil testing and prepare the site foundation, install temporary utilities to support construction activities

b) Develop ground for community center and playground area, Construct roadways and sidewalks to connect the housing units to the community.

c) Install drainage and irrigation systems

d) Install plumbing, electrical, and HVAC systems in each unit.

e) Install smoke detectors and fire suppression systems to ensure safety.

2) **Supportive Services and Staffing Detail:**

Grantee shall assure that the case manager ratio for this project will be maintained at 14.4 to 1 for Homelessness. Habitat for Humanity: Yuba/Sutter, Inc. will practice the Housing First model and will manage the property. Supportive Outreach Services (SOS) will lead the project's Supportive Services. On site services include Case management and Hosing Navigation; Household management skills: managing costs,

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cooking, and shopping; One-on-one coaching in house cleaning; use of utilities, household appliances and plumbing conditions of a lease.

E. **Grantee Contract Coordinator**

Authorized Representative Name:	Shon Harris
Authorized Representative Title:	Mayor
Entity Name:	City of Yuba City
Address:	1201 Civic Center Boulevard, Yuba City, CA 95993
Telephone No.:	(530) 822- 4602
E-Mail Address:	shonharris@yubacity.net

Authorized Representative Name:	Joseph Hale
Authorized Representative Title:	CEO
Entity Name:	Habitat for Humanity Yuba/Sutter, Inc.
Address:	202 D Street, Marysville, CA 95901
Telephone No.:	(530) 742-2727, Ext 211
E-Mail Address:	jhale@yubasutterhabitat.org

F. **Additional Conditions Precedent to Disbursement**

None

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G. **Budget Detail**

1) Grantee is obligated to cover the Project's development, operations, and service costs for five (5) years. Grantee will satisfy this obligation by leveraging funding commitments, or other reasonable funding assurances, from the following funding sources:

   a) Homekey Award dated February 13, 2024, for a funding commitment of $24,632,331.00 for new construction.

   b) The Habitat for Humanity (HHYS) letter dated May 14, 2024, for a funding commitment of $1,000,000.00 for in kind development materials.

   c) The HHYS letter dated May 14, 2024, for a funding commitment of $4,445,175.00 for project development in cash from ReStore.

   d) The HHYS letter dated May 14, 2024, for a funding commitment of $989,965.00 for in kind furnishings.

   e) The City of Yuba City letter dated January 8, 2023, for a funding commitment of $155,000 annually for project years one to three for a total of $465,000.00 in Permanent Local Housing (PLHA) for construction and development.

   f) The City of Yuba City letter dated January 8, 2023, for a funding commitment of $1,787,922.00 for development.

2) Grantee shall maintain the ongoing affordability of the Project by leveraging the following non-Homekey sources of rental or operating subsidies:

   a) The HHYS letter dated May 14, 2024, for a funding commitment of $183,333.33 annually for project years four to fifteen for a total amount of $2,200,000.00 for in kind support services.

   b) The HHYS letter dated May 14, 2024, from CalAIM partnership agreement for a funding commitment of $1,478,011.00 in community support for project years four and five. HHYS also

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commits $9,289,712.00 in operating subsidy from vouchers & medical during project years four through fifteen.

c) The City of Yuba City letter dated January 8, 2023, for a funding commitment of $155,000.00 annually for project years four through fifteen for a total amount of $1,860,000.00 in PLHA funds for operating subsidies.

H. **Performance Milestones**

Performance Milestones	Milestone Completion Date
Project escrow must be closed and Capital funds must be fully expended.	May 13, 2025 (This date includes a 7-month extension granted by the Department)
Homekey-funded operating funds must be fully expended.	June 30, 2026
All Acquisition, Construction and/or Rehabilitation of the Homekey Project must be completed.	February 13, 2025
Full occupancy by the Target Population must be accomplished in accordance with the descriptions and representations set forth in the Application.	May 13, 2025
A copy of Grantee's written nondiscrimination policy (in accordance with Exhibit D of this Agreement) must be submitted to the Department.	October 14, 2024

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Performance Milestones	Milestone Completion Date
A Department-approved Affordability Covenant must be recorded against the Project real property after the Departments approval to record, and as specified and described in the NOFA and this Agreement.	30 days from Standard Agreement execution *But not before Department approval
A copy of the Notice of Exemption from the California Environmental Quality Act (CEQA) filed with the Office of Planning and Research (OPR) as applicable.	October 14, 2024
A Homekey Program and Expenditure Report must be submitted to the Department as specified and described in the NOFA.	January 31 – Each year for five (5) years following the Effective Date of this Agreement.

2. SPECIAL TERMS AND CONDITIONS

The following Special Terms and Conditions are applicable to this Project and shall control notwithstanding anything to the contrary herein:

A. Affordability Covenant

1) The state, regional, local, or tribal Grantee shall ensure that the Project is duly encumbered with a 55-year Affordability Covenant that **(a)** is recorded in first position against the Project for the benefit of the state, regional, local, or tribal Grantee; **(b)** restricts the use, operation, occupancy, and affordability of the Project in accordance with this Agreement and the applicable Program Requirements; **(c)** duly names the Department as a third-party beneficiary with the right and privilege, but not the obligation, of enforcement thereof; and **(d)** is otherwise in form and substance acceptable to the Department.

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2) The Affordability Covenant must be recorded against the real property of the Project site by the Milestone Completion Date set forth herein. The Grantee shall obtain the Department's express written approval of the Affordability Covenant prior to the recordation of the same. After recordation, the Grantee shall promptly provide the Department with a conformed copy of the recorded Affordability Covenant.

3) Unless otherwise authorized by the prior and express written approval of the Department, the Affordability Covenant must be recorded as a lien against the Project in first position, and must remain in first position, over all other Project agreements, covenants, or other matters of record on the real property for the period of affordability required by the Program.

B. Grantee has committed to serve specific sub-populations as per NOFA Section 304, Application Scoring Criteria (3)(a). Grantee shall ensure that at least 50 percent of the Project's Assisted Units are restricted to occupancy by households experiencing Homelessness.

C. Grantee has committed to a 55-year use restriction for the Project and has waived any potential accommodation by the Department to increase income limits, as per NOFA Section 304, Application Scoring Criteria, (3)(c), for 100 percent of the Assisted Units.

D. Grantee has committed to the following accessibility details for the Project, as per NOFA Section 304, Application Scoring Criteria, (3)(d), the Project will exceed the state and federal accessibility requirements set forth in the NOFA. At least 15 percent of the Project's Assisted Units must have features accessible to persons with mobility disabilities. At least 10 percent of the Project's units must have features accessible to persons with hearing or vision disabilities.

ATTACHMENT 2

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

City Clerk
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993

NO FEE-Government Code §6103

DBL

NF

Recorded in Official Records
County of Sutter
Donna M. Johnston
County Clerk-Recorder

2024-0005918

07/11/2024 12:34 PM
Titles: 2 Pages: 76
Recording Fees: $0.00
CA SB2 Fee: $0.00
Taxes: $0.00
Total Fees: $0.00
RBRAR

Development Division, Public Works Department
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993

COVENANT AND LOAN AGREEMENT MERRIMENT VILLAGE (PHASE I)

01248.0005/996410.1

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THIS COVENANT AND LOAN AGREEMENT ("**Agreement**") is made effective this 11th day of July 2024 ("**Effective Date**"), by and between **CITY OF YUBA CITY,** a general law city ("**City**"), and **HABITAT FOR HUMANITY YUBA/SUTTER, INC.**, a California nonprofit corporation public benefit corporation ("**Habitat**"). City and Habitat are sometimes each individually referred to as a "**Party**" and jointly as the "**Parties.**"

RECITALS

A. In March of 2023 the California Department of Housing and Community Development, (**HCD**), released the Notice of Funding Availability for Homekey 3.0 with approximately $37,158,338 available for the Sacramento region.

B. On June 6, 2023, Habitat acquired that certain unimproved real property consisting of approximately 7.5 acres located at 428 North Walton Avenue in City of Yuba as legally described on Exhibit A attached hereon ("**Property**") for a purchase price of $2,125,000. Concurrently with recordation of the deed, that certain Deed of Trust with Assignment of Rents dated June 1, 2023 securing the sum of $850,000 which was recorded as Instrument No. 2023-0005025 in the Official Records of Sutter County ("**Original Deed of Trust**").

C. On April 18, 2023, City Council received a presentation from Habitat for the construction of a 217 unit apartment complex titled "Merriment Village Apartments," on the Property. The estimated cost of the total project is approximately $75 million ("**Project**"). Rather than attempting to develop the Project all at once, Habitat proposed to split the Project into multiple phases, with Phase 1 including a 4-story, 79-unit assisted units and one manager unit, l to apply for Homekey program funding ("**Phase 1**").

D. HCD funding typically requires a joint application with a local public entity. The public entity does not actually construct or administer the approved project but does remain jointly and severally liable under the Standard Agreement. On May 2, 2023, City Council adopted Resolution No. 23-056 authorizing a joint application with Habitat for Humanity to apply for Homekey 3.0 funds for Phase 1 and authorized the Mayor to submit a Funding Commitment letter for City contributions.

E. The joint application was submitted to HCD in May 2023 and was approved by HCD on February 13, 2024 ("**Award Date**"), and on June 13, 2024, City received the Standard Agreement from HCD ("**Standard Agreement**"), awarding up to $24,632,331 in Homekey funding for Phase 1 ("**Grant Funds**") consisting of $22,632,331 for the construction of capital improvements ("**Grant Construction Funds**") and $2,615,425 for operating expenses ("**Grant**

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Operating Funds"). Upon completion, acceptance and execution of the Standard Agreement by HCD, the commitment of HCD to issue the Grant Funds pursuant to the Standard Agreement is sometimes hereinafter referred to as the "**Award**."

F. The Standard Agreement provides that the Grant Funds can be distributed to "Grantee" which is Habitat as the Eligible Applicant. However, the Standard Agreement provides that the City is fully jointly and severally liable for breach of the Standard Agreement, City is requiring that all Grant Funds must be transferred to City for distribution by City for the construction of Phase I.

G. Habitat has indicated to City that there is currently a funding gap between the Grant Construction Funds and construction bids of approximately $6,000,0000 to $7,000,000 ("**Gap Funding**"). While Habitat has indicated it has several plans in place to secure sufficient money to cover the Gap Funding which are summarized on Exhibit E to the Standard Agreement , none of the plans will be able to be implemented at the time the Standard Agreement provided by HCD must be executed by July 12, 2024.

H. The Standard Agreement specifies a deadline for construction to be complete. This deadline has already started running during the time that HCD has been processing the application. As a practical matter, the default HCD timeline is not sufficient for projects of this type and scale. Habitat currently estimates that the project will take longer to complete than the time currently left. Based on its experience, Habitat has represented that extensions are commonly granted and recommends coordinating a time extension once sufficient progress has been made. City desires to ensure the request is made as soon as reasonably feasible.

I. The Parties now desire to enter into this Agreement to further define the roles and responsibilities of each for the construction of Phase I and implementation of the Standard Agreement.

AGREEMENT

In consideration of the mutual covenants and promises contained herein, Habitat and City, mutually agree as follows:

1. **<u>Recitals</u>.** The Recitals are incorporated herein as if set forth in full.

2. **<u>Standard Agreement</u>.** The Parties agree that the terms of this Agreement shall be interpreted consistently with the obligations of the Standard Agreement which is attached hereto as <u>Exhibit B</u> ("**Standard Agreement**"), but that this Agreement shall further refine and clarify the obligations of each Party with respect to Phase I.

3. **<u>General Responsibilities of Parties</u>.**

a. **<u>City</u>.** If feasible, City shall receive **all** Grant Funds (both the Grant Construction Funds and the Grant Operating Funds) directly from HCD to be used for construction of Phase 1 consistent with the Standard Agreement. However, if, for any reason, any of the Grant Funds are received by Habitat, all such funds must be immediately transferred to City and Habitat's failure to promptly transmit all funds to City shall be a material default under this Agreement. City shall establish a project management disbursement process for the disbursement of the funds for payment of the construction costs for Phase I consistent with standard construction loan disbursements. City shall review any reports and other required documentation submitted by Habitat to HCD as required under the Standard Agreement. If Habitat fails to timely submit said reports to the City or HCD, the City may submit the same to HCD at Habitat's sole cost and expense.

b. **<u>Habitat</u>.** Habitat shall (i) comply with the requirements of the State Homekey Program as detailed in the Homekey 3.0 NOFA dated March 29, 2023, and amended November 15, 2023 ("**HomeKey Program**"), and the Standard Agreement; (ii) comply with all other applicable federal, state, and local laws, regulations and polices including, but not limited to, those governing the Grant Funds, the construction of Phase I (which may include prevailing wages), etc.; (iii) comply with all Project-specific provisions and special terms and conditions identified in the Standard Agreement including, but not limited to, Exhibit E; (iv) comply with all project management, construction oversight, and budget management as required by City and generally defined in <u>Exhibit C</u> attached hereto ("**Construction & Management Requirements**"); (v) provide periodic detailed construction updates and financial reporting as required by City from time to time; and (vi) perform marketing and community outreach to seek qualified persons to occupy Phase I when completed. Habitat shall submit to HCD any required reports and other required documentation to HCD as required under the Standard Agreement, after first submitting the same to the City for review and approval. Habitat confirms to City that all its representations and warranties in the Standard Agreement are true and correct as of the Effective Date.

c. **<u>City and Habitat</u>.** Upon issuance of the Award, Habitat shall promptly and diligently (i) provide and receive approval of plans and specifications for Phase I consistent with the Scope of Work defined in the Standard Agreement for approval by City ("**Approved Plans**"); (ii) complete a construction loan budget for Phase I for review and approval by City ("**Approved Construction Budget**"); (iii) prepare a

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performance schedule (for both obtaining the Gap Funding and construction of Phase I for approve by City ("**Approved Performance Schedule**"); (iv) diligently seek the Gap Funding on reasonable terms and approved by City consistent with the construction loan budget; (v) seek approvals and entitlements from City for Phase I in accordance with City's standard process; and (vi) comply with all requirements of the Standard Agreement and this Agreement. City shall have the right, but not the obligation, to construct or complete (directly or through a third party vendor) the Phase I improvements, to ensure budget management or to secure the Gap Funding, to guarantee construction Phase 1 or its completion to secure the Gap Funding, or to operate Phase I when completed. Nothing in this Agreement shall be deemed or construed to permit or authorize any use of the Property or any portion thereof to any other uses, or to construct any improvements thereon, other than in accordance with the Approved Plans.

4. Time for Performance and Extensions. Habitat shall diligently comply with all of the covenants, conditions and obligations under the Standard Agreement. As between the Parties, Habitat shall be solely responsible for compliance within the timelines required by the Standard Agreement, including, but not limited to, those set forth in Exhibit E thereto. When a delay occurs due to unforeseen causes beyond the control and without the fault or negligence of Habitat, Habitat shall promptly notify City and then seek and secure an extension from HCD consistent with the requirements of the Standard Agreement and shall cooperate with City regarding the same. If reasonably required to comply with the construction deadline, Habitat shall promptly apply for an extension from HCD to complete Phase 1 construction not later than when progress of the construction is 25% complete and shall provide a copy of same to City.

5. Disbursement of Grant Construction Funds.

a. General Disbursement Requirements. If the Award is made and the Grant Funds are received by City, City shall disburse the Grant Construction Funds to Habitat pursuant to a standard construction disbursement control system which services may be provided by a third party vendor retained by City ("**Construction Disbursement Control Company**") in accordance with a construction disbursement control agreement ("**Construction Disbursement Control Agreement**") as approved by City with the cost to be reimbursed to City by Habitat. The Construction Disbursement Control Agreement shall provide for disbursement of the Grant Construction Funds subject to satisfaction of standard conditions including, but not limited to, (a) affidavit from the engineer or architect that the work has been completed in accordance with the Approved Plans; (ii) City inspection approvals have been issued; (iii) mechanic lien releases have been provided; (iv) an endorsement to the Loan Title Policy (as defined in Section 7) has been issued; (v) Habitat is not in default under this Agreement or the Standard Agreement; and (vi) such other requirements as reasonably required by City.

Habitat shall only use the Grant Construction Funds for construction of Phase 1 (both hard and soft costs as provided in the Approved Construction Budget), and said funds shall not be used for any other purpose.

b. Conditions to Obligation to Disburse. Habitat shall not be entitled to any disbursements of the Grant Construction Funds or funds from any other source until all of the following conditions have been satisfied to the satisfaction of City:

i. **Insurance.** Habitat has provided the insurance as specified in Section 9.

ii. **Gap Funding.** Habitat has secured the Gap Funding as required by Section 6.

iii. **Security.** Habitat has executed the Construction Note and Construction Deed of Trust to City which is insured by a loan title policy pursuant to Section 7 and also provided other security agreements and documents as specified in Section 7.

iv. **Affordability Covenant.** The Affordability Covenant as defined in the Standard Agreement and as approved by City shall be executed and recorded against the Property ("**Affordability Covenant**").

v. **No Default.** Habitat is no in default of this Agreement or the Standard Agreement.

If Habitat fails to satisfy all of the foregoing conditions in accordance with the Approved Performance Schedule, City shall have the right, in its discretion, to terminate the Standard Agreement and return all Grant Funds to HCD.

c. Periodic Disbursements. The Grant Construction Funds shall be disbursed periodically pursuant to the Construction Disbursement Control Agreement.

6. **<u>Gap Funding</u>.** Habitat shall be solely responsible for, and shall promptly seek, non-federal funding to secure the Gap Funding in accordance with the Approved Performance Schedule. Habitat shall provide written updates of its efforts to secure Gap Funding to City Manager by the 20th of each month or more frequently if requested by City.

City shall reasonably cooperate with Habitat in securing the Gap Funding but City shall not be required to incur costs nor provide any guaranty to any lender providing the Gap Funding ("**Gap Funding Lender**"). The agreement with the Gap Funding shall be subject to the review and approval of City and shall specify that the funds may be distributed in accordance with the Approved Construction Budget and shall be controlled by and through the Construction

Disbursement Control Company at the discretion of City. City may, in its sole discretion, elect to subordinate the Construction Deed of Trust to a deed of trust required by the Gap Funding Lender upon terms and conditions as required by City which may include the right of City to assume the Gap Funding Agreement.

If Gap Funding has not been secured prior to the first disbursement, Habitat shall furnish to City a performance bond in the amount of the Gap Funding, but not less than $7,000,000, to be conditioned upon the faithful performance of this Agreement, and naming City of Yuba City as obligee. The performance bond shall be subject to prior review as to form by City Attorney, and then approval of City Manager and City Attorney as to legal form. The bond shall be by one or more duly authorized corporate sureties licensed to do business in California subject to the approval of City and on forms furnished or approved by City.

7. Construction Deed of Trust and Other Security Habitat shall execute and deliver to City a promissory note in the amount of the Grant Construction Funds in a form as required by City ("**Grant Construction Note**") to be secured by construction deed of trust in a form specified by City to ("**Construction Deed of Trust**") which shall be executed and acknowledged by Habitat and recorded in first lien position on the Property although City may, in its sole discretion, elect to allow the Construction Deed of Trust to be in second lien position junior to the Original Deed of Trust although the Original Deed of Trust shall be required to subordinate to the Affordability Covenant. The Grant Construction Note shall provide, among other things, that a default by Habitat under this Agreement shall be a default under the Note, that default under the Standard Agreement is a default under the Note, that this Agreement is NOT secured by the Construction Deed of trust, a due on sale or encumbrance clause, an acceleration clause and other standard and reasonably provisions. Habitat shall provide a loan title insurance policy issued by Placer Title Company ("**Title Company**") in the amount of the Gap Construction Funds subject to only to (i) the Affordability Covenant; and (ii) the exceptions as approved by City in its discretion and with the obligation of Placer to issue endorsements as required by City upon the distribution of funds ("**Loan Title Policy**"). Habitat shall be responsible for the cost of the Loan Title Policy. Habitat shall also provide such other security instruments as required by City including, but not limited to, a personal property security agreement, UCC-1, collateral assignment of contracts, etc.

8. Indemnification. Habitat shall be obligated as follows:

a. To the furthest extent allowed by law, Habitat shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages

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(whether in contract, tort or strict liability, including, but not limited to, personal injury, death at any time and property damage) incurred by City, Habitat or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement or the Standard Agreement; (ii) the performance of this Agreement or the Standard Agreement; (iii) the performance or installation of any Phase 1 work or improvements and subsequent management and operations thereof by Habitat and Habitat' employees, officers, agents, contractors or subcontractors; (iv) the design, installation, operation, removal or maintenance of any work and improvements related to Phase 1; (v) Habitat and its employees, officers, agents, contractors or subcontractor's failure to comply with prevailing wage laws as applicable law; or (vi) City's granting, issuing or approving use of this Agreement or the Standard Agreement.

b. Habitat's obligations under the preceding sentence shall apply regardless of whether or not City or any of its officers, officials, employees or agents are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

c. If Habitat should contract or subcontract all or any portion of the work to be performed under this Agreement, Habitat shall require each contractor or subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of paragraphs "a" and "b" of this Section. Notwithstanding the preceding sentence, any subcontractor who is a "design professional" as defined in Section 2782.8 of the California Civil Code shall, in lieu of indemnity requirements set forth in paragraphs "a" and "b" of this Section, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers to the furthest extent allowed by law (including Section 2782.8 of the California Civil Code), from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate

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to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

d. Habitat further agrees that the use for any purpose and by any person of any street, sidewalk, or works of improvement to be dedicated to City or within any City right of way, shall be at the sole and exclusive risk of Habitat at all times prior to final acceptance by City of such completed street and other improvements thereon and therein. This Section shall survive termination or expiration of this Agreement.

e. This provision shall survive termination of this Agreement or the Standard Agreement for any reason.

9. **<u>Insurance</u>.** At all times, Habitat shall pay for and maintain in full force and effect all policies of insurance described in this Section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

a. **COMMERCIAL GENERAL LIABILITY** insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage, and personal and advertising injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than $2,000,000 per occurrence for bodily injury and property damage, $2,000,000 per occurrence for personal and advertising injury and $2,000,000 aggregate for products and completed operations, and $5,000,000 general aggregate.

b. **BUILDERS RISK** (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the full amount of the property and/or materials being installed and/or constructed on or within the facility, and in no event at least a minimum of $15,000,000 of the completed value of the project. Said coverage shall not be required to maintain coverage for earthquake or flood risk if not reasonably commercially available in the discretion of City Manager, and shall not include coinsurance penalty provisions.

c. **COMMERCIAL AUTOMOBILE LIABILITY** insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO)

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Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Section 1, subsection A.1 entitled "Any Auto"), with combined single limits of liability of not less than $2,000,000 per accident for bodily injury and property damage.

d. **PROFESSIONAL LIABILITY** (Errors and Omissions) insurance appropriate to the respective person's profession (applicable only to those contractors or subcontractors who are providing Professional Services to Habitat), with limits of liability of not less than $2,000,000 per claim/occurrence and $2,000,000 policy aggregate.

e. **WORKERS' COMPENSATION** insurance as required under the California Labor Code.

f. **EMPLOYERS' LIABILITY** with minimum limits of liability of not less than $1,000,000 each accident, $1,000,000 disease policy limit and $1,000,000 disease each employee. If the Habitat do not have any employees on the offsite portion of the project, then this section is not applicable.

Habitat shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Habitat shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. **In the event any policies are due to expire during the term of this Agreement, Habitat shall provide a new certificate evidencing renewal of such policy(ies) not less than 15 calendar days prior to the expiration date of the expiring policy(ies).** Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Habitat shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Habitat's insurance shall be primary and no contribution shall be required of City. In the event claims-made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a five (5) year discovery period, or (ii) the coverage shall be maintained for a minimum of five (5) years following the termination of this Agreement and the requirements of this Section relating to such coverage shall survive termination or expiration of this Agreement. Any Workers' Compensation insurance, Commercial General Liability, Builder's Risk Insurance, or Commercial Automobile Liability policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.

Habitat shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance to City prior to City's obligations to disburse any funds as specified in Section 5. Habitat shall furnish City with copies of the actual policies upon the request of City Attorney or City Clerk at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

The fact that insurance is obtained by Habitat or its contractor or subcontractors shall not be deemed to release or diminish the liability of Habitat or their subcontractors including without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City, its officers, officials, agents, employees and volunteers, shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Habitat or its contractor or subcontractors. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Habitat, its principals, officers, agents, employees, persons under the supervision of Habitat, vendors, suppliers, invitees, contractors, subcontractors, consultants or anyone employed directly or indirectly by any of them.

If at any time during the life of the Agreement or any extension, Habitat fails to maintain the required insurance in full force and effect, City Manager for City, or his/her designee, may order that Habitat, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected. All payments to Habitat shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to withhold funding under this Agreement, or utilize the same or other funding to obtain an insurance policy for City's benefit at Habitat's sole cost and expense.

If Habitat should contract or subcontract all or any portion of the services to be performed under this Agreement, Habitat shall require each contractor or subcontractor to provide insurance protection in favor of City, its officers, officials, employees, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that i) the contractor and subcontractors' certificates and endorsements shall be on file with Habitat and City prior to the commencement of any work by the contractor or subcontractor; ii) subcontractors shall not be required to provide Builder's Risk coverage; and iii) City Manager may modify subrogation requirements for subcontractors.

10. Payment for Materials and Supplies. Habitat and its contractor and subcontractors shall pay for any materials, provisions, and other supplies used in, upon, for, or about the performance of the improvements and operations to be done under Exhibit E of the Standard Agreement, and for any work or labor thereon of any kind, and for amounts due under the Unemployment Insurance Act of the State of California, with respect to such work or labor and shall file with City pursuant to Section 3800 of the California Labor Code, as may be amended, a Certificate of Workers Compensation and shall maintain a valid policy of Workers Compensation Insurance for the duration of the period of construction. Habitat shall not permit the filing of any mechanic liens against the Property. If a mechanic lien is filed, Habitat shall promptly obtain the release of such lien in compliance with applicable law by either paying the amount of the line or recording a bond pursuant to Civil Code Section 8424 and providing evidence of the release of the mechanic lien satisfactory to City which may include information from the title company.

11. Work by Habitat. It shall be the responsibility of Habitat to coordinate all work done by Habitat's contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of City be placed in the position of making decisions that are the responsibility of Habitat. It shall further be the responsibility of Habitat to give written notice to City Engineer (together with any other person designated by City) not less than two working days in advance of the actual date on which work is to be started. Failure on the part of Habitat to notify City Engineer may cause delay for which Habitat shall be solely responsible.

12. Impact and other Fees. To the extent not otherwise waived or committed to be paid by City pursuant to a separate written agreement, Habitat shall pay to City (or other regulating entity) fees or charges due for construction and operation of Phase 1, if any.

13. Entitlements, Permits, and Inspections. Habitat agrees that nothing in this Agreement shall relieve it from the requirement to comply with any provision of federal, State, or local law or regulation. Habitat shall be responsible for obtaining any entitlements, plans, permits, inspections, environmental clearances, etc., and agrees to comply with all conditions of approval or approved plan requirements for Phase 1. Habitat agrees that nothing in this Agreement shall require City to exercise its legislative or police power, or to make any other approval, unless otherwise expressly required of the Standard Agreement. City shall have the right, upon two days' notice, to inspect the Project to determine whether it is meeting the requirements of the Standard Agreement.

14. Failure to Perform, Right of Entry, and Option to Ensure Compliance.

a. Default. Habitat shall be in default of this Agreement ("**Default**") upon the occurrence of any of the following:

i. Habitat is in default of the Standard Agreement after notice and opportunity to cure if any provided in the Standard Agreement.

ii. Fails to comply with Performance Schedule after 5 days' notice from City.

iii. Fails to comply with the insurance requirements in Section 9.

iv. Breach of the Construction Note and/or Construction Deed of Trust.

v. Is no longer actively registered as a non-profit corporate capable of doing business within the State of California, or begins to wind up operations;

vi. Phase I is abandoned and work stops for more than 5 consecutive days;

vii. Commencement of foreclosure of any lien on the Property;

viii. Transfer of any portion of the Property without City's consent;

ix. A surety is required to either pay a contractor or subcontractors or assumes completion of all or a portion of the work required by Exhibit E to the Standard Agreement.

x. Failure to comply with any other provision of this Agreement after 15 days' notice from City.

b. Remedies. Upon any Default, City shall have all rights under law and equity including, but not limited to, (i) commencement of foreclosure of the Construction Deed of Trust, (ii) have a receiver appointed, and the right, but not the obligation, to assume the construction or completion of Phase 1 in order to ensure compliance with the Standard Agreement with the right to use the Grant Construction Funds for same.

c. Operations. If after completion of Phase 1, if Habitat fails to comply with the operational requirements of the Standard Agreement and/or the Affordability Covenant, City may assume operations (or obtain another operator to assume operations) after notice and opportunity to cure consistent with Subsections a and b. Habitat authorizes entry on the Property, and agrees to promptly take all action reasonably necessary for City to ensure operations consistent with the Standard

Agreement.

d. **Payment/Lien.** City shall be entitled to reimbursement from Habitat (or other entity as appropriate) of all costs and expenses incurred by City in curing any default, assuming completion of the work and improvements, assuming operations, or reimbursing payments to HCD under the Standard Agreement. Costs and expenses shall include legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the property identified in Exhibit A to the extent of such costs and disbursements.

e. **Other Remedies.** Nothing in this Section shall waive City's right to avail itself of other rights including recourse to security, insurance, liens, or other legal recourse.

15. **Compliance with Laws.** In performing obligations set forth in this Agreement, Habitat shall comply with all applicable laws, ordinances, codes, regulations, and rules of all local, state and federal governmental agencies having jurisdiction including, without limitation, applicable federal and state labor standards and environmental laws and regulations. It shall be the sole responsibility of Habitat to determine whether to pay prevailing wages for any or all work required by this Agreement or the Standard Agreement. Habitat shall indemnify, defend, and hold harmless City and its officials and employees against any failure to comply with such laws, ordinances, codes, regulations, and rules. Habitat shall comply with the codes or ordinances of City including City Code and Building Codes.

16. **Enforcement of Obligations.** City may enforce this Agreement in any manner available at law or in equity.

17. **Limitations of Legal Acts.** Except as provided by the Section entitled "Attorney's Fees and Legal Expenses," in no event shall City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement or the Standard Agreement, it being expressly understood and agreed Habitat's sole legal remedy for breach or violation of this Agreement or the Standard Agreement by City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement or the Standard Agreement.

18. **Attorney's Fees and Legal Expenses.** If any party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement or the Standard Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

19. Obligation Running With Land. This Agreement which affects affordable housing shall burden the Property, and shall be enforceable as equitable servitudes and constitute a covenant running with the land in favor of and for the benefit of City shall be binding upon the successors and transferees of Habitat. Habitat consents to the recordation of this Agreement with the Sutter County Recorder.

20. Waiver. The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by both Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

21. Successor Statutes Incorporated. All references to a statue or ordinance shall incorporate any or all successor statute or ordinance enacted to govern the activity now governed by the statute or ordinance, noted herein to the extent, however, that incorporation of such successor statute or ordinance does not adversely affect the benefits and protections granted to either Party.

22. Estoppel Certificates. Either Party may at any time deliver written Notice to the other Party requesting an estoppel certificate ("**Estoppel Certificate**") stating:

a. The Agreement is in full force and effect and is a binding obligation of the Parties; and

b. The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and

c. That no enforcement actions are outstanding or if so the status thereof.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Estoppel Certificate shall be in a form reasonably approved by City Attorney's Office, and Habitat shall pay all of City's reasonable costs incurred in issuing such Estoppel Certificate.

23. Time is of the Essence. Time is of the essence of this Agreement, and the same shall bind and inure to the benefit of the parties hereto, their successors and assigns.

24. **No Assignment.** No assignment of this Agreement or of any duty or obligation of performance hereunder (including those required by Exhibit E of the Standard Agreement) shall be made in whole or in part by Habitat without the prior written consent of City.

25. **Restrictions on Sales, Transfers, and Encumbrances.** The Property may not be transferred or encumbered without the prior written consent of City in its sole and absolute discretion. Any transfer of the ownership interests in Habitat shall constitute a transfer under this Section.

26. **Binding on Successors.** All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in Phase 1 of the property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns.

27. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement, and this Agreement is not intended and shall not be construed, to benefit or be enforceable by any third party whatsoever.

28. **Relationship of Parties.** It is specifically understood and agreed by and between the Parties that the Project is a private development by Habitat, that neither Party is acting as the agent of the other in any respect hereunder, and that such Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between City and Habitat is that of a government entity regulating the development of private property and the flow through provision of grant funding from the State, and the owner of such private property. No partnership or joint venture is created as a result of this Agreement or the Standard Agreement.

29. **Entire Agreement.** Except as this Agreement may be implemented through the Standard Agreement, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and this Agreement supersedes all previous negotiations, discussions, and agreements between the Parties. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

30. **Qualification; Authority.** Each individual executing this Agreement on behalf of Habitat represents, warrants and covenants to City that (a) it is duly formed and authorized to do business in the state of California, (b) such person is duly authorized to execute and deliver this Agreement on behalf of Habitat in accordance with authority granted under the organizational documents of Habitat, and (c) Habitat is bound under the terms of this Agreement. Furthermore, Habitat represents and warrants to City that all authority statements by Habitat in the Standard Agreement are true and correct.

31. **Minor Amendments.** City Manager for City shall be authorized to approve and execute minor non-substantive amendments to this Agreement without formal approval of City Council.

32. **Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

33. **Captions.** Section, paragraph and other captions or headings contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend or otherwise describe the scope or intent of the Agreement or any provision hereof and shall not affect in any way the meaning or interpretation of this Agreement.

34. **Ambiguities or Uncertainties.** Any ambiguities or uncertainties in this Agreement shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this Agreement, on the express understanding and agreement the Parties participated equally in the negotiation and preparation of the Agreement, or have had equal opportunity to do so. Accordingly, the Parties hereby waive the benefit of California Civil Code §1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

35. **Severable Provisions.** The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the validity or enforceability of the other provisions, which shall remain in full force and effect.

36. **Release of Agreement.** The conditions and obligations of this Agreement shall remain in full force and effect until such time as City Manager for City issues a written release finding the conditions and obligations of this Agreement have been fully satisfied and are no longer required for public health and safety reasons and thereafter records such release with the Sutter County Recorder. Upon request of Habitat, City Manager (subject to approval City Attorney) shall also have authority to subordinate this Agreement to an interest on the Property.

37. **Notices.** Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the Party's mailing address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

To City:	Development Services Director City of Yuba City 1201 Civic Center Blvd. Yuba City, CA 95993
With a copy to:	City Manager City of Yuba City 1201 Civic Center Blvd. Yuba City, CA 95993
Habitat:	Habitat for Humanity Yuba/Sutter, Inc. Attn: Joseph Hale, CEO 202 D St. Marysville, CA 95901

Either Party may change its mailing address at any time by giving ten (10) days' notice of such change in the manner provided for in this section. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Nothing in this provision shall be construed to prohibit communication by facsimile transmission, so long as an original is sent by first class mail, commercial carrier or is hand-delivered.

38. **Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Sutter County, California.

39. **Acknowledgement of Content.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Habitat.

40. **Counterparts.** This Agreement may be executed by the Parties in counterparts which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

41. **<u>Exhibits</u>**. <u>Exhibits A</u>, <u>B</u> and <u>C</u> attached hereto are incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

HABITAT:

HABITAT FOR HUMANITY YUBA/SUTTER, INC., a California nonprofit public benefit corporation

By: ______________________
Joseph Lee Hale,
Chief Executive Officer

By: ______________________
John Nicoletti,
Secretary

CITY OF YUBA CITY
INCORPORATED
JAN 23, 1908
SUTTER CO. CALIFORNIA

CITY:

CITY OF YUBA CITY, a public body, corporate and politic

By: Diana Langley
Diana Langley, City Manager

ATTEST:

____
Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: ______________________
Shannon Chaffin, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss
COUNTY OF SUTTER)

On JULY 10, 2024, 2024 before me, C WAKEFIELD, a notary public, personally appeared JOHN NICOLETTI who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

CWakefield
Notary Public

SEAL: CIARA WAKEFIELD
Notary Public - California
Sutter County
Commission # 2330784
My Comm. Expires Aug 20, 2024

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss
COUNTY OF SUTTER)

On JULY 10, 2024, 2024 before me, C WAKEFIELD, a notary public, personally appeared JOSEPH LEE HALE who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

CWakefield
Notary Public

SEAL: CIARA WAKEFIELD
Notary Public - California
Sutter County
Commission # 2330784
My Comm. Expires Aug 20, 2024

22

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SUTTER)

On JULY 10, 2024 before me, C WAKEFIELD, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared DIANA LANGLEY,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

CIARA WAKEFIELD
Notary Public - California
Sutter County
Commission # 2330784
My Comm. Expires Aug 20, 2024

Signature CWakefield (Seal)

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

HABITAT:

HABITAT FOR HUMANITY YUBA/SUTTER, INC., a California nonprofit public benefit corporation

By: ______________________
Joseph Lee Hale,
Chief Executive Officer

By: ______________________
John Nicoletti,
Secretary

CITY:

CITY OF YUBA CITY, a public body, corporate and politic

By: ______________________
Diana Langley, City Manager

ATTEST:

____
Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: ______________________
Shannon Chaffin, City Attorney

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss
COUNTY OF Fresno)

On July 10, 2024 before me, Daniela Victoria Marquez, a notary public, personally appeared Shannon L. Chaffin who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

SEAL:

DANIELA VICTORIA MARQUEZ
Notary Public - California
Fresno County
Commission # 2421605
My Comm. Expires Oct 15, 2026

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EXHIBIT A

PROPERTY DESCRIPTION

That certain real property in the City of Yuba, County of Sutter, State of California legally described as follows:

Being a portion of Lot 13 as shown on that certain Map entitled "Plat of the Mary Gray Tract" filed in the Office of the County Recorder of Sutter County, California, on January 4, 1915, in Book 3 of Surveys, Page 11, more particularly described as follows:

Beginning at a point on the Westerly line of said Lot 13, said point being North 1° 15' West and distant on said course 363.00 feet from the Southwest corner of said Lot 13, said point of beginning being the Northwest corner of that certain Lot or parcel of land conveyed by William J. Gray and Golda A. Gray, his wife, to W. L. Dolan by a deed dated January 18, 1946 and recorded in Book 254 of Official Records, Page 3 running thence North 1° 15' West along said Westerly line of Lot 13, a distance of 693.00 feet to the Northwest corner of Lot 13; thence North 89° 05' East along the Northerly line of said Lot 13, a distance of 495.00 feet to the Northeast corner of said Lot 13; thence South 1° 15' East along the Easterly line of said Lot 13, a distance of 1,056.00 feet to the Southeast corner of said Lot 13; thence South 89° 05' West along the Southerly line of said Lot 13, a distance of 145.00 feet to the Southeast corner of said Lot or parcel of land conveyed to W. L. Dolan; thence North 1° 15' West along the Easterly line of said lot or parcel of land conveyed to W. L. Dolan, a distance of 363.00 feet to the Northeast corner of said Lot or parcel of land conveyed to W.L. Dolan; and thence South 89° 05' West along the Northerly line of said Lot or parcel of land conveyed to W. L. Dolan, a distance of 350.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion of the above described property described in that certain Deed dated January 20, 1955, in which A. J. Trigueiro and Mary G. Trigueiro, his wife, are grantors and Ed B. Reamy and Reva L. Reamy, his wife, are grantees, recorded February 15, 1955, in Volume 434 of Official Records, Page 264, Sutter County Records.

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EXHIBIT B

STANDARD AGREEMENT

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES
SCO ID:

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER
23-HK-18192

PURCHASING AUTHORITY NUMBER (if applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME
City of Yuba City, and Habitat for Humanity Yuba/Sutter, Inc.

2. The term of this Agreement is:

START DATE
Upon HCD Approval

THROUGH END DATE
Fifteen (15) years from Effective Date

3. The maximum amount of this Agreement is:
$24,632,331.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Authority, Purpose and Scope of Work	10
Exhibit B	Budget Detail and Payment Provisions	3
Exhibit C*	State of California General Terms and Conditions	GTC - 04/2017
Exhibit D	Homekey General Terms and Conditions	23
Exhibit E	Project-Specific Provisions and Special Terms and Conditions	8
	TOTAL NUMBER OF PAGES ATTACHED	44

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at *https://www.dgs.ca.gov/OLS/Resources*

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership,etc.)
See Attached

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
See Attached	See Attached	See Attached	See Attached

PRINTED NAME OF PERSON SIGNING
See Attached

TITLE
See Attached

CONTRACTOR AUTHORIZED SIGNATURE
See Attached

DATE SIGNED
See Attached

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME
Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
651 Bannon Street, Suite 400	Sacramento	CA	95811

PRINTED NAME OF PERSON SIGNING

TITLE
Contract Services Section Manager

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

California Department of General Services Approval (or exemption, if applicable)

Exempt per; SCM Vol. 1 4.04.A.3 (DGS memo dated 06/12/1981)

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev. 06/03)

City of Yuba City
Habitat for Humanity Yuba/Sutter, Inc.
23-HK-18192

CONTRACTOR

City of Yuba City
a California Government City

By: Shon Harris Shon Harris (Jul 11, 2024 10:13 PDT) Date: 7/11/2024

Shon Harris
Mayor

Address:

1201 Civic Center Boulevard
Yuba City, CA 95993

Habitat for Humanity Yuba/Sutter, Inc.
a California nonprofit a California nonprofit public benefit corporation

By: ______________ Date: 07/11/2024

Joseph Hale
Chief Executive Officer

Address:

202 D Street
Marysville, CA 95901

Prep Date: 05/17/2024

23-HK-18192 - (REVISED) Pending - STD 213

Final Audit Report 2024-07-11

Created:	2024-07-11
By:	Diana Langley (dlangley@yubacity.net)
Status:	Signed
Transaction ID:	CBJCHBCAABAAm78DuLkFQtv44O5342SKNRv6CdbAiGdE

"23-HK-18192 - (REVISED) Pending - STD 213" History

- Document created by Diana Langley (dlangley@yubacity.net)
  2024-07-11 - 4:28:00 PM GMT

- Document emailed to Joseph Hale (jhale@yubasutterhabitat.org) for signature
  2024-07-11 - 4:29:18 PM GMT

- Email viewed by Joseph Hale (jhale@yubasutterhabitat.org)
  2024-07-11 - 4:57:29 PM GMT

- Document e-signed by Joseph Hale (jhale@yubasutterhabitat.org)
  Signature Date: 2024-07-11 - 5:00:20 PM GMT - Time Source: server

- Document emailed to Shon Harris (shonharris@yubacity.net) for signature
  2024-07-11 - 5:00:22 PM GMT

- Email viewed by Shon Harris (shonharris@yubacity.net)
  2024-07-11 - 5:12:13 PM GMT

- Document e-signed by Shon Harris (shonharris@yubacity.net)
  Signature Date: 2024-07-11 - 5:13:01 PM GMT - Time Source: server

- Agreement completed.
  2024-07-11 - 5:13:01 PM GMT

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK

1. Authority

California Assembly Bill No. 140 (Chapter 111, Statutes of 2021) ("**AB 140**") added sections 50675.1.3 and 50675.1.4 to the Multifamily Housing Program ("**MHP**") (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code). Health and Safety Code section 50675.1.3 provides the statutory basis for the Homekey Program – Round 3 ("**Homekey**" or "**Program**"). Health and Safety Code section 50675.1, subdivision (d) authorizes the Department of Housing and Community Development ("**Department**" or "**HCD**") to administer MHP.

The Department issued a Homekey Program Notice of Funding Availability, Round 3 on March 29, 2023 (the "**NOFA**"). The NOFA incorporates by reference the MHP, as well as the Multifamily Housing Program Final Guidelines, dated March 30, 2022 and amended on May 5, 2022 ("**MHP Guidelines**"), both as amended and in effect from time to time. The NOFA, further, incorporates by reference, the Uniform Multifamily Regulations (UMRs) (Cal. Code Regs., tit. 25, § 8300 et seq.), effective November 15, 2017, and as subsequently amended, except to the extent that any UMR provision would be inconsistent with the provisions of the NOFA. Homekey grant funds are derived primarily from the state's direct allocation of the federal Coronavirus State Fiscal Recovery Fund ("**CSFRF**"), which was established by the American Rescue Plan Act of 2021 ("**ARPA**") (Pub.L. No. 117-2). Homekey funds are also derived from the State of California's General Fund.

This STD 213, Standard Agreement ("**Agreement**") is entered under the authority and in furtherance of the Program. This Agreement is the result of an Application by the Grantee, as defined below, for funding under the Program (the "**Grant**"). As such, this Agreement shall be executed by the Grantee. Where the Grantee comprises a Public Entity or Tribal Entity, as defined below, and one or more additional entities, all entities shall execute the Agreement.

This Agreement hereby incorporates by reference the Application, as well as the project report prepared by the Department in reliance on the representations and descriptions included in that Application. This Agreement is governed by the following (collectively, the "**Program Requirements**"), and each of the following, as amended and in effect from time to time, is incorporated hereto as if set forth in full herein:

EXHIBIT A

A. AB 140;

B. The above-referenced MHP statutory scheme;

C. The NOFA;

D. The MHP Guidelines;

E. The UMRs;

F. ARPA and related federal guidance;

G. The award letter issued by the Department to the Grantee; and

H. All other applicable law.

2. Purpose

The Homekey Program is intended to provide housing for individuals and families who are homeless or who are at risk of homelessness, as defined in Part 578.3 of Title 24 of the Code of Federal Regulations, and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases ("**Target Population**").

Grantee applied to the Department for the Grant in order to conduct one or more of the activities outlined in Paragraph 4 below. By entering into this Agreement and thereby accepting the award of Program Grant funds, the Grantee agrees to comply with the Program Requirements and the terms and conditions of this Agreement.

3. Definitions

Any capitalized terms that are not defined below shall have the definitions set forth in the NOFA, the MHP statutes, and the MHP Guidelines. In the event of any conflict, the definitions in this Agreement and the NOFA are controlling.

A. **"Affordability Covenant"** means the legally binding instrument which **(i)** is recorded in first position against Project real property in consideration for the Homekey Program award to the Grantee; **(ii)** imposes use, operation, occupancy, and affordability restrictions on the real property and improvements; and **(iii)** incorporates the Homekey Program Requirements by reference. Upon

EXHIBIT A

its execution, the Affordability Covenant shall be binding, effective, and enforceable against all successors, transferees, and assignees, in accordance with Section 208 of the NOFA, after a certificate of occupancy or its equivalent has been issued for the Project, or if no such certificate is issued, from the date of initial occupancy of the Project. Interim Housing Projects, Permanent Housing Projects, and Permanent Housing Projects on tribal trust land shall be encumbered with 30-year, 55-year, and 50-year Affordability Covenants, respectively.

B. **"AMI"** means Area Median Income.

C. **"Application"** means the application for Grant funds that was submitted in response to the Department's NOFA.

D. "**Assistance Listing Number**" (ALN) formerly known as the Catalog of Federal Domestic Assistance (CFDA) Number, is a five-digit number assigned in the awarding document for all federal assistance award mechanisms.

E. **"Assisted Unit"** means a Homekey-funded residential dwelling unit that is subject to rent, income, occupancy, and other restrictions in accordance with Program Requirements. See also "**Youth Assisted Unit**."

F. **"Chronically Homeless"** is defined in accordance with Part 578.3 of Title 24 of the Code of Federal Regulations.

G. **"Co-Applicant"** means the nonprofit corporation, for-profit corporation, limited liability company, and/or limited partnership that applied for an award of Homekey Grant funds with the Eligible Applicant (i.e., a Public Entity or Tribal Entity).

H. **"Date of Award"** means the date on the award letter issued from the Department to the Grantee.

I. **"Designated Payee"** means the Co-Grantee that will serve as the payee of the Program Grant funds. If applicable, the Designated Payee is identified at Exhibit E of this Agreement.

J. **"Eligible Applicant"** means the Public Entity or Tribal Entity that applied for an award of Homekey Grant funds.

EXHIBIT A

K. **"Eligible Uses"** means the activities that may be funded by the Homekey Program Grant. Those activities are listed at Paragraph 4 below of this Agreement, and at Health and Safety Code section 50675.1.3, subdivision (a).

L. **"Expenditure Deadline for Capital Funds"** means the date by which the capital expenditure award must be fully expended. This deadline is eight (8) months from the Date of Award. or up to 15 months from the Date of Award if an expenditure deadline extension has been requested and approved by the Department.

M. **"Expenditure Deadline for Operating Funds"** means the date by which the operating subsidy award must be fully expended. This deadline is **June 30, 2026**.

N. **"Grantee or Subrecipient"** means the Eligible Applicant (and, if applicable, the Co-Applicant) that has been awarded funds under the Program, and that will be held responsible for compliance with and performance of all Program Requirements. The Grantee may comprise one or more entities, so long as the Grantee structure includes an "Eligible Applicant," as defined in the NOFA and as set forth above. "**Grantee**" refers, both individually and collectively, to the Co-Applicant and/or the Eligible Applicant that received a Homekey Grant after submitting an Application or a joint Application to the Department. When the Grantee comprises two or more entities, each entity may be referred to as a "**Co-Grantee**." On the STD 213 portion of this Agreement, the Grantee is identified as the Contractor.

O. **"Homeless Youth"** means a child, a youth, or a current or former foster youth through the age of 25 who qualifies as "homeless" under any of the relevant definitions set forth or identified at Part 578.3 of Title 24 of the Code of Federal Regulations.

P. **"Homeless Youth Project"** means a Project that was prioritized to receive set-aside Homekey funds because **(i)** at least 25 percent of its Assisted Units will be restricted to Homeless Youth or Youth at Risk of Homelessness; **(ii)** the Grantee jointly applied and/or partnered with a nonprofit corporation with experience serving the foregoing subpopulation; and **(iii)** the Project will provide Supportive Services for Youth Assisted Units using a Positive Youth Development (PYD) model and trauma-informed care. Such Project may also have been prioritized because it is located within a one-mile radius of youth-centered amenities, such as community colleges, universities, trade schools, apprenticeship programs,

EXHIBIT A

employment programs, childcare centers for parenting youth, and community centers for youth.

Q. **"Interim Housing"** means any facility whose primary purpose is to provide a temporary shelter for the Target Population and which does not require occupants to sign leases or occupancy agreements.

R. **"Local Public Entity"** is defined at Health and Safety Code section 50079, and means any county, city, city and county, the duly constituted governing body of an Indian reservation or rancheria, tribally designated housing entity as defined in Section 4103 of Title 25 of the United States Code and Section 50104.6.5, redevelopment 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 also includes any state agency, public district, or other political subdivision of the state, and any instrumentality thereof, that is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income. In addition, and in accord with this Health and Safety Code definition, the term "**Local Public Entity**" also includes two or more local public entities acting jointly.

S. **"Performance Milestones"** means the indicators and metrics of progress and performance that are identified as such at Exhibit E of this Agreement. Grantee's failure to satisfy any one of the Performance Milestones will constitute a breach of this Agreement and will entitle the Department to exercise any and all available remedies, including the recapture of disbursed Grant funds and the cancellation of this Agreement.

T. **"Permanent Housing"** means housing, dwellings, or other living accommodations where the landlord does not limit the tenant's length of tenancy, the landlord does not restrict the tenant's movements, and the tenant has a lease and is subject to the rights and responsibilities of tenancy.

U. **"Program Requirements"** means the legal authority and Program materials listed at Paragraph 1.A – H, above.

V. **"Project"** means a structure or set of structures with common financing, ownership, and management, which provides Permanent Housing or Interim

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Housing for the Target Population, and which is subject to an appropriate Affordability Covenant in accordance with Section 208 of the NOFA.

W. **"Public Entity"** is defined in accordance with Health and Safety Code section 50675.1.3, subdivision (a), and means a city, a county, a city and county, and any other state entity, regional entity, or Local Public Entity, including any council of government, metropolitan planning organization, and regional transportation planning agency designated in Section 29532.1 of the Government Code. For purposes of this Agreement, a "**Local Public Entity**" is defined in accordance with Health and Safety Code section 50079 and as set forth above.

X. **"Scope of Work"** or **"Work"** means the work to be performed by the Grantee to accomplish the Program purpose.

Y. **"Supportive Services"** means social, health, educational, income support, employment, and housing stability services and benefits; coordination of community building and educational activities; individualized needs assessment and case management; and individualized assistance with obtaining services and benefits.

Z. **"Target Population"** means individuals and families who are "homeless" or "at risk of homelessness," as those terms are defined in Part 578.3 of Title 24 of the Code of Federal Regulations, and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases. The Target Population also includes Homeless Youth or Youth at Risk of homelessness. For Grantees utilizing HOME-ARP funding as match, the "Target Population" also includes individuals and families who are "Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking" and "Other Populations" as defined in HUD Community Planning and Development (CPD) Notice 21-10.

AA. **"TCAC"** means the California Tax Credit Allocation Committee.

BB. **"Tribal Entity"** means an entity that meets any of the following criteria:

1) Meets the definition of Indian tribe under section 4103(13)(B) of title 25 of the United States Code;
2) Meets the definition of Tribally Designated Housing Entity under section 4103(22) of title 25 of the United States Code;

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3) Is not a federally recognized tribe, but is either:
   a) Listed in the petitioner list of the Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary – Indian Affairs of the Department of the Interior pursuant to Part 82.1 of Title 25 of the Code of Federal Regulations; or
   b) Is an Indian tribe located in the State of California and identified on the contact list maintained by the Native American Heritage Commission for the purpose of consultation pursuant to Government Code section 65352.3.

CC. **"Unique Entity ID"** (UEI) is a 12-character alphanumeric ID assigned to an entity by www.Sam.gov.

DD. **"Youth Assisted Unit"** means an Assisted Unit serving Homeless Youth or Youth at Risk of Homelessness. See also "**Assisted Unit**."

EE. **"Youth at Risk of Homelessness"** means a child, a youth, or a current or former foster youth through the age of 25 who qualifies as "at risk of homelessness" or "homeless" under any of the relevant definitions set forth or identified at Part 578.3 of Title 24 of the Code of Federal Regulations.

4. Eligible Uses

Grantee shall apply the Program Grant funds to one or more of the following uses. All costs in connection with such Eligible Uses must be incurred on or after March 3, 2021, by the Expenditure Deadline for Capital Funds, and by the Expenditure Deadline for Operating Funds, respectively and as applicable. Grantee's use of the funds and scope of work ("**Scope of Work**" or "**Work**") are specified at Exhibit E of this Agreement.

A. Acquisition or rehabilitation, or acquisition and rehabilitation, of motels, hotels, hostels, or other sites and assets, including apartments or homes, adult residential facilities, residential care facilities for the elderly, manufactured housing, commercial properties, and other buildings with existing uses that could be converted to permanent or interim housing.

B. Master leasing of properties for non-congregate housing.

C. Conversion of units from nonresidential to residential.

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D. New construction of dwelling units.

E. The purchase of affordability covenants and restrictions for units.

F. Relocation costs for individuals who are being displaced as a result of the Homekey Project.

G. Capitalized operating subsidies for units purchased, converted, or altered with Homekey Grant funds provided pursuant to Health and Safety Code section 50675.1.3.

5. <u>Rent Standards</u>

A. <u>Permanent Housing</u>. Rent limits for initial occupancy, and for each subsequent occupancy, of an Assisted Unit shall not exceed 30 percent of that Assisted Unit's designated income-eligibility level.

B. <u>Interim Housing</u>. No rent shall be charged to the Target Population residents of Interim Housing.

6. <u>Program Deadlines</u>

A. Acquisition, rehabilitation, and/or construction shall be completed within 12 months of the Date of Award.

B. Grantee shall expend any capital expenditure award by the Expenditure Deadline for Capital Funds.

C. The Homekey-funded portion of the operating award must be disbursed by the Department by June 30, 2025. Grantee shall expend any Homekey-funded operating subsidy award by the Expenditure Deadline for Operating Funds.

D. Full occupancy shall be achieved within 15 months of the Date of Award.

7. <u>Performance Milestones</u>

A. Grantee shall complete each of the Performance Milestones set forth at <u>Exhibit E</u> of this Agreement by the date designated for such completion therein (each, a "**Milestone Completion Date**"). The Performance Milestones shall include, but

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not be limited to, any applicable Expenditure Deadline for Capital Funds, Expenditure Deadline for Operating Funds, or occupancy deadline.

B. The Department may, in its sole and absolute discretion, approve an extension of the acquisition, rehabilitation, construction, and/or occupancy deadlines if the Grantee demonstrates, to the Department's satisfaction, that the relevant delay is caused by reasonably unforeseeable events, conditions, or circumstances.

C. In no event will the Department approve an extension request in the absence of Grantee's demonstration of good cause for said extension, along with Grantee's reasonable assurances that the extension will not result in Grantee's failure to meet other Performance Milestones or any Expenditure Deadline under this Agreement. Construction labor shortages and supply chain issues do not constitute reasonably unforeseeable events, conditions, or circumstances for purposes of an extension request.

D. The Department will not grant extensions of the Expenditure Deadline for Operating Funds.

8. **Reporting Requirements**

A. Grantee shall submit an annual Homekey Program and Expenditure Report, and comply with all additional reporting requirements, as set forth and specified at Section 601 of the NOFA, all in accordance with the Milestone Completion Date(s) set forth at Exhibit E of this Agreement.

B. After satisfaction of each Performance Milestone, the Grantee shall promptly report its progress, in writing, to the Department.

C. Upon the Department's request and as specified, the Grantee shall provide progress reports in connection with the development plan and any updates to the timeline for completion of the Project. The development plan should include the Project's completion milestones and any updates or substantial changes.

D. In addition, the Grantee shall submit to the Department such periodic reports, updates, and information as deemed necessary by the Department to monitor compliance and/or perform Program evaluation. Any requested data or information shall be submitted in electronic format on a form provided by the Department.

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9. **Department Contract Coordinator**

The Department's Contract Coordinator for this Agreement is the Deputy Director of the Division of State Financial Assistance, or the Deputy Director's designee. Unless otherwise informed, Grantee shall mail any notice, report, or other communication required under this Agreement by First-Class Mail to the Department Contract Coordinator at the following address or email to Homekey3SGM@hcd.ca.gov:

California Department of Housing and Community Development
Attention: Homekey Program – Round 3 (Homekey)
State Grant Management Section
2020 West El Camino Avenue, Suite 400, 95833
P. O. Box 952050
Sacramento, CA 94252-2050

10. **Grantee Contract Coordinator**

The Grantee Contract Coordinator for this Agreement may coordinate with the State Grant Management Section Manager for the Homekey Program. Unless otherwise informed, the Department shall mail any notice, report, or other communication required under this Agreement by First-Class Mail, or through a commercial courier, to the Grantee Contract Coordinator at the address specified at Exhibit E of this Agreement.

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BUDGET DETAIL AND PAYMENT PROVISIONS

1. Budget Detail

Grantee has been awarded the Grant amount set forth in this Agreement.

2. Conditions of Disbursement

The Department will disburse the full amount of the Grant award to the Grantee after this Agreement has been fully executed and after the Department receives the Grantee's request for funds, with all required supporting documents appended thereto. The Grantee shall append the following supporting documents to the request for funds, all in form and substance acceptable to the Department:

A. Payee Data Record (STD 204) or Government Agency Taxpayer ID Form, as applicable;

B. An authorizing resolution or set of authorizing resolutions that, in the Department's reasonable determination, materially comports with the Program Requirements (if the Grantee has not already submitted same);

C. Documentary evidence of any eligible costs incurred on or after March 3, 2021 and before the execution of this Agreement;

D. Certification of compliance with California's prevailing wage law, as well as all applicable federal prevailing wage law;

E. A copy of the Department-approved relocation plan for the Project, or a copy of a Department-issued Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement which has been duly executed by the Grantee and approved by the Department;

F. Evidence of the insurance coverages required under the Program and/or a written acknowledgment of self-insured status;

G. Documentary evidence of capacity to provide operating funds for the Project for at least five (5) years;

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H. A current title report (dated within 15 days of the request for funds); or for tribal trust land, a title status report ("**TSR**") or an attorney's opinion regarding chain of title and current title status;

I. A Draft Covenant or Regulatory Agreement must be submitted to the Department for review and approval;

J. Any forms, certifications, or documentation required pursuant to Paragraph 1.F– Additional Conditions Precedent to Disbursement of Exhibit E of this Agreement; and

K. Any other forms, certifications, or documentation deemed necessary by the Department prior to disbursement of Grant funds.

3. Performance

A. After disbursement of the funds, the Grantee shall meet each Performance Milestone set forth at Exhibit E by the relevant Milestone Completion Date. After satisfaction of each Performance Milestone, the Grantee shall promptly report its progress, in writing, to the Department. Grantee may apply to the Department for an extension of a Milestone Completion Date as allowed by the NOFA and this Agreement.

B. FAILURE TO SATISFY ANY ONE OF THE PERFORMANCE MILESTONES WILL CONSTITUTE A BREACH OF THIS AGREEMENT AND ENTITLES THE DEPARTMENT TO MANDATE THE GRANTEE TO RETURN TO THE DEPARTMENT ANY FUNDS DISBURSED; IN ANY SUCH INSTANCE, THE DEPARMENT MAY ALSO CANCEL THIS AGREEMENT WITHOUT OWING ANY DAMAGES OR OTHER PAYMENT TO GRANTEE.

4. Fiscal Administration

A. Grantee shall either deposit the Grant funds with an escrow company licensed to do business in the State of California and in good standing or deposit the Grant funds in an interest-bearing checking or savings account that is insured by the Federal Deposit Insurance Corporation ("**FDIC**"). All interest earned from the deposit of Grant funds shall be used for eligible Program activities.

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B. Any capital expenditure award funds that have not been expended by the Expenditure Deadline for Capital Funds must be returned to the Department with accrued interest. Any operating subsidy award funds that have not been expended by the Expenditure Deadline for Operating Funds must be returned to the Department with accrued interest. Checks shall be made payable to the Department of Housing and Community Development and shall be mailed to the Department at the address below, no later than thirty (30) calendar days after the applicable Expenditure Deadline.

Department of Housing and Community Development
Accounting Division, Suite 300
2020 W. El Camino Avenue
Sacramento, California 95833

5. <u>Duplication of Benefit</u>

Homekey funding is not required to be used as funding of last resort. However, Grantee may not use Homekey funding to cover expenditures that have already been funded through other sources. Expenses that have been or will be reimbursed under any federal program are not eligible uses of Homekey funding.

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HOMEKEY GENERAL TERMS AND CONDITIONS

Federal Grant Identification
$435 million of grant funds are derived from U.S. Department of the Treasury FAIN SLFRP3211 **(Coronavirus State and Local Fiscal Recovery Fund (CSFRF) established by the Federal American Rescue Plan Act of 2021 (ARPA) (Public Law 11702). CFDA # 21.027 dated 06/04/2021 and $301 million from State General Fund.**

1. Effective Date, Term of Agreement, Timing, and Deadlines

A. This Agreement, when fully executed by the Department and the Grantee, is effective upon the date of the Department representative's signature on the STD 213, Standard Agreement (such date, the "**Effective Date**").

B. This Agreement shall terminate fifteen (15) years after the Effective Date, as stated in Section 2 of the STD 213, Standard Agreement (such date, the "**Expiration Date**").

C. Grantee will receive the disbursement of Program funds after satisfying all conditions precedent to such disbursement, as set forth under Paragraph 2 of Exhibit B and, as necessary and applicable, under Paragraph 1.F – Additional Conditions Precedent to Disbursement of Exhibit E.

D. Any expenses incurred prior to March 3, 2021, after the Expenditure Deadline for Capital Funds, or after the Expenditure Deadline for Operating Funds, respectively and as applicable, are not eligible for payment under the Program, unless an alternate arrangement is legally permissible and has been approved by the Department in advance and in writing.

E. Grant funds that have not been expended by the applicable Expenditure Deadlines shall revert to the Department in the absence of an alternate arrangement that has been approved by the Department in advance and in writing.

2. Termination for Cause

The Department may terminate this Agreement for cause at any time by giving at least fourteen (14) calendar days' advance written notice to the Grantee. Upon such termination, Grantee shall return any unexpended funds to the Department within thirty

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(30) calendar days of the date on the Department's written notice of termination, unless the Department has approved an alternate arrangement in advance and in writing, as provided below. Such termination will not limit any other remedies that may be available to the Department under this Agreement, at law, or in equity. Cause shall consist of Grantee's breach of, or failure to satisfy, any of the terms or conditions of this Agreement. Cause includes but is not limited to the following:

A. Grantee's failure to satisfy the conditions precedent to disbursement or to expend Program Grant funds, as specified.

B. Grantee's failure to timely satisfy each or any of the conditions set forth in these Homekey General Terms and Conditions, the Project-Specific Provisions and Special Terms and Conditions set forth at Exhibit E of this Agreement (including any one of the Performance Milestones), or the award letter.

C. Grantee's violation of any of the Program Requirements.

D. The Department's determination of the following:

   1) Any material fact or representation, made or furnished to the Department by the Grantee in connection with the Application or the award letter, shall have been untrue or misleading at the time that such fact or representation was made known to the Department, or subsequently becomes untrue or misleading; or

   2) Grantee has concealed any material fact from the Department related to the Application or the Project.

E. The Department's determination that the objectives and requirements of the Homekey Program cannot be met in accordance with applicable timeframes, as memorialized by this Agreement.

In the event of this or any other breach, violation, or default by the Grantee, the Department may give written notice to the Grantee to cure the breach, violation, or default. If the breach, violation, or default is not cured to the Department's satisfaction within a reasonable time, as determined by the Department in its sole and absolute discretion, then the Department may declare a default under this Agreement and seek any and all remedies that are available under this Agreement, at law, or in equity.

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3. Cancellation

A. It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.

B. This Agreement is valid and enforceable only if sufficient funds are made available to the State of California by the United States Government for fiscal years 2021-2022 through 2025-2026 for CSFRF purposes. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner.

C. The parties mutually agree that if the Congress does not appropriate sufficient funds for the CSFRF, this Agreement shall be amended to reflect any subsequent reduction in CSFRF funds.

D. The Department may cancel this Agreement, in whole or in part, if **(i)** sufficient funds are not made available by the United States Government; **(ii)** Congress enacts any restrictions, limitations, or conditions that impact this Agreement or the funding of this Agreement; or **(iii)** cancellation is otherwise permitted under state contracting law.

E. To cancel this Agreement pursuant to this paragraph, the Department shall give thirty (30) calendar days' advance written notice to the Grantee. The Grantee shall return any unexpended portion of its Grant award to the Department within thirty (30) calendar days from the date on the Department's written notice of cancellation, unless **(i)** the parties have agreed upon an alternate arrangement in advance and in writing; or **(ii)** an alternate arrangement is necessary for one or both parties to remain in compliance with ARPA or other applicable law.

4. Eligible Activities

Grant funds awarded to the Grantee shall be applied to the eligible uses set forth at Exhibit A and described in greater detail at Exhibit E. Payment for any cost which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee.

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5. **Performance Milestones**

Grantee shall timely satisfy and complete all Performance Milestones, as identified at Exhibit E of this Agreement.

6. **Article XXXIV**

Per Health and Safety Code section 37001, subdivision (h)(5), article XXXIV, section 1 of the California Constitution ("**Article XXXIV**") is not applicable to Homekey-funded acquisition, rehabilitation, reconstruction, alterations work, new construction, or any combination thereof, of lodging facilities or dwelling units.

7. **Appraisals**

Grantee shall, at the request of the Department, provide an appraisal of any real property or any interest in real property that is acquired with the Grant funds. Any such appraisal shall be prepared in a form, and by a qualified appraiser, acceptable to the Department.

8. **Byrd Anti-Lobbying Amendment**

(31 U.S.C. 1352) Grantees, Subrecipients, Co-Applicants, Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

9. **Anti-Kickback Act of 1986**

Grantee shall ensure that all contracts comply with the Anti-Kickback Act of 1986 (41 U.S.C. §§ 5158) that prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind.

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10. Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

11. Contracting and Labor Standards

A. **Davis Bacon Act codified at 40 U.S.C. 3141, et seq. (as amended)**
Where funds provided through this Agreement are used for construction work or in support of construction work, the Grantee shall also ensure that the federal requirements of the Davis Bacon Act codified at 40 U.S.C. 3141, et seq. (as amended), pertaining to federal labor standards and compliance, are met and documented. Grantee recognizes that multiple labor standards (both state prevailing wage and federal Davis-Bacon Act) may apply to the project and both standards must be satisfied.

B. **Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 3701–3708)**
Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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C. For the purposes of this requirement "construction work" includes, but is not limited to, rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Grantee and a licensed building contractor, the Grantee shall serve as the "awarding body" as that term is defined in the California Labor Code. Where the Grantee will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

D. The applicable wage rate determination on construction work will be the more restrictive of the rate prescribed in the California Labor Code Sections 1770-1784, or the Davis-Bacon Wage Determination.

E. Grantee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

F. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Grantee shall ensure that the requirements of California Labor Code, Chapter 1, commencing with Section 1720, Part 7 [California Labor Code Sections 1720-1743] (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

12. Domestic Preferences for Procurement 2 CFR Part 184 § 70915

A. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

B. For purposes of this section:

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1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

13. <u>Prohibition of Certain Telecommunications and Video Surveillance Services or Equipment 2 CFR 200.216</u>

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

A. Procure or obtain;

B. Extend or renew a contract to procure or obtain; or

C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

2) Telecommunications or video surveillance services provided by such entities or using such equipment.

3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of

the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

D. In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

E. See also Public Law 115–232, section 889 for additional information.

F. See also § 200.471.

14. <u>Environmental Compliance</u>

Grantee shall provide a Phase I Environmental Site Assessment ("**ESA**") for the Project, in conformance with ASTM Standard Practice E 1527, evaluating whether the Project is affected by any recognized environmental conditions. If the Phase I ESA discloses evidence of recognized environmental conditions and Grantee desires to proceed with the Project, the Grantee shall provide the Department with a Phase II report and any additional reports as required by the Department and in a form acceptable to the Department. Any remediation work shall be subject to Department approval. Grantee shall also provide an asbestos assessment and a lead-based paint report for the Department's approval if the Project involves rehabilitation or demolition of existing improvements.

A. Grantee shall comply with the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, as amended, and 33 U.S.C. § 1318 relating to inspection, monitoring, entry, reports, and information, and all regulations and guidelines issued thereunder.

B. Grantee shall comply with the requirements of the Clean Air Act (<u>42 U.S.C. 7401</u>–7671q.) and the Federal Water Pollution Control Act (<u>33 U.S.C. 1251</u>–1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (<u>42 U.S.C. 7401</u>–7671q) and the Federal Water Pollution Control Act as

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amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

C. Grantee shall comply with Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50 regarding air quality protections, as amended.

D. Grantee shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4001). Grantee shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

E. Grantee shall comply with the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and Section 401(b) of the Lead-Based Paint Poisoning Prevention Act of 1971. Grantee agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR §570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all Homekey-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be required.

F. 2 CFR Part 200.323 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a

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manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. See § 200.323.

G. Grantee shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), the Archaeological and Historical Preservation Act of 1974 (Public Law 93-291), and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement. Grantee shall also comply with federal Executive Order 11593 on the protection and enhancement of the cultural environment. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

H. Grantee shall comply with all National Environmental Protection Act (NEPA) requirements as applicable to the performance of this Agreement as found in 24 CFR Part 50, 24 CFR Part 58, as applicable, and 40 CFR Parts 1500 – 1508. The CARES Act provides that funds may be used to cover or reimburse allowable costs of eligible activities to prevent, prepare for, and respond to coronavirus incurred by a Grantee after January 21, 2020. However, Grantee shall not execute this Agreement nor receive reimbursement for pre-agreement eligible activity costs until they have successfully documented compliance with the applicable NEPA requirements, including public noticing and publishing.

I. This Agreement does not constitute a commitment of funds or site approval, and the commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the Grantee of an approval of the request for release of funds and certification from the Department under 24 CFR Part 50, 24 CFR Part 58, and 40 CFR 1500 - 1508. The provision of any funds to the project is conditioned on the Grantee's determination to proceed with, modify or cancel the project based on the results of the environmental review. The Grantee will not receive appropriate notice to proceed until they have successfully documented compliance with the applicable NEPA requirements, including public noticing and publishing.

15. Insurance

A. Grantee shall obtain the insurance coverages identified in the NOFA. Grantee

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shall maintain such insurance coverages for either the term of this Agreement or the term of any required restrictive covenant or regulatory agreement, whichever applicable term is longer. Grantee shall name the State of California and the Department, as well as their respective appointees, officers, agents, and employees, as additional insureds on all such policies. Such policies shall provide for notice to the Department in the event of any lapse of coverage or insurance claim thereunder. Prior to disbursement of any Grant funds, Grantee shall provide evidence satisfactory to the Department of its compliance with these insurance requirements.

B. If Grantee is self-insured, in whole or in part, as to any of the required types and levels of coverage, the Grantee shall provide the Department with a written acknowledgment of its self-insured status prior to disbursement of any Grant funds. If the Grantee abandons its self-insured status at any time after execution of this Agreement, the Grantee shall immediately notify the Department, and shall promptly comply with the insurance coverage requirements under the Program.

16. Operating Funds

Grantee shall demonstrate its capacity to provide five (5) years of operating funds for the Project. As set forth at Exhibit B of this Agreement, Grantee shall provide documentary evidence of such capacity prior to disbursement of any Grant funds.

17. Relocation

Grantee shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, in 24 CFR Part 42, 49 CFR Part 24, and 42 U.S. §5304(d) as they apply to the performance of this Agreement. Grantee agrees to comply with 24 CFR 570.606 relating to the acquisition and disposition of all real property utilizing grant funds and to the displacement of persons, businesses, non-profit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds.

Grantee must have a relocation plan prior to proceeding with any phase of a Project or other activity that will result in the displacement of persons, businesses, or farm operations. To ensure that displaced persons and entities do not suffer a disproportionate impact as a result of Projects which benefit the public, all notices to vacate and relocation services must be provided to them in accordance with applicable law. In addition, before the Homekey award will be disbursed, Grantee must have

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either:

A. Department-approved relocation plan; or

B. Department-issued Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement, which has been duly executed by the Grantee and approved by the Department.

18. One-for-One Replacement of Assisted Units

One-for-one replacement of Assisted Units is permissible if approved in advance by the Department per Section 300 of the NOFA, after the Department's determination, in its sole and absolute discretion, that such replacement will not reduce the inventory of units that are already available at affordable rents to households that are at or under 30 percent AMI.

19. Site Control

Unless and except as otherwise expressly approved in writing by the Department or provided at Exhibit E to this Agreement, the Grantee shall have control of the property at all times, and such control shall not be contingent on the approval of any other party. The status and nature of the Grantee's title and interest in the property must be acceptable to the Department. Site control may be evidenced by one of the following:

A. Fee title.

B. A leasehold interest on the property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with, and satisfaction of, all Program objectives and requirements, including, without limitation, those set forth in this Agreement. If the Grantee's interest in the property is a leasehold, and the lessee and the lessor are affiliated or related parties, then the Department may require both the lessee and the lessor to execute this Agreement.

C. An executed disposition and development agreement, or irrevocable offer of dedication to a public agency.

D. A sales contract, or other enforceable agreement for the acquisition of the property. If this form of evidence was relied upon at the time of Application, the

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Department may impose additional Performance Milestones (e.g., presentation of additional or supplemental evidence of eventual site control closer to any projected close of escrow).

E. A letter of intent, executed by a sufficiently authorized signatory of the Grantee, that expressly represents to the Department, without condition or reservation, that, upon successful application, the Grantee shall purchase or otherwise acquire a sufficient legal interest in the property to accomplish the purpose of the award. The letter of intent must also be duly acknowledged by the party selling or otherwise conveying an interest in the subject property to the Grantee. If this form of evidence was relied upon at the time of Application, the Department may impose additional Performance Milestones (e.g., presentation of additional or supplemental evidence of eventual site control closer to any projected close of escrow).

F. Other evidence of site control that gives the Department assurance (equivalent to A-E above) that the Grantee will be able to complete the Project in a timely manner and in accordance with the Program's objectives and requirements, including, without limitation, those set forth or referenced in this Agreement.

20. Adaptability and Accessibility

The Project shall comply with all applicable federal, state and local laws regarding adaptability and accessibility, including, without limitation, the requirements set forth in the NOFA.

21. Title Status and Reports

Grantee shall provide a current title report for the real property on which the Project is located. If Grantee's interest in the property is leasehold, then Grantee shall provide a current title report for the leasehold interest and the fee interest. For tribal trust land, Grantee shall provide a TSR or an attorney's opinion regarding chain of title and current title status. As set forth and specified at Exhibit B of this Agreement, Grantee shall provide such title report or documentation of title status prior to disbursement of any Homekey Grant funds.

22. Title Insurance

Grantee shall provide evidence of title insurance and an ALTA As-Built Survey that are acceptable to the Department. The condition of title, the insurer, the liability amount, the

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form of policy, and the endorsements shall be subject to Department approval. The policy shall insure that Grantee holds good and marketable title (fee simple or leasehold).

23. Property Management Plan

Grantee shall submit a property management plan to the Department for its review and approval. Such management plan shall be consistent with any representations made in the Application, and it shall meet the Program Requirements (e.g., include the management, maintenance, and repair information required by the MHP Guidelines).

24. Supportive Services Plan

Grantee shall submit a Supportive Services plan to the Department for its review and approval. Such Supportive Services plan shall be consistent with any representations made in the Application, and it shall meet the Program Requirements (e.g., provide for delivery of housing stability services and benefits).

25. Nondiscrimination

Grantee shall adopt a written nondiscrimination policy requiring that no person shall, on the grounds of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition, genetic information, citizenship, primary language, immigration status (except where explicitly prohibited by federal law), arbitrary characteristics, and all other classes of individuals protected from discrimination under federal or state housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with Homekey funds.

Statutes and regulations prohibiting discrimination are applicable to this Agreement and include, without limitation, the following:

A. Grantee and any of its contractors, subcontractors, successors, transferees, and assignees shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as

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implemented by the U.S. Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the U.S. Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement;

B. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.";

C. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.); Grantee shall affirmatively further fair housing, in accordance with the Civil Rights Act of 1964 (42 U.S.C §2000a, et seq.), and the Fair Housing Act (42 U.S.C. §3601, et seq.), according to 42 U.S.C. §5306, et seq. and in compliance with California statute (Gov. Code sections 65583, et seq.). Grantee shall comply with the Fair Housing Amendment Act of 1988 (Public Law 100-430). Grantee shall develop and implement an affirmative fair housing marketing plan that is satisfactory to the Department. Appropriate aspects of the initial plan shall be incorporated into the ongoing management plan to ensure positive outreach and informational efforts to those who are least likely to know about and apply for Interim Housing or Permanent Housing. Grantee is encouraged to refer to the guidelines for Affirmative Fair Housing Marketing Plans issued by the U.S. Department of Housing and Urban Development ("**HUD**"). Grantee shall comply with all applicable state and federal fair housing laws;

D. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); prohibiting recipients of federal funds from discrimination against persons with disability; the Americans With Disabilities Act of 1990 prohibiting all public discrimination against persons with disabilities; the Age Discrimination Act of 1975 prohibiting age-based discrimination in federally funded activities; Executive Order 11063 prohibiting discrimination in disposition of properties owned or

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financed with federal funds, as amended by Executive Order 12259; and Executive Order 11246 regarding fair employment, as amended by Executive Orders 11375, 11478 and 12086; and HUD regulations heretofore issued or to be issued to implement these authorities relating to civil rights;

E. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.); The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.); prohibiting age-based discrimination in federally funded activities.

Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.); Americans With Disabilities Act of 1990 prohibiting all public discrimination against persons with disabilities. The State of California nondiscrimination statutes, regulations, and standards set forth and identified in the NOFA and at Exhibit C of this Agreement.

26. Affirmative Fair Housing Marketing Plan and Fair Housing Compliance

A. Grantee shall affirmatively further fair housing, in accordance with the Civil Rights Act of 1964 (42 U.S.C §2000a, et seq.), and the Fair Housing Act (42 U.S.C. §3601, et seq.), according to 42 U.S.C. §5306, et seq. and in compliance with California statute (Gov. Code sections 65583, et seq.). Grantee shall comply with the Fair Housing Amendment Act of 1988 (Public Law 100-430).

B. Grantee shall develop and implement an affirmative fair housing marketing plan that is satisfactory to the Department. Appropriate aspects of the initial plan shall be incorporated into the ongoing management plan to ensure positive outreach and informational efforts to those who are least likely to know about and apply for Interim Housing or Permanent Housing. Grantee is encouraged to refer to the guidelines for Affirmative Fair Housing Marketing Plans issued by the U.S. Department of Housing and Urban Development ("**HUD**"). Grantee shall comply with all applicable state and federal fair housing laws.

27. Grantee Acknowledgment of the Pet Friendly Housing Act of 2017

By executing this Agreement, Grantee acknowledges that the Pet Friendly Housing Act of 2017 (Health & Saf. Code, § 50466) requires each housing development, if it is financed on or after January 1, 2018 pursuant to Division 31 of the Health and Safety Code, to authorize a resident of the housing development to own or otherwise maintain one or more common household pets within the resident's dwelling unit, subject to applicable state laws and local governmental ordinances related to public health, animal

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control, and animal anticruelty.

28. Final Certificate of Occupancy

Grantee shall provide a final certificate of occupancy (or an equivalent form of occupancy certification or approval) issued by the local agency having jurisdiction over such certificates.

29. Occupancy

The Assisted Units shall be occupied by the Target Population, and such units shall be in decent, safe, and sanitary condition at the time of their occupancy. In addition, the Grantee shall certify, upon occupancy, that it will employ the core components of Housing First (as set forth at Welfare and Institutions Code section 8255) as part of its property management plan and Supportive Services plan.

30. Tenant Selection

Referrals to Assisted Units shall be made through the local Coordinated Entry System ("**CES**"), or another comparable prioritization system based on greatest need shall be used. All referral protocols for Assisted Units shall be developed in collaboration with the local Continuum of Care and implemented consistent with the Program Requirements.

31. Participation in Statewide HDIS/HMIS

Grantee shall support Continuum of Care participation in the statewide Homeless Data Integration System ("**HDIS**"). As required by and in accordance with state and federal law (including all applicable privacy law), Grantee shall further disclose relevant data to the local Homeless Management Information System ("**HMIS**") and comparable data collection systems.

32. Affordability Covenant

A. An Affordability Covenant shall be recorded against the Project real property in accordance with Section 208 of the NOFA and this Agreement. For Interim Housing Projects, the Department will prepare, and the Public Entity or Tribal Entity shall cause, a 30-year Affordability Covenant to be recorded against the Project real property.

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B. For Interim Housing Projects that will ultimately result in Permanent Housing, the Public Entity or Tribal Entity shall prepare and cause a 30-year Affordability Covenant to be recorded against the Project real property during the interim phase and upon conversion to permanent housing the public entity or tribal entity shall cause a 55-year affordability covenant.

C. For Permanent Housing Projects, the Public Entity or Tribal Entity shall prepare and cause a 55-year Affordability Covenant to be recorded against the Project real property. For Permanent Housing Projects located on tribal trust land, a 50-year Affordability Covenant shall be recorded against the Project real property.

D. The Affordability Covenant shall require integration of the Target Population within all entrances, common areas, and buildings that comprise the Project.

E. The Affordability Covenant shall include occupancy and rent restrictions that maintain the Project's accessibility to the Target Population over the full term of the Affordability Covenant.

F. All Affordability Covenants are subject to the advance written approval of the Department, and shall be acceptable to the Department in form, substance, and priority. Project-specific requirements and deadlines are set forth at Exhibit E of this Agreement.

33. Restrictions on Sales, Transfers, and Encumbrances

Grantee shall not, for the duration of this Agreement, sell, assign, transfer, or convey the Project, or any interest therein or portion thereof, without the express prior written approval of the Department.

34. Retention, Inspection, and Audit of Records

A. Grantee is responsible for maintaining records which fully disclose the activities funded by the Grant. Grantee shall retain all records for a period of five (5) years after the expiration of this Agreement, unless a longer retention period is stipulated. If any litigation, claim, negotiation, audit, monitoring, inspection or other action commences during this required retention period, all records must be retained until a full and final resolution of the action.

B. The Department, as well as its appointees, employees, agents, and delegates, shall have the right to review, obtain, and copy all records pertaining to performance under this Agreement. The U.S. Department of the Treasury and

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any authorized oversight body or representative, including, without limitation, the Treasury's Office of Inspector General, the Government Accountability Office, and the Pandemic Relief Accountability Committee, shall have the right of access to such records in order to conduct audits or other investigations. Grantee shall provide any relevant information requested, and shall permit access to its premises, upon reasonable notice and during normal business hours, for the purpose of interviewing employees and inspecting and copying books, records, accounts, and other relevant material.

C. At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Project. At the Department's request, the Grantee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The audit shall be performed by a qualified state, local, independent, or Department auditor. Where an independent auditor is engaged, the audit services agreement shall include a clause which permits the Department to have access to the independent auditor's relevant papers, records, and work product.

D. If there are audit findings, the Grantee shall submit a detailed response to the Department for each audit finding. The Department will review the response. If the Department determines, in its sole and absolute discretion, that the response is satisfactory, the Department will conclude the audit process and notify the Grantee in writing. If the Department determines, in its sole and absolute discretion, that the response is not satisfactory, the Department will contact the Grantee, in writing, and explain the action required to cure any audit deficiencies. Such action could include the repayment of ineligible costs or other remediation.

E. If so directed by the Department upon the termination or expiration of this Agreement, the Grantee shall deliver all records, accounts, documentation, and other materials that are relevant to this Agreement to the Department as depository.

35. <u>Site Inspection</u>

The Department reserves the right, upon reasonable notice, to inspect the Project to determine whether it meets the Program Requirements. If the Department reasonably determines that the site is not acceptable for the Project in accordance with] the Program Requirements, the Department reserves the right to rescind the award and the Grant. Nothing in this paragraph is intended to create or imply any obligation of the Department to inspect the Project.

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36. Compliance with State and Federal Laws, Rules, Guidelines, and Regulations

A. Grantee, its agencies or instrumentalities, contractors, sub-grantees, and subrecipients shall comply with all local, state, and federal laws, statutes, and regulations, as well as policies and guidelines established by the Department for the administration of the Homekey program.

B. Grantee shall comply with the requirements of 24 CFR 570.480 et seq., the Housing and Urban Development (HUD) 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, as adopted by HUD at 2 CFR 2400, Title II of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. § 12701 et seq.) and all federal regulations and policies issued pursuant to these regulations. The Grantee further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

37. Updated Information

If there is any change in the information that has been provided to the Department, Grantee shall promptly provide the Department with updated documentation (e.g., updated sources and uses). All changes shall be subject to Department approval. In addition, Grantee shall promptly notify the Department, in writing, of any changes in Grantee or Co-Grantee organization, authorization, or capacity.

38. Survival of Obligations

The obligations of the Grantee, as set forth in this Agreement, shall survive the termination or expiration of this Agreement.

39. Litigation

Grantee shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement, the Program Requirements, the interests of the Department, and the objectives of the Homekey Program.

40. Entire Agreement; Severability

This Agreement constitutes the entire agreement between the Grantee and the

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Department. All prior representations, statements, negotiations, and undertakings with regard to the subject matter hereof are superseded hereby. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

41. Modification or Waiver under AB 1010

The Department reserves the right to waive or modify any requirement under this Agreement, or any Program Requirement, as authorized by and in accordance with Assembly Bill No. 1010 (Chapter 660, Statutes of 2019) ("**AB 1010**"), which is codified at Health and Safety Code section 50406, subdivision (p).

42. Waivers

No waiver of any breach, violation, or default under this Agreement shall be held to be a waiver of any other or subsequent breach or violation thereof or default thereunder. The Department's failure, at any time, to enforce the provisions of this Agreement or to require the Grantee's performance under this Agreement shall in no way be construed as a waiver of such provisions or performance, and it shall not affect the validity of this Agreement or the Department's right to enforce this Agreement.

43. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

This Agreement is subject to the administrative requirements, cost principles, and audit requirements for federal awards to non-federal entities, which are set forth at 2 Code of Federal Regulations part 200.

A. Accounting Standards: Grantee agrees to comply with, and administer the activity in conformance with, 2 CFR Part 200.300 et seq, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Debarred contractors: It certifies that neither the Applicant or its staff are presently debarred, suspended, proposed for debarment, declared ineligible, or

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voluntarily excluded from participation in federal assistance programs, in any proposal submitted in connection with the Homekey program, per the Excluded Party List System located at https://www.sam.gov/SAM/. In addition, the Applicant will not award contracts to or otherwise engage the services of any contractor while that contractor (or its principals) is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction, in any proposal submitted in connection with the Homekey program under the provisions of 24 CFR Part 24.

Single Audit Requirements: Grantee is responsible for complying, as necessary, with the Single Audit Act and its implementing regulation at 2 Code of Federal Regulations part 200, subpart F regarding audit requirements.

44. Disputes

In the event of any conflict between this Agreement and any Grantee documents or side agreements, this Agreement and the Program Requirements shall prevail, are applicable, and shall be enforceable by the Department even if the Department provided review or approval of such documents and side agreements.

45. Consent

The parties agree that wherever the consent or approval of the Department or Grantee is required under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned, or delayed, unless the same is specified as being in that party's sole and absolute discretion, or other words of similar import.

46. Grantee Liability

Grantee shall remain liable to the Department for performance under this Standard Agreement and compliance with all Program Requirements regardless of any Department-approved transfer or assignment of interest, or of any designation of a third party for the undertaking of all or any part of the Scope of Work. Likewise, each Co-Grantee shall remain jointly and severally liable to the Department for performance under this Standard Agreement and compliance with all Program Requirements regardless of any Department-approved transfer or assignment of interest; any designation of a third party for the undertaking of all or any part of the Scope of Work; or the Co-Grantees' identification of a Designated Payee.

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47. Defense and Indemnification

Grantee agrees to defend, indemnify, and hold harmless the Department, and its appointees, agents, employees, and officers, from any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), which may arise in connection with Grantee's use of the Grant funds and performance under this Agreement. If any attorney, including the California Attorney General, is engaged by the Department to enforce, construe, or defend any provision of this paragraph, with or without the filing of any legal action or proceeding, Grantee shall, individually or jointly, pay to the Department, immediately upon demand, the amount of all attorneys' fees and costs incurred by the Department in connection therewith.

48. Time Is of the Essence

Time is of the essence under this Agreement, and in the performance of every term, covenant, and obligation contained herein.

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PROJECT-SPECIFIC PROVISIONS AND SPECIAL TERMS AND CONDITIONS

1. PROJECT-SPECIFIC PROVISIONS

Project Name: Merriment Village Apartments

Address: 428 N. Walton Avenue, Yuba City, CA 95993

Assessor Parcel Numbers (APNs): 058-120-001-000

A. **Permanent Housing – Award, Disbursement, and Eligible Use(s)**

Grantee received Homekey Program award letter on February 13, 2024 (the "**Award Date**"). Pursuant to that award letter, the Grantee is receiving Homekey Grant funds in the amount of $24,632,331.00 (the "**Award**"). The Payee of these funds is the City of Yuba City. Grantee will use the funds to provide Permanent Housing for the Target Population and subpopulations as specified in the unit mix chart included herein. Specifically, the Grantee will apply these funds towards the following eligible use(s):

1) New Construction of dwelling units to provide Permanent Housing for the Target Population.

The Homekey Award is comprised of:

Total Award	$24,632,331.00
Capital Award	$22,016,906.00
Acquisition	$0.00
Rehabilitation	$0.00
Master Leasing	$0.00
New Construction	$22,016,906.00
Affordability Covenants	$0.00
Relocation	$0.00
Operating Award	$2,615,425.00

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B. **Unit Mix**

# of Bedrooms	Total Homekey Units	Homekey-funded Manager Units	Homekey-Assisted Units	AMI Income Limit	Target Population or Subpopulation Restriction
2-Bedroom	79	0	79	30%	Homeless
3-Bedroom	1	1	0	N/A	Manager Unit
Totals:	80	1	79		

Grantee must use referrals to the Homekey Assisted Units through the local Coordinated Entry System (CES) or comparable prioritization system based on greatest need. All referral protocols for Homekey Assisted Units must be developed in collaboration with the local CoC and implementation consistent with the requirements set forth in the Homekey NOFA.

C. **Project Narrative**

1) Merriment Village Apartments is the Phase 1 of a larger project that will create 80 newly construction units, with 79 two-bedroom units, and one (1) three-bedroom manager's unit. The Project will provide permanent supportive housing for households with incomes equal to or less than 30% of Area Median Income (AMI). Seventy-nine (79) units will exceed federal and state accessibility requirements for persons with mobility disabilities and will include features accessible to persons with hearing or vision disabilities. Each unit will include a refrigerator, microwave, basic cooking utensils, and storage for food and kitchenware, a bed, nightstand, a desk, or table, living space seating and storage units. Off-site amenities, located within two miles of the project include transportation stops, a medical clinic, a grocery store/supermarket, a pharmacy, and a public park.

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D. **Scope of Work**

1) **Construction and Rehabilitation Detail:**

Overall, the scope of work for phase one of the Merriment Village Project involves site preparation, infrastructure development, and construction of the 79 housing units.

a) Prepare and clear the land for construction, conduct soil testing and prepare the site foundation, install temporary utilities to support construction activities

b) Develop ground for community center and playground area, Construct roadways and sidewalks to connect the housing units to the community.

c) Install drainage and irrigation systems

d) Install plumbing, electrical, and HVAC systems in each unit.

e) Install smoke detectors and fire suppression systems to ensure safety.

2) **Supportive Services and Staffing Detail:**

Grantee shall assure that the case manager ratio for this project will be maintained at 14.4 to 1 for Homelessness. Habitat for Humanity: Yuba/Sutter, Inc. will practice the Housing First model and will manage the property. Supportive Outreach Services (SOS) will lead the project's Supportive Services. On site services include Case management and Hosing Navigation; Household management skills: managing costs,

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cooking, and shopping; One-on-one coaching in house cleaning; use of utilities, household appliances and plumbing conditions of a lease.

E. **Grantee Contract Coordinator**

Authorized Representative Name:	Shon Harris
Authorized Representative Title:	Mayor
Entity Name:	City of Yuba City
Address:	1201 Civic Center Boulevard, Yuba City, CA 95993
Telephone No.:	(530) 822- 4602
E-Mail Address:	shonharris@yubacity.net

Authorized Representative Name:	Joseph Hale
Authorized Representative Title:	CEO
Entity Name:	Habitat for Humanity Yuba/Sutter, Inc.
Address:	202 D Street, Marysville, CA 95901
Telephone No.:	(530) 742-2727, Ext 211
E-Mail Address:	jhale@yubasutterhabitat.org

F. **Additional Conditions Precedent to Disbursement**

None

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G. **Budget Detail**

1) Grantee is obligated to cover the Project's development, operations, and service costs for five (5) years. Grantee will satisfy this obligation by leveraging funding commitments, or other reasonable funding assurances, from the following funding sources:

   a) Homekey Award dated February 13, 2024, for a funding commitment of $24,632,331.00 for new construction.

   b) The Habitat for Humanity (HHYS) letter dated May 14, 2024, for a funding commitment of $1,000,000.00 for in kind development materials.

   c) The HHYS letter dated May 14, 2024, for a funding commitment of $4,445,175.00 for project development in cash from ReStore.

   d) The HHYS letter dated May 14, 2024, for a funding commitment of $989,965.00 for in kind furnishings.

   e) The City of Yuba City letter dated January 8, 2023, for a funding commitment of $155,000 annually for project years one to three for a total of $465,000.00 in Permanent Local Housing (PLHA) for construction and development.

   f) The City of Yuba City letter dated January 8, 2023, for a funding commitment of $1,787,922.00 for development.

2) Grantee shall maintain the ongoing affordability of the Project by leveraging the following non-Homekey sources of rental or operating subsidies:

   a) The HHYS letter dated May 14, 2024, for a funding commitment of $183,333.33 annually for project years four to fifteen for a total amount of $2,200,000.00 for in kind support services.

   b) The HHYS letter dated May 14, 2024, from CalAIM partnership agreement for a funding commitment of $1,478,011.00 in community support for project years four and five. HHYS also

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commits $9,289,712.00 in operating subsidy from vouchers & medical during project years four through fifteen.

c) The City of Yuba City letter dated January 8, 2023, for a funding commitment of $155,000.00 annually for project years four through fifteen for a total amount of $1,860,000.00 in PLHA funds for operating subsidies.

H. **Performance Milestones**

Performance Milestones	Milestone Completion Date
Project escrow must be closed and Capital funds must be fully expended.	May 13, 2025 (This date includes a 7-month extension granted by the Department)
Homekey-funded operating funds must be fully expended.	June 30, 2026
All Acquisition, Construction and/or Rehabilitation of the Homekey Project must be completed.	February 13, 2025
Full occupancy by the Target Population must be accomplished in accordance with the descriptions and representations set forth in the Application.	May 13, 2025
A copy of Grantee's written nondiscrimination policy (in accordance with Exhibit D of this Agreement) must be submitted to the Department.	October 14, 2024

EXHIBIT E

Performance Milestones	Milestone Completion Date
A Department-approved Affordability Covenant must be recorded against the Project real property after the Departments approval to record, and as specified and described in the NOFA and this Agreement.	30 days from Standard Agreement execution *But not before Department approval
A copy of the Notice of Exemption from the California Environmental Quality Act (CEQA) filed with the Office of Planning and Research (OPR) as applicable.	October 14, 2024
A Homekey Program and Expenditure Report must be submitted to the Department as specified and described in the NOFA.	January 31 – Each year for five (5) years following the Effective Date of this Agreement.

2. <u>SPECIAL TERMS AND CONDITIONS</u>

The following Special Terms and Conditions are applicable to this Project and shall control notwithstanding anything to the contrary herein:

A. **<u>Affordability Covenant</u>**

1) The state, regional, local, or tribal Grantee shall ensure that the Project is duly encumbered with a 55-year Affordability Covenant that **(a)** is recorded in first position against the Project for the benefit of the state, regional, local, or tribal Grantee; **(b)** restricts the use, operation, occupancy, and affordability of the Project in accordance with this Agreement and the applicable Program Requirements; **(c)** duly names the Department as a third-party beneficiary with the right and privilege, but not the obligation, of enforcement thereof; and **(d)** is otherwise in form and substance acceptable to the Department.

EXHIBIT E

2) The Affordability Covenant must be recorded against the real property of the Project site by the Milestone Completion Date set forth herein. The Grantee shall obtain the Department's express written approval of the Affordability Covenant prior to the recordation of the same. After recordation, the Grantee shall promptly provide the Department with a conformed copy of the recorded Affordability Covenant.

3) Unless otherwise authorized by the prior and express written approval of the Department, the Affordability Covenant must be recorded as a lien against the Project in first position, and must remain in first position, over all other Project agreements, covenants, or other matters of record on the real property for the period of affordability required by the Program.

B. Grantee has committed to serve specific sub-populations as per NOFA Section 304, Application Scoring Criteria (3)(a). Grantee shall ensure that at least 50 percent of the Project's Assisted Units are restricted to occupancy by households experiencing Homelessness.

C. Grantee has committed to a 55-year use restriction for the Project and has waived any potential accommodation by the Department to increase income limits, as per NOFA Section 304, Application Scoring Criteria, (3)(c), for 100 percent of the Assisted Units.

D. Grantee has committed to the following accessibility details for the Project, as per NOFA Section 304, Application Scoring Criteria, (3)(d), the Project will exceed the state and federal accessibility requirements set forth in the NOFA. At least 15 percent of the Project's Assisted Units must have features accessible to persons with mobility disabilities. At least 10 percent of the Project's units must have features accessible to persons with hearing or vision disabilities.

EXHIBIT C

ADDITIONAL SCOPE OF WORK

In addition to the work required by this Agreement, Habitat shall be responsible for performing the following items identified below. Note that this list is not inclusive, and is intended to instead outline the broad categories of the scope of work that may be necessary to complete Phase I.

1. **Project Management.**

a. Finance and construct and ultimately operate supportive services for the Project consistent with this Agreement, the Standard Agreement, and all federal, State, and local requirements.

b. Record all covenants or other documents required by the Standard Agreement or this Agreement in a form acceptable to City Manager and City Attorney.

c. Apply for and obtain approval for any required entitlement (including a site plan), permit (including encroachment permits), approvals of required plans and specifications, etc.

d. Maintain site control at all times.

e. Provide all documentation and information needed to comply with its funding and reporting requirements under the Standard Agreement. with all submissions first provided for review and approval by City Manager.

2. **Budget Management.**

a. Obtain funding and finance the completion of all aspects of Phase 1.

b. Receive, review, and process all invoices and requests for payment from contractors or other persons regarding the project. Ensure that expenditures are reasonable, necessary, responsible, and eligible prior to submission of the same to City.

c. Ensure prompt and timely payment of contractors, subcontractors, and materialmen.

d. Provide financial reports to City as required by the Agreement. Provide data and documentation regarding the same to City upon request of City.

e. Ensuring that expenditures do not exceed budgeted amounts, and the project stays within funding amounts or additional funding is timely secured.

f. If changes are required to the budget, Habitat will present the requested changes to City for approval, which shall not be unreasonably withheld if the requests meet the State Homekey requirements.

3. **Construction Management.**

a. Monitor all work at the project site to ensure the work is being performed consistent with this Agreement, the Standard Agreement, and all federal, State, and local requirements.

b. Ensure that Homekey procurement requirements are met in the procurement of a general contractor and all sub-contracts associated with the project to complete the work for the Project.

c. Procure a general contractor for the project.

d. Obtain and complete all inspections.

e. Provide monthly update report to City detaining the status of the project.

4. <u>Project Close Out</u>.

a. Provide City with copies of all required documentation (permits, inspections reports, any applicable certifications, and similar information) necessary for City to complete project awards close out as required by the Standard Agreement or HCD.

5. <u>Operations</u>.

a. Comply with the requirements of the Standard Agreement for operations, including the provision of supportive services and staffing, etc.

b. Comply with the provisions of any recorded covenant, including affordability, and any ongoing requirements of the Standard Agreement.

c. Submit, obtain, and comply with the property management plan and supportive services plan approved by HCD.

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END OF DOCUMENT

ATTACHMENT 3

Habitat Gap Funding and Bonding Strategy for Merriment

According to the original budget shared with the City, our project had an existing funding gap of $7.3 million to be covered by a construction loan and converted into a permanent loan. However, as a result of the lien position associated with the Homekey award, we found it extremely difficult to locate a lender who was comfortable with lending on the project. As such we were forced to pivot and develop a plan to fill this gap.

To achieve this, Habitat for Humanity Yuba/ Sutter has committed to saving $300,000 a month for a 12-month period in order to contribute $3,600,000 in additional cash contribution to the project. Additionally, Habitat operating in the capacity of a general contractor agreed to complete a certain scope of work within the construction which amounts to $2,149,338 in work. This effectively closes the remaining development gap to $1,600,000. This gap will ultimately be filled by utilizing a HOME application under the most recent NOFA, contingent upon reasonable federal requirements. As a backup to this application, we will also submit an AHP application to serve as a supplement.

As stated in the conditions for disbursement that were placed on the Homekey award by Yuba City:

" If Gap Funding has not been secured prior to the first disbursement, Habitat shall furnish to City a performance bond in the amount of the Gap funding, but not less than $7,000,000…"

Although a $1,600,000 gap persists, upon the confirmation of this financing plan, Habitat and Hilbers will execute 2 bonds, one for each of their scopes of work, totaling $27,956,992 in value. This is far greater than the required $7,000,000 bond and should be sufficient to allow for the release of the first RFF once all other conditions have been met.

ATTACHMENT 4

TO: City Council, City of Yuba City
FROM: Habitat Project Team
DATE: March 4, 2025
SUBJECT: Merriment Village Apartments: Financial Plan and Request for Loan

Dear City Council Members,

The Habitat Project Team is pleased to submit a comprehensive financial plan to address all outstanding gap financing needs for the Merriment Village Apartments. Our goal is to partner with the City of Yuba City to ensure this critical affordable housing development remains on track with the California Department of Housing and Community Development's (HCD) mandated construction commencement deadline of April 2025, with project completion anticipated by October 2026.

Project Cost Updates and Value Engineering

On January 28, 2025, Hilbers Inc. provided an updated Schedule of Values, which includes projected cost adjustments based on subcontractor pricing revisions, additional ADA-compliant units, material price increases, new subcontractor participation, and anticipated prevailing wage increases for certain trades in 2025.

Following a thorough review of these preliminary cost estimates, our team has identified opportunities for cost reduction in two key areas:

1. **Prevailing Wage Adjustments** – A portion of the anticipated wage increases has already been accounted for in the October 2024 cost estimate.
2. **Material and Finishes Pricing** – While some material cost increases are expected, they can be mitigated through strategic substitutions, and these costs are not yet fixed.

Additionally, Habitat remains committed to self-performing select construction activities to further manage costs, including but not limited to existing well work, landscaping, and finishes.

Proposed Gap Financing Solution

The current funding gap for the project stands at **$7,047,672**. To address this, Habitat intends to pursue an Affordable Housing Program (AHP) grant in the amount of $2,000,000. While we are confident in the competitiveness of our application, we acknowledge that these grant funds are not guaranteed.

To ensure financial stability and timely project execution, we respectfully request that the City of Yuba City provide an **unsecured line of credit up to $7,500,000** at a **4% interest rate, amortized over ten years**. The Project Team is open to further negotiations on the loan terms.

Key terms of this request include:

- The loan would be structured as a **not-to-exceed, non-collateralized** agreement, ensuring no additional financing gaps arise.
- There would be **no early prepayment penalties**, allowing Habitat to repay the loan ahead of schedule should additional funding become available.
- We understand that the City's Homekey funds are currently held in an interest-bearing account, generating approximately **$1 million annually in earnings**. These earnings could serve as a safeguard against potential cost overruns or, if no overruns occur, could contribute toward the early repayment of the loan.

Conclusion

This financial plan provides a clear path to keeping the Merriment Village Apartments on schedule while addressing cost uncertainties responsibly. We appreciate the City Council's consideration of this request and look forward to working together to bring much-needed affordable housing to Yuba City.

We welcome the opportunity to discuss this proposal further and are available to answer any questions at your earliest convenience.

Sincerely,

Joseph Hale, CEO