

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 3.63  
(ID # 18226)

**MEETING DATE:**

Tuesday, January 25, 2022

**FROM :** HOUSING AND WORKFORCE SOLUTIONS:

**SUBJECT:** HOUSING AND WORKFORCE SOLUTIONS (HWS): Adopt Resolution No. 2022-058, Approving Funding Allocation and Authorizing Submittal of a Joint Application with the City of Palm Springs to the State of California Department of Housing and Community Development for Homekey Program Funds for a Grant Amount Not to Exceed \$50,000,000; Approval and Execution of a Standard Agreement to Accept the Grant Funding if Awarded, and Any Amendments Thereto; and Any Related Documents Necessary to Participate in the Homekey Program; and Approval of Up to \$5,740,000 in American Rescue Plan Act (ARPA) Funding Allocation from the County of Riverside as Local Matching Funds in Support of the Homekey Program Funding Application to Department of Housing and Community Development (HCD); District 4. [\$5,740,000 – 10% Federal ARPA Funds; \$50,000,000 – 90% State HCD Funds]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Adopt Resolution No. 2022-058, Approving Funding Allocation and Authorizing Submittal of a Joint Application with the City of Palm Springs to the State of California Department of Housing and Community Development for Homekey Program Funds for a Grant Amount Not to Exceed \$50,000,000; Approval and Execution of a Standard Agreement to Accept the Grant Funding if Awarded, and any Amendments Thereto; and Any Related Documents Necessary to Participate in the Homekey Program;
2. If awarded, approve the form of the State of California's Standard Agreement, attached hereto, and authorize the Director of Housing and Workforce Solutions (HWS), or designee, on behalf of the County of Riverside, to accept the grant award and execute a form of the State of California's Standard Agreement, substantially conforming in form and substance to the attached Standard Agreement;

Continued on page 2

**ACTION:Policy, A-30**

  
Heidi Marshall, Director 1/19/2022

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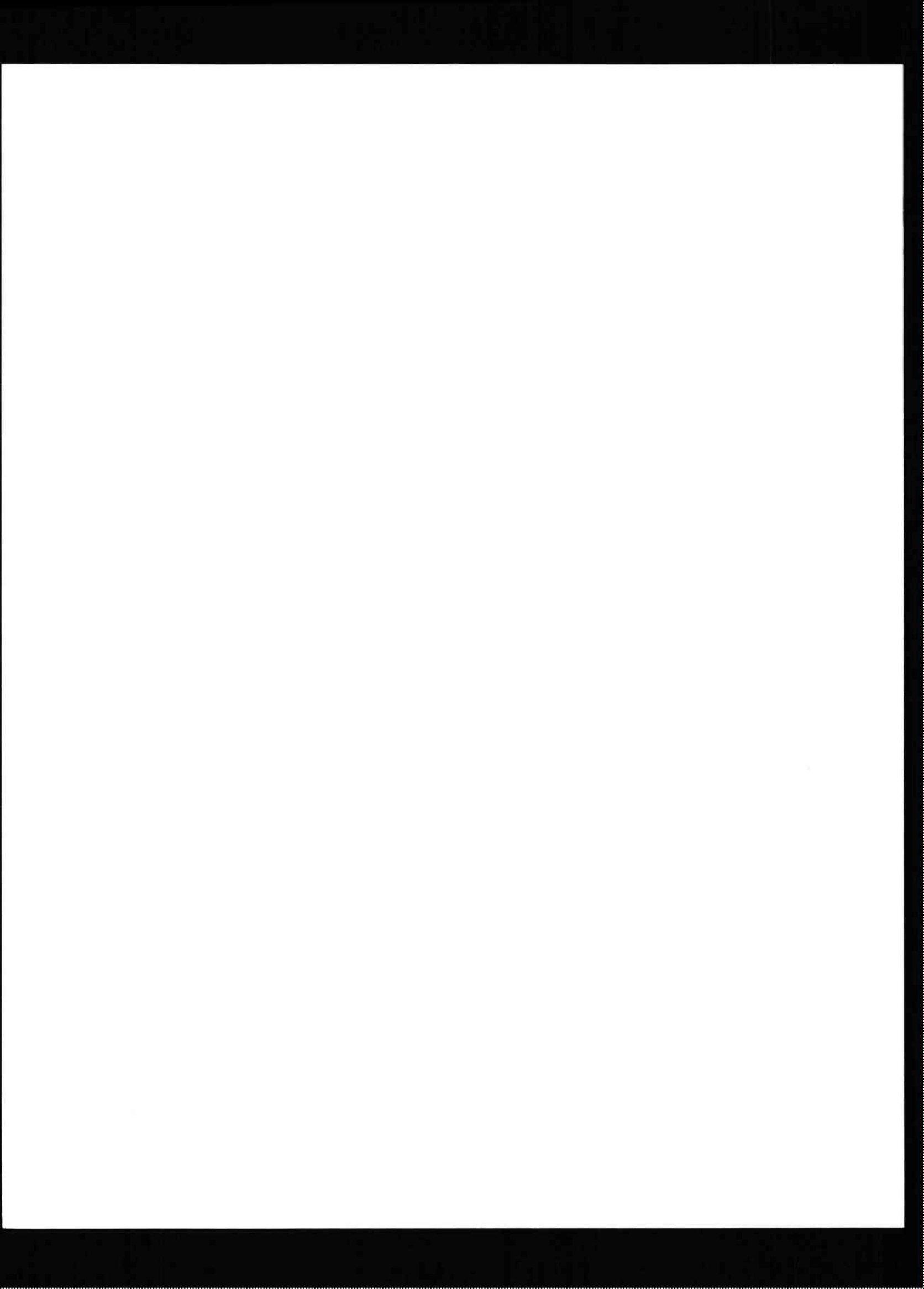
**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Spiegel seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
Nays: None  
Absent: None  
Date: January 25, 2022  
xc: HWS

Kecia R. Harper  
Clerk of the Board

By:   
Deputy



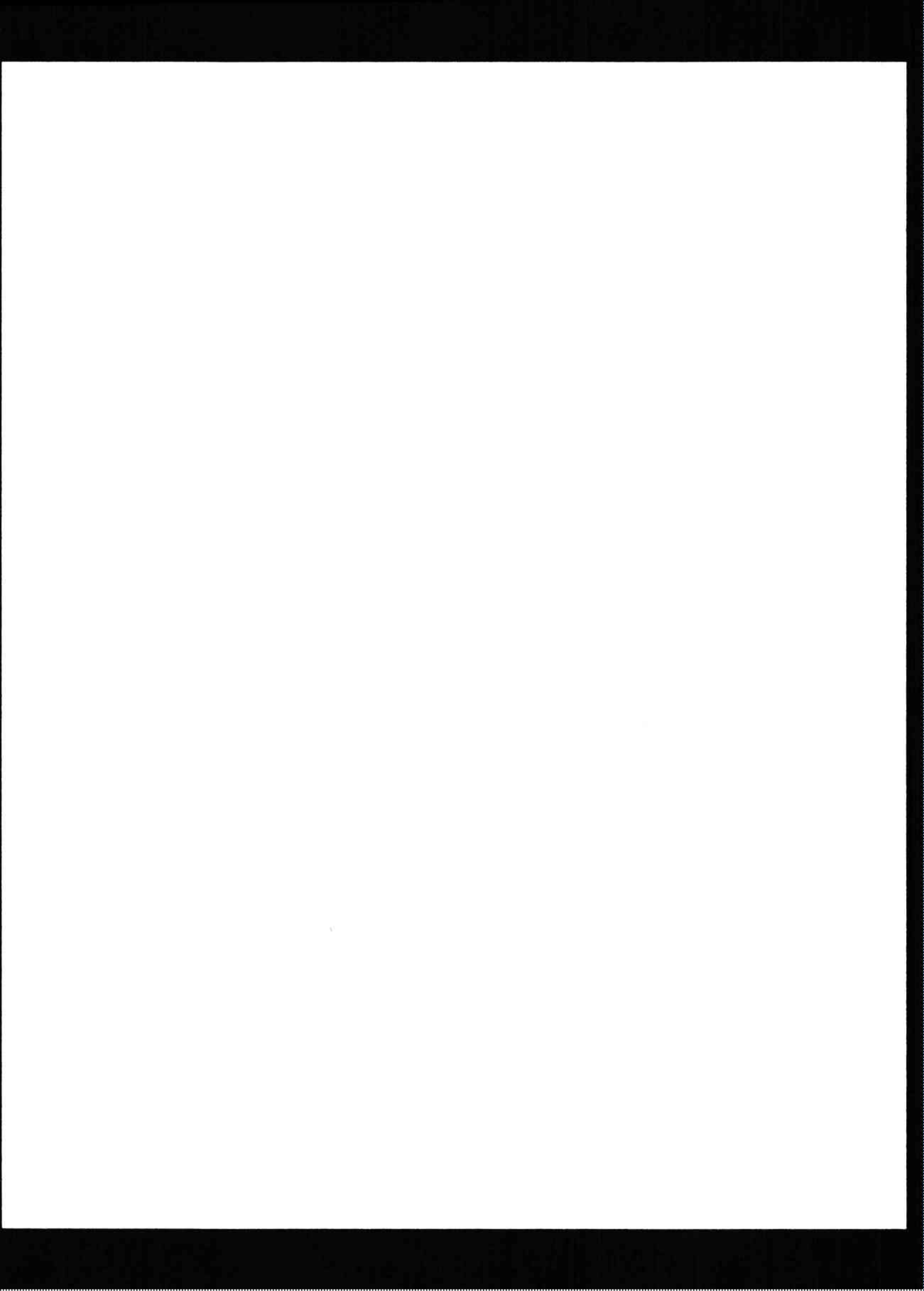
**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

**RECOMMENDED MOTION:** That the Board of Supervisors:

3. Approve the attached Memorandum of Understanding (MOU) between the County of Riverside and City of Palm Springs;
4. Authorize the Director of HWS, or designee, to execute the attached MOU, subject to approval as to form by County Counsel;
5. Authorize and allocate ARPA funding to provide a loan to the City of Palm Springs, (City), in an amount not to exceed \$5,740,000; Approve the attached form of the ARPA Loan Agreement with City, providing a loan derived from the ARPA funds in an amount not to exceed \$5,740,000 to pay for the acquisition of property located at 3589 McCarthy Road in the City of Palm Springs and convert it to a shelter, as set forth in its application to the HCD for Project Homekey funding, and Authorize the Director of the HWS, or designee, to execute the ARPA Loan Agreement with City, subject to approval as to form by County Counsel;
6. Authorize the Director of HWS, or designee, to take all necessary steps to implement the ARPA Loan Agreements, and MOU including but not limited to, signing subsequent necessary and relevant documents, subject to approval as to form by County Counsel;
7. If awarded, authorize the Director of HWS, or designee, to negotiate and execute any and all other documents, including but not limited to, memoranda of understanding, covenant agreements, and regulatory agreements, and any amendments thereto, as required by HCD for participation in the Homekey Program and to implement said program, in an amount not to exceed a total of \$50,000,000, subject to approval as to form by County Counsel;
8. Authorize and direct HWS to provide the Kahlen Group monthly financial reports and supporting documentation for audit purposes; and
9. Approve and direct the Auditor-Controller to make the budget adjustment as detailed in the attached Schedule A.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$5,740,000	\$ 0	\$55,740,000	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> 10% - County of Riverside American Rescue Plan Act Funds; 90% - Homekey Program Funds from the California Department of Housing and Community Development			<b>Budget Adjustment: Yes</b>	
			<b>For Fiscal Year: 21/22</b>	

**C.E.O. RECOMMENDATION:** Approve



**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

**BACKGROUND:**

**Summary**

On September 9, 2021, the Department of Housing and Community Development (HCD) published a Round 2 Notice of Funding Availability (NOFA) for Homekey grant funds pursuant to Health and Safety Code section 50675.1.3 (Assembly Bill No. 140 (2021-2022 Reg. Sess.)). The Homekey Program is a statewide effort to rapidly sustain and expand housing for persons experiencing homelessness. HCD has allocated \$1.45 billion in Homekey funding: \$1.2 billion of which is derived from the State's direct allocation of the federal Coronavirus State Fiscal Recovery Fund (CSFRF) established by the federal American Rescue Plan Act of 2021 (ARPA) (Public Law 117-2); \$250 million is derived from the State's General Fund. Projects receiving an award from the State's direct allocation of federal ARPA funds must be expended within eight months of the date of award. The portion of a Project's award associated with the State's General Fund must be expended by June 30, 2026. Depending on the funding award, the successful applicant must close escrow by the expenditure deadline.

The City of Palm Springs in coordination with County of Riverside Department of Housing Workforce Solutions (HWS) have been working to identify potential locations to build a homeless navigation center that could provide transitional housing and wraparound services for homeless residents. A potential site has been identified that could benefit from HCD Homekey Program grant funds, the property located at 3589 McCarthy Road in the City of Palm Springs, Assessor Parcel Number 669-420-019 (Property). There are 3 commercial structures on the Property that will be retrofitted much more quickly and more cost effectively than other properties that were considered. Attached for Board consideration is a memorandum of understanding to memorialize this partnership with the City.

One of the more persistent challenges in addressing homelessness issues that exist in the Eastern part of the County of Riverside has been the lack of a comprehensive facility such as a navigation center where shelter, food, and the full suite of support services can be co-located. Building a navigation center provides a unique opportunity to greatly expand on recent progress, including opening of the Access Center in partnership with Martha's Village and Kitchen. A well-managed navigation center would greatly expand our ability to serve our unhoused population and reduce secondary impacts the can negatively impact quality of life.

HWS is proposing to partner with the City of Palm Springs (City), to apply for up \$50,000,000 in Homekey Program funds to convert the Property into a campus equipped with 50 beds and wrap around supportive services for individuals that are homeless or at risk of homelessness ("Proposed Project"). The Property has 3 existing commercial buildings that will be retrofitted for the intended use. The proposed conversion of the existing commercial buildings is only expected to take 8-12 months, compared to the usual 3- to 5-year timeframe for new construction projects. The proposed project will feature wrap around supportive services that all residents of the proposed project will be eligible to receive so that residents may achieve self-sufficiency.

On October 19, 2021, the Board of Supervisors allocated \$50,000,000 for the purpose of addressing homelessness through development of affordable housing and providing shelter.



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The \$50,000,000 allocated by the Board will be further divided into five \$10,000,000 investments to each Supervisorial District. The funding allocated by the Board was funding the County expects to receive as part of the American Rescue Plan Act of 2021 (H.R. 1319). These funds are to focus on projects and/or programs that serve as a pathway to transition into permanent housing with the necessary supporting infrastructure. The allowable uses of ARPA funds include increasing local sheltering capacity.

The proposed project has a funding gap of \$5,740,000 and the City has applied to the County requesting assistance in the form of County of Riverside's American Rescue Plan Act (ARPA) funds. County ARPA funds will be used for the acquisition of the Property by the City of Palm Springs. The attached proposed Resolution No. 2022-058, provides Board support for the Proposed Project and recommends an allocation of up to \$5,740,000 in ARPA funds to be used as local match funds to pay for the acquisition of the Property for the Proposed Project. The County ARPA funds to the City will be provided in the form of a deferred loan, no payments will be made and the loan will be forgiven after 55 years if the City remains in compliance with the County ARPA Loan Covenant Agreement. The County's investment in this project will increase the number of interim housing beds and services which are critical to addressing homelessness.

The Homekey NOFA requires a Board resolution as part of the application. Staff is requesting approval of the attached resolution for the above referenced Homekey application. County Counsel has reviewed the attached Resolution (No. 2022-058) and approved as to form.

Staff further recommends that the Board of Supervisors approve the attached form the MOU, ARPA Loan Agreement and all exhibits, including, but not limited to the forms of the ARPA Loan Deed of Trust and Assignment of Rents, ARPA Loan Promissory Note and ARPA Loan Covenant Agreement. The ARPA Loan will be evidenced by the aforementioned Promissory Note which will be secured by a Deed of Trust encumbering the Property. The use and occupancy restrictions will be memorialized in a separate covenant agreement recorded against the Property with concurrent 55-year terms.

**Impact on Residents and Businesses**

The Homekey Program funding will allow the County to address lack of housing available to our homeless population and provide housing to people impacted by COVID-19.

**Additional Fiscal Information**

No impact upon the County's General Fund, the proposed project will be funded with State Homekey Program grant funds and the County's federal allocation of ARPA funds.

**ATTACHMENTS:**

- Resolution No. 2022-058
- Schedule A
- Form of the ARPA Loan Agreement, ARPA Loan Deed of Trust, ARPA Loan Covenant Agreement
- For of the Memorandum of Understanding



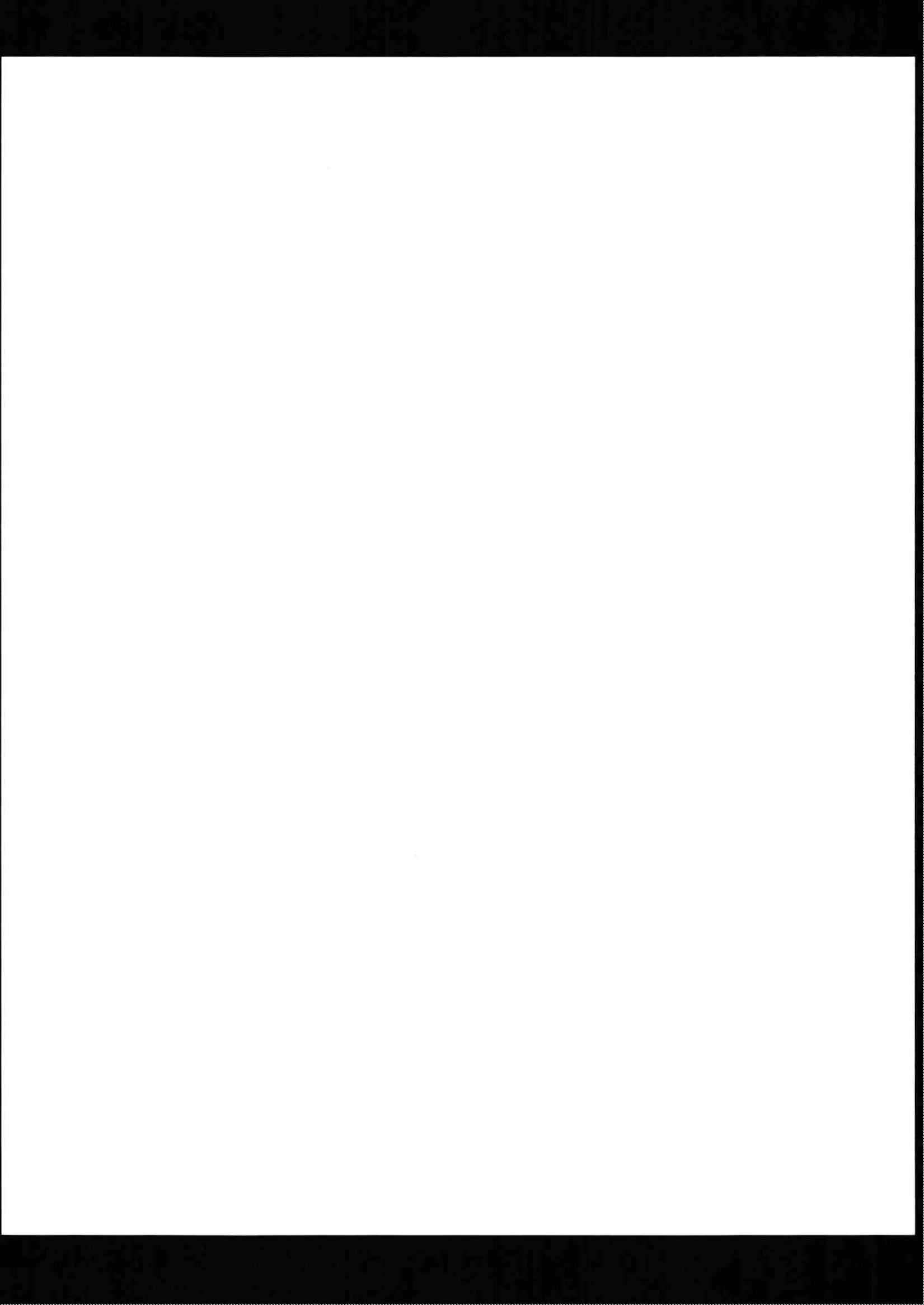


SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA

- Standard Agreement Form
- NOFA

  
Ericka Lontajo, Principal Management Analyst 1/21/2022

  
Gregory V. Prietos, Director County Counsel 1/19/2022



3 RESOLUTION NO. 2022-058

4 **A RESOLUTION OF THE GOVERNING BODY OF THE COUNTY OF RIVERSIDE**  
5 **APPROVING FUNDING ALLOCATION AND AUTHORIZING SUBMITTAL OF A JOINT**  
6 **APPLICATION WITH CITY OF PALM SPRINGS TO THE HOMEKEY PROGRAM THE**  
7 **STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY**  
8 **DEVELOPMENT FOR THE HOMEKEY PROGRAM FUNDS IN A GRANT AMOUNT NOT TO**  
9 **EXCEED \$50,000,000; APPROVAL AND EXECUTION OF A STANDARD AGREEMENT TO**  
10 **ACCEPT THE GRANT FUNDING IF AWARDED AND ANY AMENDMENTS THERETO; AND**  
11 **ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE HOMEKEY**  
12 **PROGRAM**

13 **WHEREAS**, The Department of Housing and Community Development (“Department”) has issued  
14 a Notice of Funding Availability (“NOFA”), dated September 9, 2021, for the Homekey Program  
15 (“Homekey” or “Homekey Program”) and the Department has issued the NOFA for Homekey grant funds  
16 pursuant to Health and Safety Code section 50675.1.3 (Assembly Bill No. 104 (2021-2022 Reg. Sess.), §  
17 21.); and

18 **WHEREAS**, the County of Riverside (“Applicant”) desires to jointly apply for Homekey grant funds  
19 with the City of Palm Springs, a California municipality (“Co-Applicant”) to the Department for review and  
20 consideration (“Application”); and

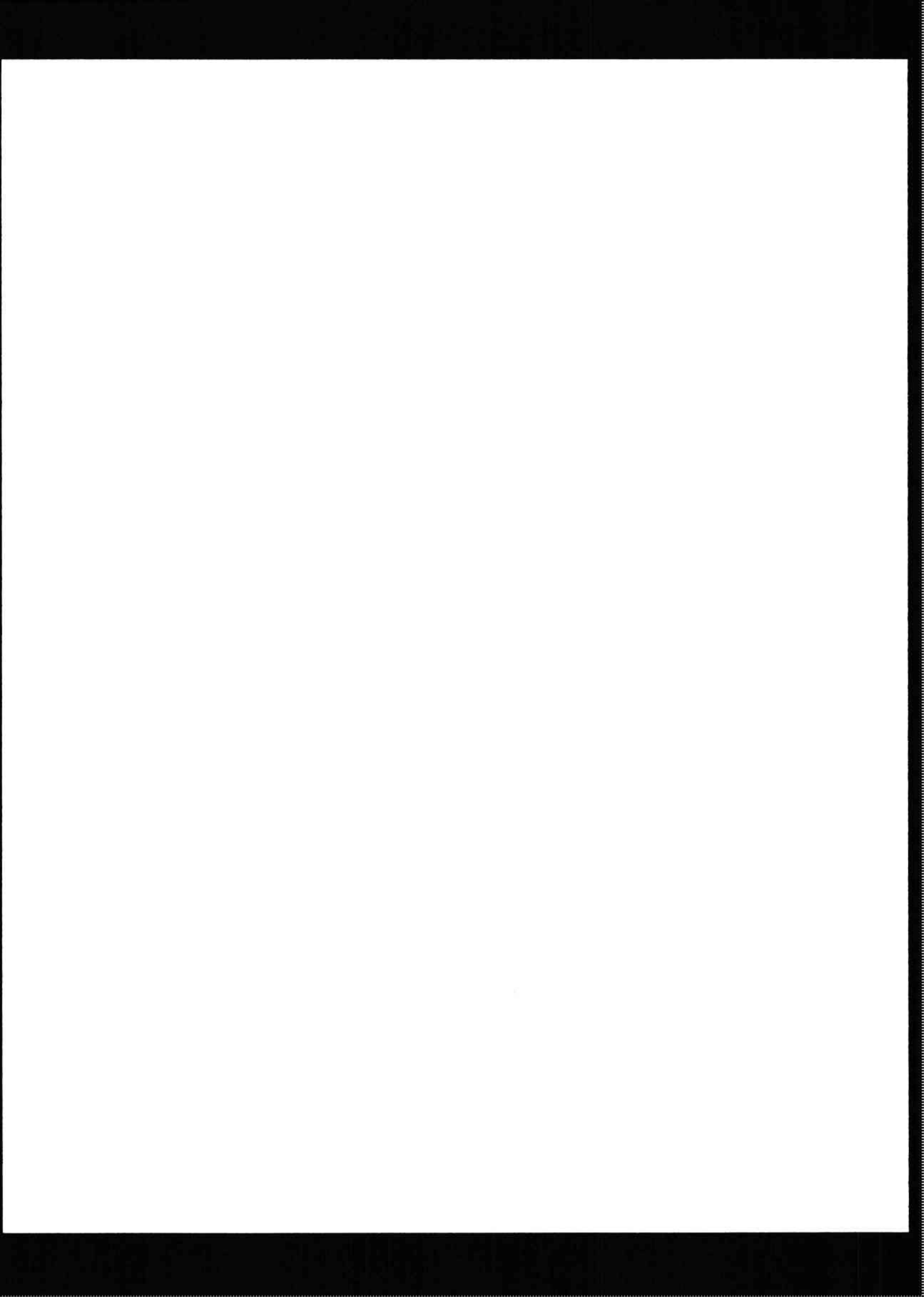
21 **WHEREAS**, Applicant desires to use the funds, if awarded, for purposes consistent with Homekey  
22 Program objectives and purposes, such as acquiring the property located at 3589 McCarthy Road in the City  
23 of Palm Springs for the purpose of providing up to 200 units of interim housing for qualified individuals and  
24 families who are homeless or at risk of homelessness and impacted by COVID-19;

25 **WHEREAS**, the Department is authorized to administer Homekey pursuant to the Multifamily  
26 Housing Program (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health  
27 and Safety Code). Homekey funding allocations are subject to the terms and conditions of the NOFA, the  
28 Application, the Department-approved STD 213, Standard Agreement (“Standard Agreement”), and all  
other legal requirements of the Homekey Program; and

**WHEREAS**, the Co-Applicant submitted an application to the County of Riverside requesting  
matching funds for the Homekey Application in the amount of \$5,900,000 in County of Riverside

FORWARDED APPROVED COUNTY COUNSEL  
BY: Cynthia M. Guared

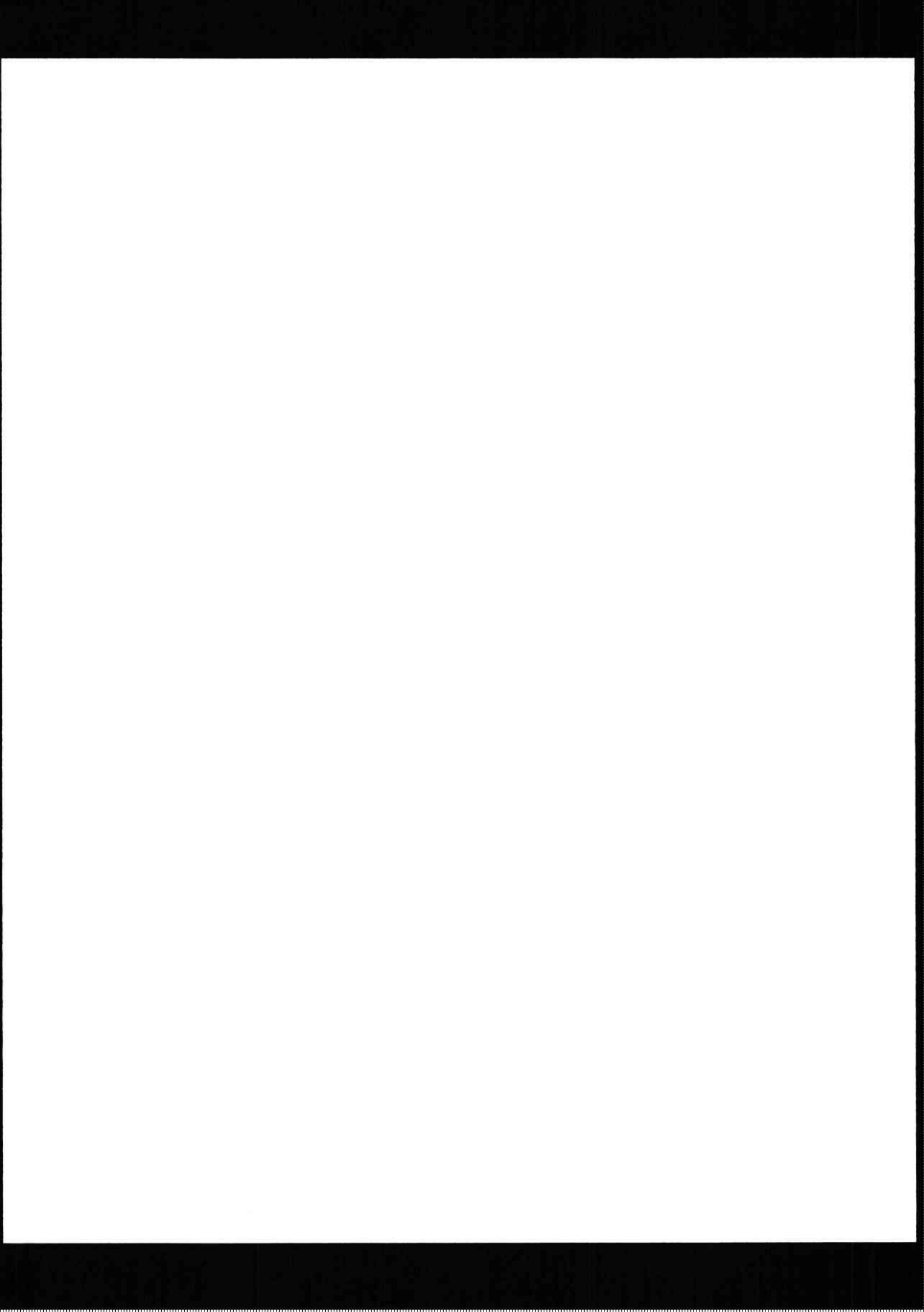
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1 American Rescue Plan Act funds (“County Allocation”). The County Allocation will be used as local  
2 matching funds in support of the Homekey application to HCD;

3 **NOW THEREFORE, BE IT RESOLVED, FOUND, DETERMINED AND ORDERED** by  
4 the Board of Supervisors of the County of Riverside, State of California, (“Board”) in regular session  
5 assembled on or about January 25, 2022, in the meeting room of the Board located on the 1<sup>st</sup> floor of the  
6 County Administrative Center, 4080 Lemon Street, Riverside, California, and based upon the evidence  
7 and testimony presented on the matter, both written and oral, including the Administrative Record as it  
8 relates to the Homekey Application, as follows:

- 9 1. Applicant is hereby authorized and directed to submit a joint Application to the Department in  
10 response to the NOFA, dated September 9, 2021, and to jointly apply for Homekey grant funds  
11 in a total amount not to exceed \$50,000,000.
- 12 2. If the Application is approved, Applicant is hereby authorized and directed to ensure that any  
13 funds awarded for capital expenditures are spent within eight (8) months of the date of award,  
14 and that any funds awarded for capitalized operating subsidies are spent by June 30, 2026.
- 15 3. If the Application is approved, Applicant is hereby authorized and directed to enter into,  
16 execute, and deliver a Standard Agreement in a total amount not to exceed \$50,000,000, any  
17 and all other documents required or deemed necessary or appropriate to secure the Homekey  
18 funds from the Department and to participate in the Homekey Program, and all amendments  
19 thereto (collectively, the “Homekey Documents”).
- 20 4. Applicant acknowledges and agrees that it shall be subject to the terms and conditions  
21 specified in the Standard Agreement, and that the NOFA and Application will be incorporated  
22 in the Standard Agreement by reference and made a part thereof. Any and all activities,  
23 expenditures, information, and timelines represented in the Application are enforceable  
24 through the Standard Agreement. Funds are to be used for the allowable expenditures and  
25 activities identified in the Standard Agreement.
- 26 5. Heidi Marshall, Director, or designee, is authorized to execute the Application and the  
27 Homekey Documents on behalf of Applicant for participation in the Homekey Program  
28



2 **RESOLUTION 2022-058**

3 **A RESOLUTION OF THE GOVERNING BODY OF THE COUNTY OF RIVERSIDE**  
4 **APPROVING FUNDING ALLOCATION AND AUTHORIZING SUBMITTAL OF A**  
5 **JOINT APPLICATION WITH CITY OF PALM SPRINGS TO THE HOMEKEY**  
6 **PROGRAM THE STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND**  
7 **COMMUNITY DEVELOPMENT FOR THE HOMEKEY PROGRAM FUNDS IN A**  
8 **GRANT AMOUNT NOT TO EXCEED \$50, 000, 000; APPROVAL AND EXECUTION**  
9 **OF A STANDARD AGREEMENT TO ACCEPT THE GRANT FUNDING IF AWARDED**  
10 **AND ANY AMENDMENTS THERETO; AND ANY RELATED DOCUMENTS**  
11 **NECESSARY TO PARTICIPATE IN THE HOMEKEY PROGRAM**

12 ADOPTED by Riverside County Board of Supervisors on January 25, 2022.

13 ROLL CALL:

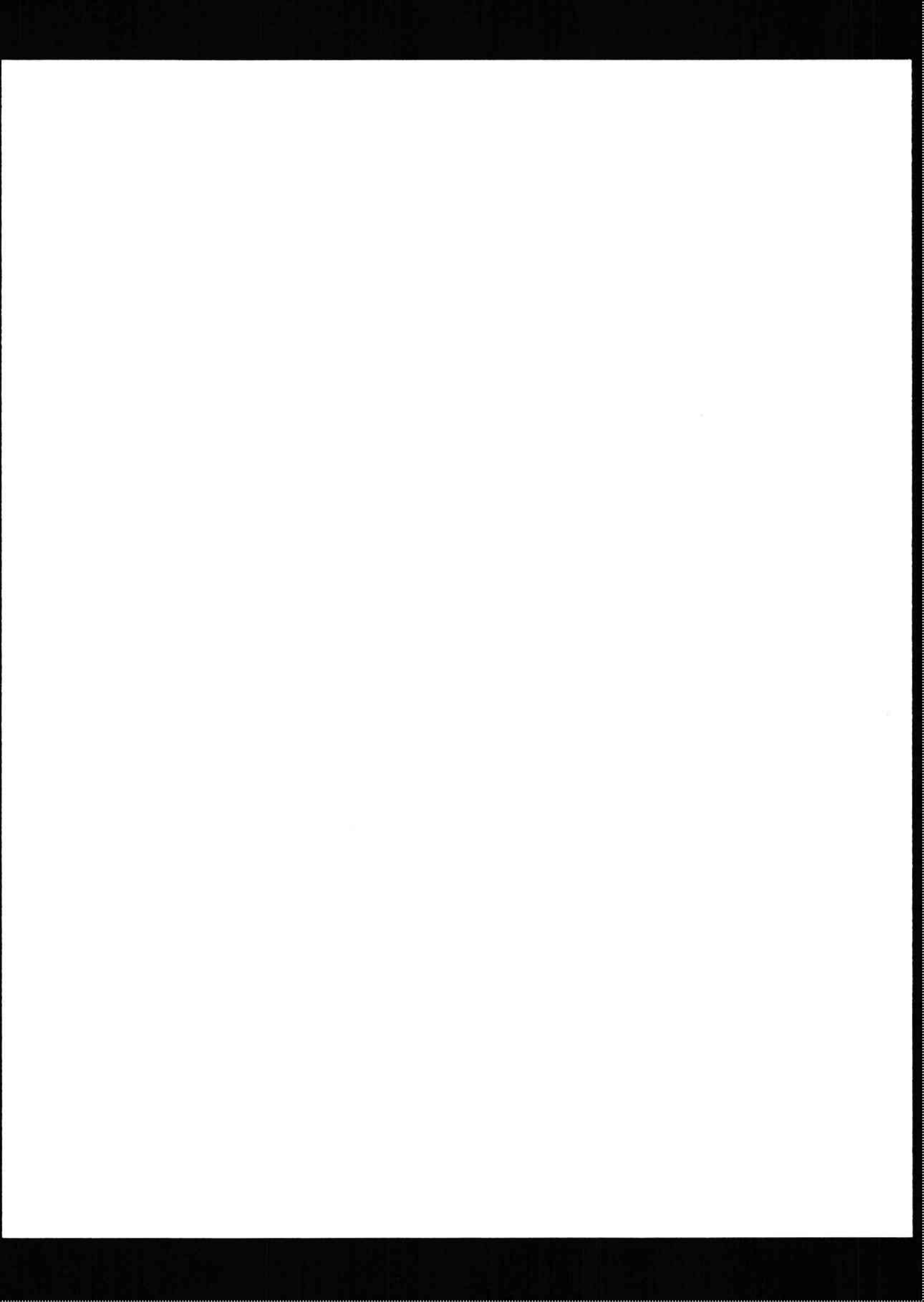
14 Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
15 Nays: None  
16 Absent: None

17 The foregoing is certified to be a true copy of a resolution duly adopted by said Board o  
18 Supervisors on the date therein set forth.

19 KECIA R. HARPER, Clerk of said Board

20 By: 

21 Deputy





## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") dated as of the 27th day of January, 2022 ("Effective Date") is between the City of Palm Springs a municipal corporation and Charter City of the State of California ("City") and County of Riverside, a political subdivision of the State of California ("County") (referred to herein individually as a "Party" and collectively as the "Parties").

### RECITALS

A. City and County have been working cooperatively to identify real property for a service rich homeless Navigation Center that provides overnight shelter and food, and has a strong focus on services designed to end an individual's homelessness and build the foundational skills needed to ensure a successful transition to permanent housing that are necessary to assist populations experiencing food and housing insecurity as result of impacts due do to the COVID-19 public health emergency

B. City and County have identified for this purpose a site located at 3589 McCarthy Road, in the City of Palm Springs ("Site"), and would like to memorialize the basic understanding they have reached concerning further steps to acquire and control the Site and to provide for an outline of the operation of the Site as a Homeless Navigation Center.

C. The County and City intend to utilize funding available through the American Rescue Plan Act (ARPA) and County will distribute funding in conformance with the requirements of the Act and the to the City for the acquisition and operation of the Navigation Center Project.

D. The City and County agree that this and all related agreements will be in compliance with the requirements of the American Plan Act and all contract terms required by the Act shall be incorporated into the Acquisition and Sale Agreement, Operation Memorandum of Understanding and other operative agreements.

E. The purpose of this Memorandum is to provide a basic understanding concerning the understanding the Parties have with respect to the acquisition of the Site and set forth a framework that the Parties contemplate regarding the operation of the Navigation Center.

F. For purposes of the California Environmental Quality Act, Pub. Res. Code 21000 et. seq ("CEQA"), the City shall be the lead agency for the acquisition and operation of the Site. AB 101 (2019) makes "low barrier navigation centers" a use by right in "areas zoned for mixed use and nonresidential zones permitting multifamily uses". The Site has a Palm Springs General Plan designation of MU (Mixed-Use/Multi-Use), which allows for residential development, thereby making a low barrier navigation center a "use by right". Pursuant to Government Code section 65660(b), CEQA shall not apply to any actions taken by a public agency to approve a low barrier navigation center, as proposed by the Parties. Therefore, no further environmental review is required by CEQA.

### I. INTENDED ACQUISITION AND USE OF SITE

A. City has entered into escrow for purchase of the Site located at 3589 McCarthy Road, Palm Springs. City has paid One Hundred and Twenty Five Thousand Dollars

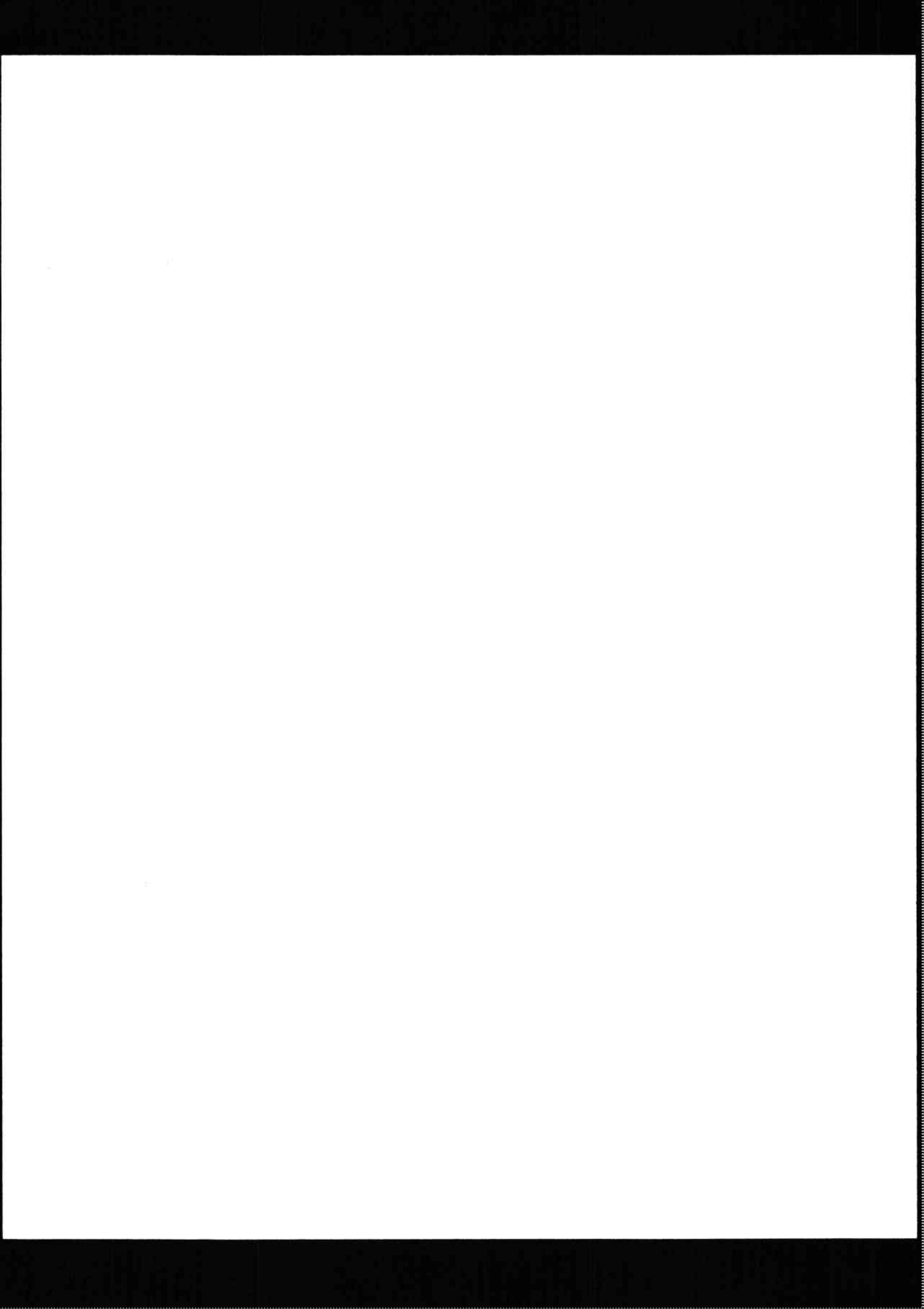
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WHEN DOCUMENT IS FULLY EXECUTED RETURN

**CLERK'S COPY**

to Riverside County Clerk of the Board, Stop 1010  
Post Office Box 1147, Riverside, Ca 92502-1147  
Thank you.



(\$125,000) in earnest money to owner of the Site and must complete escrow by January 28, 2022. The total purchase price of the Site is \$5,900,000.

B. The Parties intend for the Site to serve as a low barrier navigation center, as that term is defined in Government Code section 65660(a), to provide services to homeless individuals including temporary shelter beds and to provide supportive services ("Navigation Center").

C. Through the use of a contractor or otherwise, City anticipates providing services at the Site, including, but not limited to, social and mental health services as determined in the reasonable discretion of the City ("Supportive Services").

D. The City shall be the lead agency in the processing of any land use entitlements and permits, as may be required for the renovation and operation of the Site.

E. The City shall control the management and operational plan for the Site, as well as the types of clients who are served at the Site. The City shall operate the Site as a Navigation Center.

## **II. COST SHARING BETWEEN THE PARTIES**

A. For the acquisition of the Site by the City and the Capital Improvements, the County agrees to provide ARPA funding in the amount of \$7,000,000 pursuant to terms and conditions described herein, the Loan Agreement and any other agreements to be entered between the Parties. Parties shall enter into a Loan Agreement for the use of ARPA funds for the acquisition of the Site property whereby the County will disburse Five Million Seven Hundred Forty Thousand Dollars (\$5,740,000). County to disburse. Subsequently pursuant to a separate agreement, the County will provide additional funding in the amount of One Million Two Hundred Sixty Thousand Dollars (\$1,260,000) for the Capital Improvements. City will pay any additional amounts due to acquire the Site.

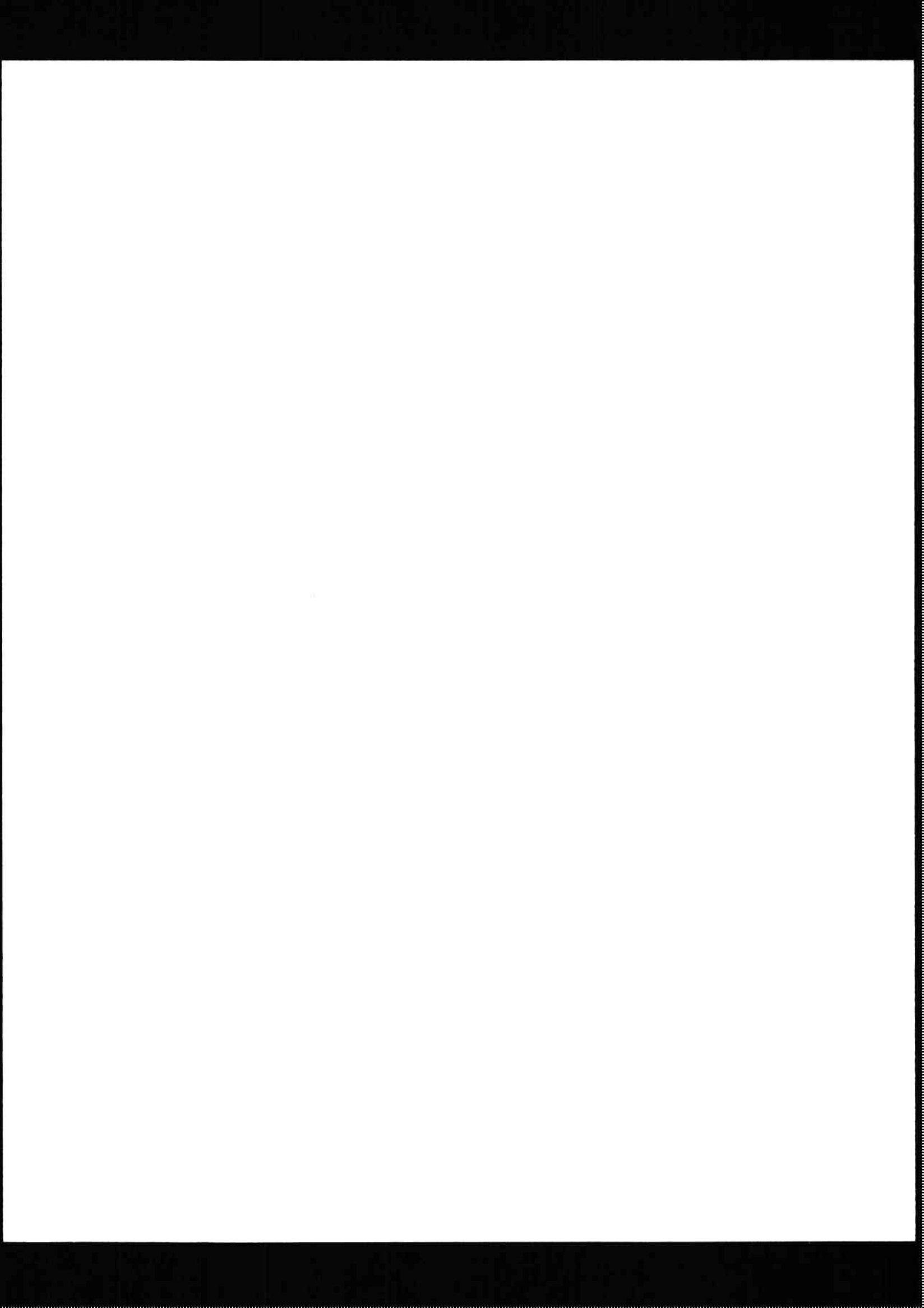
B. The City and County shall jointly, or independently, pursue grant funds in sufficient amounts to complete the purchase and Capital Improvements of the Site, and to be utilized to provide the Supportive Services, operation or maintenance of the Navigation Center.

C. The City shall initially allocate Housing Homelessness Assistance Program funds budgeted in the Housing Homelessness Assistance Program Standard Agreement between the City and Business, Consumer Services, and Housing Agency of the State of California, in the New Navigation Centers and Emergency Shelters Eligible Use Category in the amount of \$3,500,000 to provide the Supportive Services, operation or maintenance of the Navigation Center.

D. The Parties are concurrently entering into a Loan (Funding) Agreement with the terms and conditions for the disbursement of the \$5,740,000.

## **III. PARTIES AGREE TO ENTER INTO AGREEMENT(S) FOR OPERATION OF NAVIGATION CENTER.**

A. After the acquisition of the Site by the City, the Parties shall endeavor to enter into one or more agreements for the ongoing funding and operation of the Navigation Center. Should County not allocate the funds for the operation and administration of the Navigation Center, City and County shall mutually agree to the disposition of the Site consistent with the terms of any separate agreements entered into between the parties..



B. The Parties acknowledge and agree that City may enter into Third Party Operation Agreements for the operation and maintenance of the Navigation Center, in its sole and absolute discretion. The Third Party Operation Agreement should be consistent with the Operation Memorandum of Understanding however, Parties agree that City may operate the shelter as it determines in its reasonable discretion.

#### **IV. MISCELLANEOUS**

A. The Parties shall indemnify, defend with counsel approved in writing, save and hold each of its elected officials, officers, directors, agents and employees harmless from any and all claims, injuries, liabilities, actions, damages, losses or expenses, of every type and description to which they may be subjected arising out of any act or omission of, its employees, representatives, agents and independent contractors in connection with the implementation of the actions described in this Agreement. The Parties' duties and obligations under this paragraph shall survive termination or expiration of this Agreement.

B. Neither Party shall have the right to assign this Memorandum without the express written approval of the other Party. This Memorandum shall be binding upon and inure to the benefit of the Parties and their permitted successors, assigns and legal representatives. This Memorandum shall not be interpreted to establish any express or implied third party beneficiaries.

C. This Memorandum contains the entire agreement between the Parties with respect to the acquisition of the Site and initial and ongoing funding, though not for the operation of the Site. No alteration or variation of the terms of this Memorandum shall be valid unless made in writing and signed by the Parties; and no oral understanding or agreement not incorporated herein shall be binding on either of the Parties.

F. Notices or other communications which may be required or provided under the terms of this Memorandum shall be given as follows:

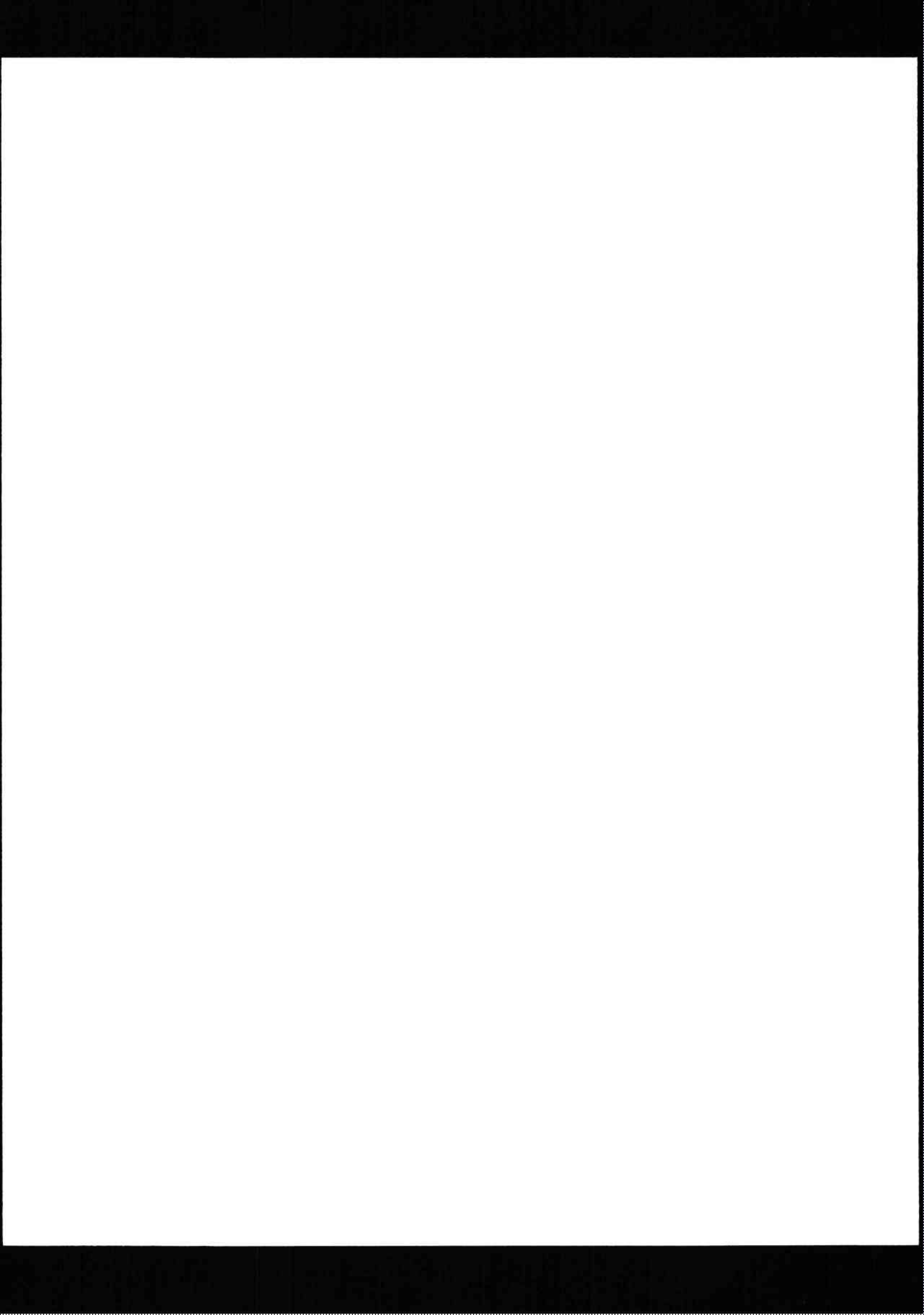
Cities: City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Attention: City Manager

County: County of Riverside/County Executive Office  
4080 Lemon Street, Floor 4  
Riverside CA 92501  
Attention: County Executive Officer

All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the above, the Parties may also provide notices by facsimile transmittal, and any such notice so given shall be deemed to have been given upon receipt during normal business hours or, in the event of receipt after business, on the following business day. Any notices, correspondence, reports and/or statements authorized or required by this Memorandum, addressed in any other fashion shall be deemed not given.

G. In any action or proceeding to enforce or interpret any provision of this Memorandum, or where any provision hereof is validly asserted as a defense, the Parties shall bear their own attorney's fees, costs and expenses.

H. Prior to the acquisition of the Site, either Party may terminate this Memorandum upon thirty (30) days' notice provided however that if County terminates this Memorandum then County shall reimburse City for any expenses including amount of the funds paid to property owner during escrow.



I. In the event County or City defaults in the performance of any of their obligations under this Memorandum or materially breaches any of the provisions of this Memorandum, the other Party may enforce this Memorandum through specific performance or may exercise any other available remedies. Additionally, the failure of one Party to fulfill its obligations hereunder shall relieve the other Party of doing so as well upon thirty (30) days' prior written notice to the other Party. In the event City or County cures such default within such thirty (30) day period, all obligation hereunder shall continue in full force and effect.

J. Each Party represents and warrants that the execution, delivery and performance of this Memorandum have been duly authorized by all necessary action of such Party's governing board, and the person executing this Memorandum on behalf of such Party has been duly authorized and empowered to do so on behalf of such Party.

K. The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Memorandum.

L. This Memorandum may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Each party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The parties further agree that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

M. Either Party shall be excused from performing its obligations under this Memorandum during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material wrongful act or omission by the other Party; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial data. This includes not only sales and purchases but also expenses and income. The document provides a detailed list of items that should be tracked, such as inventory levels, customer orders, and supplier invoices. It also outlines the procedures for recording these transactions, including the use of specific forms and the assignment of responsibilities to different staff members.

The second part of the document focuses on the analysis of the recorded data. It describes various methods for identifying trends and anomalies in the financial performance. This includes comparing current data with historical records and industry benchmarks. The document also discusses the importance of regular reviews and audits to ensure that the records are accurate and up-to-date. It provides a step-by-step guide for conducting these reviews, from the initial data collection to the final reporting and corrective actions.

The final part of the document addresses the communication of the findings to the management and other stakeholders. It emphasizes the need for clear and concise reporting that highlights key insights and recommendations. The document provides a template for these reports and outlines the best practices for presenting the data in a way that is easy to understand and actionable. It also discusses the importance of maintaining transparency and accountability in the reporting process.



City-and County have executed this Memorandum of Understanding as of the date and year first written above.

"CITY"

CITY OF PALM SPRINGS, a California charter city and municipal corporation

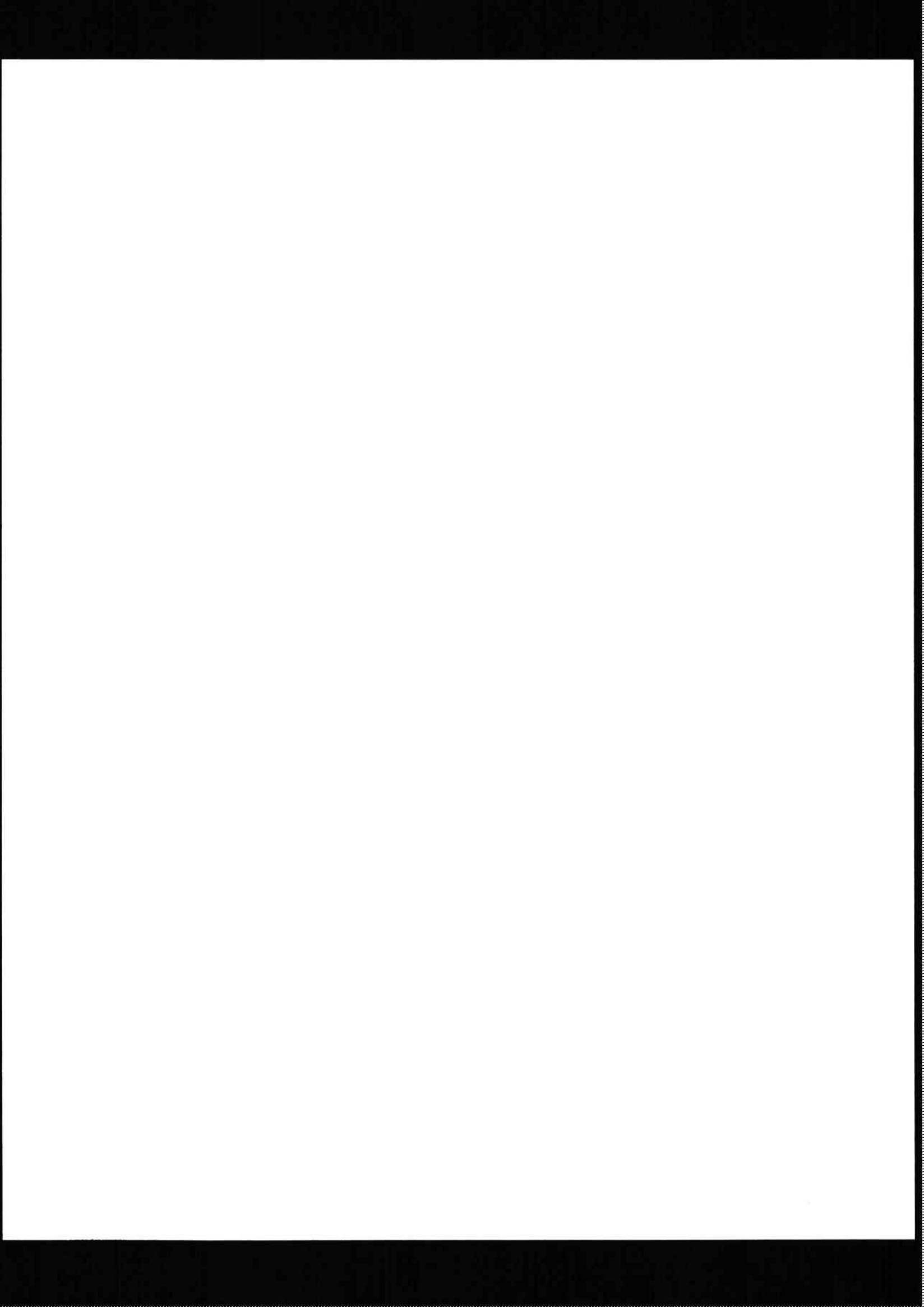
By: \_\_\_\_\_  
Justin Clifton, City Manager

ATTEST:

\_\_\_\_\_  
Anthony Mejia, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeffrey S. Ballinger, City Attorney



"COUNTY"

COUNTY OF RIVERSIDE, a political  
subdivision of the State of California

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

Its: \_\_\_\_\_

ATTEST:

CLERK OF THE BOARD

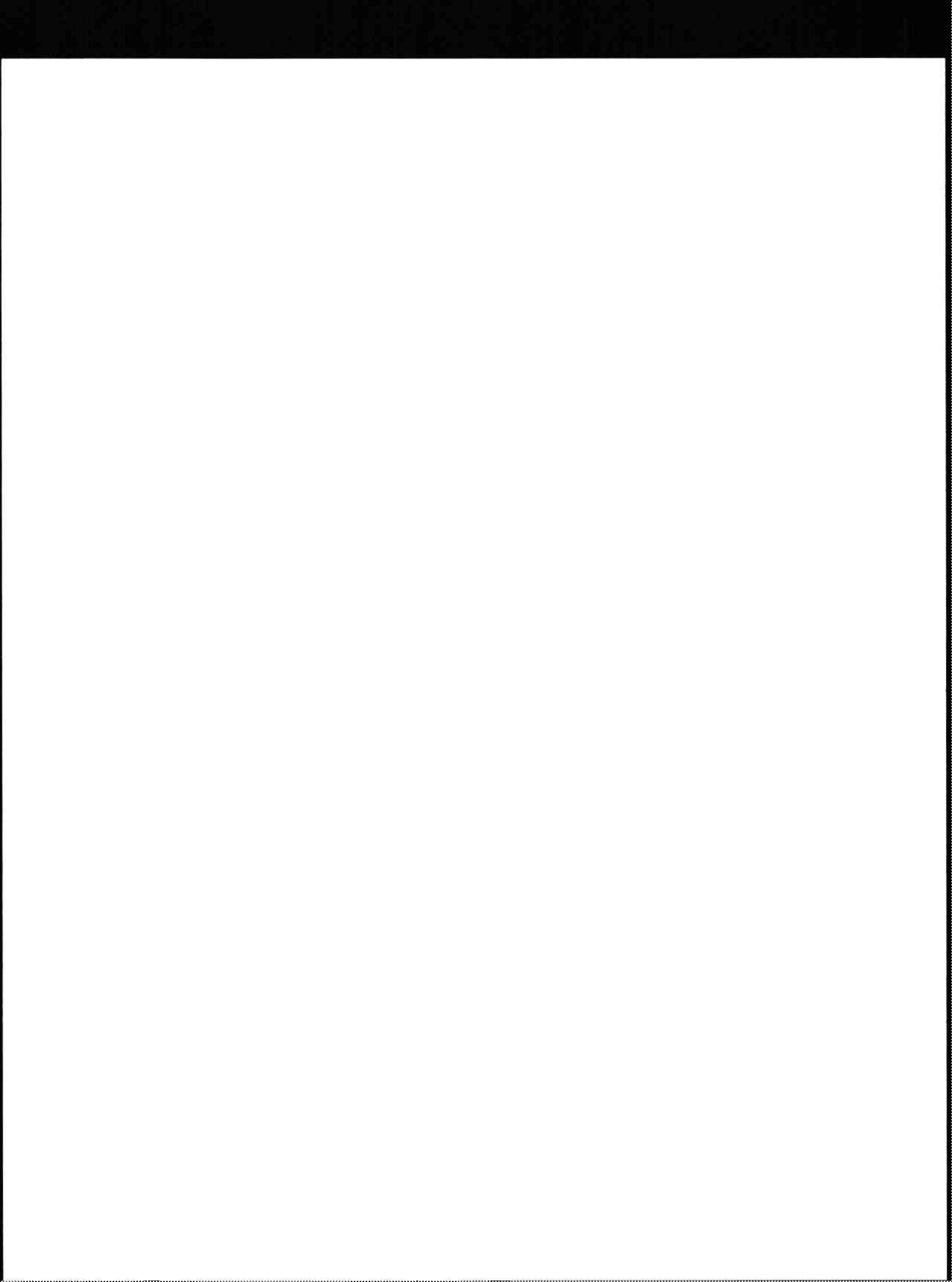
BY: \_\_\_\_\_

DEPUTY

APPROVED AS TO LEGAL FORM:



Chief Deputy County Counsel  
Gregory Priamos, County Counsel



SCHEDULE A  
Housing and Workforce Solutions  
Budget Adjustment  
Fiscal Year 2021/2022  
County ARPA

Increase in Appropriations:

21735-5501000000-536200	Contrib. To Non-County Agency	\$	5,740,000
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Increase in Estimated Revenues:

21735-5501000000-763520	Fed-American Rescue Plan Act	\$	5,740,000
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1 NO FEE FOR RECORDING PURSUANT  
2 TO GOVERNMENT CODE SECTION 6103

3 Order No.  
4 Escrow No.  
5 Loan No.

6 RECORDING REQUESTED BY AND  
7 WHEN RECORDED MAIL TO:

8 County of Riverside  
9 Housing and Workforce Solutions  
10 3403 10<sup>th</sup> Street, Suite 300  
11 Riverside, CA 92501  
12 Attn: Juan Garcia

13 SPACE ABOVE THIS LINE FOR RECORDER'S USE

14 **LOAN AGREEMENT FOR THE USE OF**  
15 **AMERICAN RESCUE PLAN ACT (ARPA) FUNDS**

16 This LOAN AGREEMENT FOR THE USE OF AMERICAN RESCUE PLAN ACT FUNDS  
17 (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and  
18 between the COUNTY OF RIVERSIDE, a political subdivision of the State of California  
19 (“COUNTY”) and CITY OF PALM SPRINGS, a municipal corporation and Charter City of the  
20 State of California (“BORROWER”). The COUNTY and BORROWER may be individually  
21 referred to herein as a “Party” and collectively as the “Parties.” This Agreement, for the use of  
22 funding under the American Rescue Plan Act of 2021 (Title VI of the Social Security Act Section  
23 602 et seq.), hereinafter “ARPA,” is made and entered into as of the Effective Date (defined  
24 herein).

25 WITNESSETH:

26 WHEREAS, ARPA provides that ARPA Act funds may be used to cover costs that are  
27 necessary expenditures incurred due to the public health emergency with respect to the COVID-  
28 19 pandemic; and

WHEREAS, on October 19, 2021, via Minute Order 3.5, the Board of Supervisors of the  
County of Riverside approved allocating \$50,000,000 in ARPA funds to increase shelter

JAN 25 2022 3.63

1 capacity, permanent supportive housing units and affordable housing to help address  
2 homelessness; and

3 WHEREAS, BORROWER is proposing to utilize ARPA funds for the acquisition of the  
4 property in the City of Palm Springs for the purposes of building a navigation center that would  
5 provide overnight shelter, food, and full suite of support services designed to end and  
6 individual's homelessness and build foundation skills needed to ensure self-sufficiency;

7 WHEREAS, BORROWER has entered into purchase and sale agreement for purchase of  
8 the site located at 3589 McCarthy Road, Palm Springs, [Assessor Parcel Numbers: 669-420-019]  
9 ("Property"); as more specifically described in the legal description attached hereto and  
10 incorporated herein as **Exhibit A**, for the purchase price of \$5,740,000;

11 WHEREAS, the purpose of this Agreement is, among other things, for COUNTY to  
12 provide financial assistance to BORROWER in the maximum amount of Five Million Seven  
13 Hundred Forty Thousand Dollars (\$5,740,000.00) consisting of ARPA funds, to fund the  
14 acquisition the Property, as more fully described herein; and

15 WHEREAS, the ARPA-assisted activities described herein comply with the objectives  
16 required under the ARPA in that they are necessary assist populations experiencing food and  
17 housing insecurity as result of impacts due do to the COVID-19 public health emergency.

18 NOW, THEREFORE, based upon the foregoing Recitals and for good and valuable  
19 consideration, the receipt and sufficiency of which is acknowledged by all Parties, the COUNTY  
20 and BORROWER hereby agree as follows:

21 1. PURPOSE. The aforementioned Recitals are true and correct and incorporated  
22 herein by this reference. COUNTY has agreed to lend up to appraised amount of the Property  
23 and no more than a maximum total amount of Five Million Nine Hundred Thousand Dollars  
24 (\$5,740,000.00) in ARPA Act funds ("ARPA Loan") to BORROWER upon the satisfaction of  
25 the terms and conditions set forth herein, including but not limited to the conditions precedent to  
26 distribution of the ARPA Loan set forth in **Section 11** below. Subject also to **Sections 48** and  
27 **49** below, BORROWER shall undertake and complete the ARPA activities required herein and  
28

1 as set forth in **Exhibits A and A-1**, and shall utilize the ARPA Loan, as required herein and  
2 pursuant to the ARPA Final Rule that become effective April 1, 2022. The Navigation Center  
3 will serve people that are experiencing homelessness, at risk of homelessness, or experiencing  
4 housing insecurity (“Qualified Population”).

5 2. **BORROWER’S OBLIGATIONS.** Upon the commencement of the Effective Date  
6 (defined in **Section 55** below), BORROWER hereby agrees to undertake and complete the  
7 following activities within the time period(s) set forth herein and in **Exhibit A-1**:

- 8 a. Satisfy the conditions precedent to distribution of the ARPA Loan set forth in  
9 **Section 11** below.
- 10 b. Acquire the Property in accordance with the timeline set forth in **Exhibit A**  
11 **and A-1**.
- 12 c. Operate the Project in such a manner so that it will remain available to  
13 Qualified Populations for the Affordability Period as defined in **Section 14**  
14 below without regard to (i) the term of the promissory note or (ii) transfer of  
15 ownership.
- 16 d. Maintain the Project in compliance with applicable local, state, federal laws,  
17 codes and regulations as further described in **Section 17** below until the  
18 expiration of the Term of this Agreement set forth in **Section 6** below, and the  
19 Affordability Period set forth in **Section 14** below.

20 3. **RESERVED.**

21 4. **ARPA ACT LOAN.** Subject to BORROWER’s satisfaction of the conditions  
22 precedent to disbursement of the ARPA Loan set forth in **Section 11** below, COUNTY shall  
23 provide financing to BORROWER in the form of a loan in the amount of \$5,740,000.00 (“ARPA  
24 Loan”), pursuant to the following terms and conditions:

- 25 a. **Term of ARPA Loan.** The maturity date of the ARPA Loan shall be the later  
26 to occur of (i) July 1, 2077 or (ii) fifty-five (55) years from the recordation of  
27 the Covenant Agreement in the Official Records upon close of escrow for  
28



1 acquisition of the Property (the "ARPA Loan Term"). The term, "Official  
2 Records" used herein shall mean the Official Records of the Recorder's Office  
3 of the County of Riverside.

4 b. Principal. The total amount of the ARPA Loan shall not exceed  
5 \$5,740,000.00, and shall be evidenced by a Promissory Note, substantially  
6 conforming in form and substance to the Promissory Note attached hereto and  
7 incorporated herein as **Exhibit C** ("ARPA Note"), which note shall be secured  
8 by a Deed of Trust, Security Agreement and Fixture Filing (with Assignment  
9 of Rents), substantially conforming in form and substance to the Deed of Trust,  
10 Security Agreement and Fixture Filing (with Assignment of Rents) attached  
11 hereto and incorporated herein as **Exhibit B** ("ARPA Deed of Trust").

12 c. Interest. The interest rate shall be zero percent (0%) simple interest per annum.

13 d. Repayment. The terms of the ARPA Note shall be as follows:

14 i. That the ARPA Loan will accrue simple interest at a rate of zero  
15 percent (0%) per annum, as more specifically set forth in the ARPA  
16 Note. Interest will begin to accrue thirty (30) days from the recordation  
17 of the Covenant Agreement in the Official Records.

18 ii. The ARPA Note shall be deferred and forgiven at the end of the Term  
19 of the Agreement if the BORROWER has complied with the terms of  
20 the ARPA Loan.

21 iii. Security. The ARPA Deed of Trust and this Agreement shall be in a  
22 first priority lien position for the benefit of COUNTY, securing a loan  
23 in the amount of \$5,740,000 ("ARPA Loan"). BORROWER shall  
24 cause any COUNTY approved senior lender to execute and record in  
25 the Official Records, a Subordination Agreement, substantially in a  
26 form and of substance as approved by the COUNTY, which, among  
27 other things, grants the COUNTY notice and opportunity to cure events  
28

1 of default under the senior loan documents.

2 e. Prepayment. Prepayment of principal and/or interest under the ARPA Note  
3 may occur at any time without penalty; provided, however (i) the requirements  
4 of **Section 17**, "Compliance with Laws and Regulations", shall remain in full  
5 force and effect for the term of the Agreement specified in **Section 6** below;  
6 and (ii) the affordability requirements set forth in the Covenant Agreement,  
7 attached hereto as **Exhibit G**, shall remain in effect until the expiration of the  
8 Affordability Period.

9 5. PRIOR COUNTY APPROVAL.

10 a. Except as otherwise expressly provided in this Agreement, approvals required  
11 of the COUNTY shall be deemed granted by the written approval of the  
12 Director of Housing and Workforce Solutions, or designee. Notwithstanding  
13 the foregoing, the Director may, in his or her sole discretion, refer to the  
14 governing body of the COUNTY any item requiring COUNTY approval;  
15 otherwise, "COUNTY approval" means and refers to approval by the Director  
16 of HHPWS, or designee.

17 b. The Director of HWS, or designee, shall have the right to make changes to the  
18 attachments to this Agreement in order to ensure that all such attachments are  
19 consistent with the terms and provisions of this Agreement.

20 6. TERM OF AGREEMENT. This Agreement shall become effective upon the  
21 Effective Date, as defined in **Section 55** below, and unless terminated earlier pursuant to the  
22 terms hereof, shall continue in full force and effect until the later to occur of (i) July 1, 2077 or  
23 (ii) fifty-five (55) years from the recordation of the Covenant Agreement in the Official Records  
24 for the last building for which rehabilitation is completed for the Project ("Term of Agreement").

25 7. BORROWER'S REPRESENTATIONS. BORROWER represents and warrants  
26 to COUNTY as follows:

27 a. Authority. BORROWER has full right, power and lawful authority to enter  
28

1 into this Agreement and accept the ARPA Loan and undertake all obligations  
2 as provided herein. The execution, performance, and delivery of this  
3 Agreement by BORROWER have been fully authorized by all requisite  
4 actions on the part of BORROWER.

5 b. No Conflict. To the best of BORROWER's knowledge, BORROWER's  
6 execution, delivery and performance of its obligations under this Agreement  
7 will not constitute a default or a breach under contract, agreement or order to  
8 which BORROWER is a party or by which it is bound.

9 c. No Bankruptcy. BORROWER is not the subject of a bankruptcy proceeding.

10 d. Prior to Closing. BORROWER shall, upon learning of any fact or condition  
11 which would cause any of the warranties and representations in this **Section 7**  
12 not to be true as of close of escrow, immediately give written notice of such  
13 fact or condition to COUNTY. Such exception(s) to a representation shall not  
14 be deemed a breach by BORROWER hereunder, but shall constitute an  
15 exception which COUNTY shall have the right to approve or disapprove if  
16 such exception would have an effect on the value and/or operation of the  
17 Project.

18 8. COMPLETION SCHEDULE. BORROWER shall proceed consistent with the  
19 Implementation Schedule set forth in **Exhibit A-1**, as such schedule may be amended pursuant  
20 to **Section 10**, and subject to Force Majeure Delays as defined in **Section 9**.

21 9. FORCE MAJEURE DELAYS. "Force Majeure" means event(s) beyond the  
22 reasonable control of BORROWER, and which could not have been reasonably anticipated,  
23 which prevent(s) BORROWER from complying with any of its obligations under this  
24 Agreement, including, but not limited to: acts of God, acts of war, acts or threats of terrorism,  
25 civil disorders, strikes, labor disputes, pandemics such as COVID-19, flood, fire, explosion,  
26 earthquake or other similar acts.

27 "Force Majeure Delay" is delay due to Force Majeure that, in each case, (i)  
28

1 materially adversely affects the performance by BORROWER of its obligations hereunder, (ii)  
2 is not reasonably foreseeable and is beyond BORROWER's reasonable control, (iii) despite the  
3 exercise of reasonable diligence, cannot be prevented, avoided or removed by BORROWER and  
4 is not attributable to the negligence, willful misconduct or bad faith of BORROWER, and (iv) is  
5 not the result of the failure of BORROWER to perform any of its obligations under this  
6 Agreement. Notwithstanding the foregoing, a Force Majeure Delay shall not be deemed to have  
7 occurred unless BORROWER has notified COUNTY in writing of such occurrence within  
8 fifteen (15) days after such occurrence, and has provided COUNTY with the details of such  
9 event and the length of the anticipated delay within an additional fifteen (15) days thereafter.  
10 BORROWER shall diligently attempt to remove, resolve, or otherwise eliminate such event,  
11 keep COUNTY advised with respect thereto, and shall commence performance of its obligations  
12 hereunder immediately upon such removal, resolution or elimination. During the occurrence  
13 and continuance of a Force Majeure Delay, BORROWER shall be excused from performance of  
14 its obligations under this Agreement to the extent the Force Majeure prevents BORROWER  
15 from performing such obligations.

16 10. EXTENSION OF TIME. COUNTY may grant an extension to the  
17 Implementation Schedule set forth in **Exhibit A-1** for the purpose of completing BORROWER's  
18 activities which cannot be completed as outlined in **Exhibit A-1**. BORROWER shall request  
19 said extension in writing, stating the reasons therefore, which extension must be first approved  
20 in writing by the COUNTY in its reasonable discretion. The Director of HWS, or designee, may  
21 extend all pending deadlines in the Implementation Schedule on two (2) or fewer occasions, so  
22 long as the aggregate duration of such administrative time extensions is no greater than ninety  
23 (90) days. Every term, condition, covenant, and requirement of this Agreement shall continue  
24 in full force and effect during the period of any such extension.

25 11. CONDITIONS PRECEDENT TO DISTRIBUTION OF ARPA ACT LOAN  
26 FUNDS. COUNTY, through its Department of HWS, shall: (1) Disburse ARPA Loan funds  
27 directly into escrow for the acquisition of the Property. COUNTY shall not disburse any ARPA  
28

1 Loan funds pursuant to this Agreement until the following conditions precedent have been  
2 satisfied:

- 3 a. BORROWER executes this Agreement and delivers to COUNTY for  
4 recordation in the Official Records;
- 5 b. BORROWER provides COUNTY with evidence of insurance as required  
6 herein;
- 7 c. BORROWER executes the ARPA Deed of Trust, substantially conforming in  
8 form and substance to the Deed of Trust, Security Agreement and Fixture  
9 Filing (with Assignment of Rents) attached hereto as **Exhibit B**, in recordable  
10 form, and delivers such document to the County of Riverside for recordation  
11 in the Official Records;
- 12 d. BORROWER executes the ARPA Note, substantially conforming in form and  
13 substance to the Promissory Note attached hereto as **Exhibit C** and delivers to  
14 COUNTY;
- 15 e. BORROWER executes the Covenant Agreement, substantially conforming in  
16 form and substance to the Covenant Agreement attached hereto and  
17 incorporated herein as **Exhibit G**, in recordable form, and delivers to the  
18 County of Riverside for recordation in the Official Records;
- 19 f. COUNTY executes and records the Requests for Notice of Default,  
20 conforming in form and substance to **Exhibit I** attached hereto;
- 21 g. BORROWER provides, at its expense, an American Land Title Association  
22 (ALTA) lender's policy in favor of COUNTY, insuring the ARPA Deed of  
23 Trust as a first priority lien against the Property, junior only to the senior loans  
24 identified in **Section 4(d)(iv)**;
- 25 h. BORROWER is not in default under the terms of this Agreement or any other  
26 agreement related to the financing of the Project;
- 27  
28

1 i. If Davis Bacon and/or prevailing wages are required to be paid, BORROWER  
2 hires a qualified professional firm to review and monitor Davis Bacon and/or  
3 prevailing wage compliance for all submissions of contractors certified  
4 payrolls to COUNTY. In the event that the Project requires prevailing wages,  
5 BORROWER shall comply with, and shall require its contractors and  
6 subcontractors performing work on the Project, to pay prevailing wages, use a  
7 skilled and trained workforce, and adhere to any applicable labor regulations  
8 and all State laws in connection with the construction of the Project, including  
9 but not limited to Chapter 1 (commencing with Section 1720) of Part 7 of  
10 Division 2 of the Labor Code, and Chapter 2.9 (commencing with Section  
11 2600) of Part 1 of Division 2 of the Public Contract Code. BORROWER  
12 agrees and acknowledges that it is the responsibility of BORROWER to obtain  
13 a legal determination, at BORROWER's sole cost and expense, as to whether  
14 prevailing wages must be paid during the construction of the Project. If the  
15 Project is subject to prevailing wages, then BORROWER shall be solely  
16 responsible to pay its contractors and subcontractors the required prevailing  
17 wage rates. BORROWER agrees to indemnify, defend, and hold COUNTY  
18 harmless from and against any and all liability arising out of and related to  
19 BORROWER's failure to comply with any and all applicable Davis Bacon  
20 and/or prevailing wage requirements;

21 j. BORROWER agrees to verify that BORROWER, and its principals, or any/all  
22 persons, contractors, consultants, businesses, etc. ("Developer Associates"),  
23 that BORROWER is conducting business with, are not presently debarred,  
24 proposed for debarment, suspended, declared ineligible, or voluntarily  
25 excluded from participation or from receiving federal contracts or federally  
26 approved subcontracts or from certain types of federal financial and  
27  
28

1 nonfinancial assistance and benefits with the Excluded Parties Listing System  
2 (“EPLS”). EPLS records are located at www.sam.gov; and

3 k. BORROWER shall search and provide a single comprehensive list of  
4 Developer Associates (individuals and firms) and print and maintain evidence  
5 of the search results of each Developer Associate as verification of compliance  
6 with this requirement, as provided in **Exhibit I**, “Contractor Debarment  
7 Certification Form”, which is attached hereto and incorporated herein by this  
8 reference.

9 BORROWER agrees to submit the following documentation to COUNTY, 180 days from  
10 close of escrow:

- 11 1) Service Plan;
- 12 2) Management Plan; and
- 13 3) Funding commitments and sources and uses for the proposed modifications to  
14 the existing buildings for the proposed intended use.

15 12. REALLOCATION OF FUNDS. If BORROWER fails to acquire the Property by  
16 March 1, 2022, then escrow shall be instructed to return the ARPA Loan funds back to the  
17 COUNTY after at least ten (10) days’ prior written notice to BORROWER. Upon such  
18 reallocation and repayment of funds, this Agreement shall be terminated and be of no further  
19 force and effect and BORROWER shall be released and discharged from any obligations  
20 hereunder, except as to those obligations which by their terms survive termination of this  
21 Agreement.

22 13. DISTRIBUTION OF FUNDS. COUNTY’S Board of Supervisors shall determine  
23 the final disbursement and distribution of all funds received by COUNTY under the ARPA Act.  
24 Disbursement of ARPA Act funds shall occur upon the satisfaction of conditions set forth in  
25 **Section 11**. COUNTY shall deposit the sum specified in **Section 1** into escrow upon receipt of  
26 escrow instructions and wire.

27 14. TERMS OF AFFORDABILITY. The COUNTY ARPA-Assisted Units shall  
28 remain occupied and available to Qualified Populations, pursuant to **Section 18** below, **Exhibit**

1 A, and the Covenant Agreement attached hereto as **Exhibit G**, until the later of (i) fifty-five (55)  
2 years from the recordation of the Covenant Agreement in the Official Records, or (ii) July 1,  
3 2077 (“Affordability Period”).

4 15. INSURANCE. Without limiting or diminishing BORROWER’S obligation to  
5 indemnify or hold COUNTY harmless, BORROWER or its general contractor for the Project  
6 (“General Contractor”), shall procure and maintain or cause to be maintained, at its sole cost and  
7 expense, the following insurance coverages during the Term of this Agreement.

8 a. Builder’s All Risk (Course of Construction) Insurance. BORROWER shall  
9 cause General Contractor to provide a policy of Builder’s All Risk (Course of  
10 Construction) insurance coverage including (if the work is located in an  
11 earthquake or flood zone or if required on financed or bond financing  
12 arrangements) coverage for earthquake and flood, covering the COUNTY,  
13 BORROWER, General Contractor and every subcontractor, of every tier, for  
14 the entire Project, including property to be used in the construction of the work  
15 while such property is at off-site storage locations or while in transit or  
16 temporary off-site storage. Such policy shall include, but not be limited to,  
17 coverage for fire, collapse, faulty workmanship, debris removal, expediting  
18 expense, fire department service charges, valuable papers and records, trees,  
19 grass, shrubbery and plants. If scaffolding, false work and temporary buildings  
20 are insured separately by the General Contractor or others, evidence of such  
21 separate coverage shall be provided to COUNTY prior to the start of the work.  
22 Such policy shall be written on a completed value form. Such policy shall also  
23 provide coverage for temporary structures (on-site offices, etc.), fixtures,  
24 machinery and equipment being installed as part of the work. BORROWER  
25 shall require that General Contractor shall be responsible for any and all  
26 deductibles under such policy. Upon request by COUNTY, BORROWER ,  
27 on behalf of General Contractor, shall declare all terms, conditions, coverages  
28



1 and limits of such policy. If the COUNTY so provides, in its sole discretion,  
2 the All Risk (Course of Construction) insurance for the Project, then  
3 BORROWER shall cause the General Contractor to assume the cost of any and  
4 all applicable policy deductibles (currently, \$50,000 per occurrence) and shall  
5 insure its own machinery, equipment, tools, etc. from any loss of any nature  
6 whatsoever.

7 b. Workers' Compensation Insurance. If BORROWER or General Contractor  
8 have employees as defined by the State of California, BORROWER or General  
9 Contractor, as applicable, shall maintain statutory Workers' Compensation  
10 Insurance (Coverage A) as prescribed by the laws of the State of California.  
11 Policy shall include Employers' Liability (Coverage B) including  
12 Occupational Disease with limits not less than \$1,500,000 per person per  
13 accident. The policy shall be endorsed to waive subrogation in favor of The  
14 County of Riverside.

15 c. Commercial General Liability Insurance. Borrower shall maintain  
16 Commercial General Liability insurance coverage, including but not limited  
17 to, premises liability, contractual liability, products and completed operations  
18 liability, personal and advertising injury, and cross liability coverage, covering  
19 claims which may arise from or out of BORROWER'S performance of its  
20 obligations hereunder. Policy shall name the County of Riverside, its  
21 Agencies, Boards, Districts, Special Districts, and Departments, their  
22 respective directors, officers, Board of Supervisors, employees, elected or  
23 appointed officials, agents or representatives as Additional Insured. Policy's  
24 limit of liability shall not be less than \$1,000,000 per occurrence combined  
25 single limit. If such insurance contains a general aggregate limit, it shall apply  
26 separately to this agreement or be no less than two (2) times the occurrence  
27 limit.  
28

1 d. Vehicle Liability Insurance. If vehicles or mobile equipment are used in the  
2 performance of the obligations under this Agreement, then BORROWER shall  
3 maintain liability insurance for all owned, non-owned or hired vehicles so used  
4 in an amount not less than \$1,000,000 per occurrence combined single limit.  
5 If such insurance contains a general aggregate limit, it shall apply separately  
6 to this agreement or be no less than two (2) times the occurrence limit. Policy  
7 shall name the County of Riverside, its Agencies, Boards, Districts, Special  
8 Districts, and Departments, their respective directors, officers, Board of  
9 Supervisors, employees, elected or appointed officials, agents or  
10 representatives as Additional Insured or provide similar evidence of coverage  
11 approved by COUNTY's Risk Manager.

12 e. General Insurance Provisions – All Lines.

13 (i) Any insurance carrier providing insurance coverage hereunder shall be  
14 admitted to the State of California and have an A M BEST rating of not  
15 less than A: VIII (A:8) unless such requirements are waived, in writing,  
16 by COUNTY Risk Manager. If COUNTY's Risk Manager waives a  
17 requirement for a particular insurer such waiver is only valid for that  
18 specific insurer and only for one policy term.

19 (ii) BORROWER, or Borrower on behalf of General Contractor, must  
20 declare its insurance self-insured retentions. If such self-insured  
21 retentions exceed \$500,000 per occurrence such retentions shall have  
22 the prior written consent of COUNTY Risk Manager before the  
23 commencement of operations under this Agreement. Upon notification  
24 of self-insured retention unacceptable to COUNTY, and at the election  
25 of COUNTY's Risk Manager, BORROWER's or General  
26 Contractor's, as applicable, carriers shall either: (a) reduce or eliminate  
27 such self-insured retention as respects this Agreement with COUNTY,  
28

1 or (b) procure a bond which guarantees payment of losses and related  
2 investigations, claims administration, and defense costs and expenses.

3 (iii) BORROWER shall cause BORROWER's and General Contractor's  
4 insurance carrier(s) to furnish the County of Riverside with copies of  
5 the Certificate(s) of Insurance and Endorsements effecting coverage as  
6 required herein, and 2) if requested to do so orally or in writing by  
7 COUNTY Risk Manager, provide copies of policies including all  
8 Endorsements and all attachments thereto, showing such insurance is  
9 in full force and effect. Further, said Certificate(s) and policies of  
10 insurance shall contain the covenant of the insurance carrier(s) that  
11 thirty (30) days written notice shall be given to the County of Riverside  
12 prior to any material modification, cancellation, expiration or reduction  
13 in coverage of such insurance. In the event of a material modification,  
14 cancellation, expiration, or reduction in coverage, this Agreement shall  
15 terminate forthwith, unless the County of Riverside receives, prior to  
16 such effective date, another Certificate of Insurance and copies of  
17 endorsements, including all endorsements and attachments thereto  
18 evidencing coverages set forth herein and the insurance required herein  
19 is in full force and effect. BORROWER shall not commence  
20 operations until COUNTY has been furnished Certificate(s) of  
21 Insurance and copies of endorsements and if requested, copies of  
22 policies of insurance including all endorsements and any and all other  
23 attachments as required in this Section. An individual authorized by  
24 the insurance carrier on its behalf shall sign the original endorsements  
25 for each policy and the Certificate of Insurance.

26 (iv) It is understood and agreed to by the parties hereto that BORROWER's  
27 insurance shall be construed as primary insurance, and COUNTY's  
28

1 insurance and/or deductibles and/or self-insured retentions or self-  
2 insured programs shall not be construed as contributory.

3 (v) If, during the term of this Agreement or any extension thereof, there is  
4 a material change in the scope of services; or, there is a material change  
5 in the equipment to be used in the performance of the scope of work  
6 which will add additional exposures (such as the use of aircraft,  
7 watercraft, cranes, etc.); or, the term of this Agreement, including any  
8 extensions thereof, exceeds five (5) years, COUNTY reserves the right  
9 to adjust the types of insurance required under this Agreement and the  
10 monetary limits of liability for the insurance coverages currently  
11 required herein, if; in COUNTY Risk Manager's reasonable judgment,  
12 the amount or type of insurance carried by BORROWER has become  
13 inadequate.

14 (vi) BORROWER shall pass down the insurance obligations contained  
15 herein to all tiers of subcontractors working under this Agreement.

16 (vii) The insurance requirements contained in this Agreement may be  
17 met with a program(s) of self-insurance acceptable to COUNTY.

18 (viii) BORROWER agrees to notify COUNTY of any claim by a third  
19 party or any incident or event that may give rise to a claim arising from  
20 the performance of this Agreement.

21 16. FINANCIAL AND PROJECT RECORDS. BORROWER shall maintain financial,  
22 programmatic, statistical, and other supporting records of its operations and financial activities  
23 sufficient to establish compliance with subsection 601(d) of the Social Security Act, as amended,  
24 (42 U.S.C. 801(d)), in accordance with the requirements of the ARPA, and the regulations as  
25 amended and promulgated thereunder, which records shall be open to inspection and audit by  
26 authorized representatives of COUNTY, the California Department of Finance, and the United  
27 States Department of the Treasury Office of Inspector General, during regular working hours.

1 COUNTY, state, and federal representatives have the right of access, with at least forty-eight (48)  
2 hours prior notice, to any pertinent books, documents, papers, or other records of BORROWER,  
3 in order to make audits, examinations, excerpts, and transcripts. Said records shall be retained  
4 for such time as may be required by the ARPA, but in no event no less than five (5) years after  
5 the Project completion date as evidenced by recordation of the Notice of Completion, or after  
6 final payment is made, whichever is later, to support reported expenditures and to participate in  
7 COUNTY, state, and federal audits; except that records of individual income verifications, project  
8 rents, and project inspections must be retained for the most recent five (5) year period, until five  
9 (5) years after the Affordability Period terminates. If any litigation, claim, negotiation, audit, or  
10 other action has been started before the expiration of the regular period specified, the records must  
11 be retained until completion of the action and resolution of all issues which arise from it, or until  
12 the end of the regular period, whichever is later.

13 17. COMPLIANCE WITH LAWS AND REGULATIONS. By executing this  
14 Agreement, BORROWER hereby certifies that it will adhere to and comply with all federal, state  
15 and local laws, regulations and ordinances. In particular, BORROWER shall comply with the  
16 following as they may be applicable to BORROWER in connection with the ARPA Loan:

- 17 a. Compliance with Executive Order 11246 of September 24, 1965, entitled  
18 "Equal Employment Opportunity", as amended by Executive Order 11375 of  
19 October 13, 1967, and as supplemented in Department of Labor Regulations  
20 (41 CFR Part 60). The BORROWER will not discriminate against any  
21 employee or applicant for employment because of race, color, religion, sex, or  
22 national origin. BORROWER shall ensure that all qualified applicants will  
23 receive consideration for employment without regard to race, color, religion,  
24 sex or national origin. The BORROWER will take affirmative action to ensure  
25 that applicants are employed and the employees are treated during employment,  
26 without regard to their race color, religion, sex, or national origin. Such actions  
27 shall include, but are not limited to, the following: employment, up-grading,  
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1 demotion, or transfer; recruitment or recruitment advertising; rates of pay or  
2 other forms of compensation; and selection for training, including  
3 apprenticeship. The BORROWER agrees to post in a conspicuous place,  
4 available to employees and applicants for employment, notices to be provided  
5 by the County setting forth the provisions of this non-discrimination clause;

6 b. Executive Order 11063, as amended by Executive Order 12259, and  
7 implementing regulations at 24 CFR Part 107;

8 c. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended,  
9 and implementing regulations;

10 d. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and  
11 implementing regulations;

12 e. The regulations, policies, guidelines and requirements of the Uniform  
13 Administrative Requirements, Cost Principles, and Audit Requirements for  
14 Federal Awards (2 CFR Part 200) as they relate to the acceptance and use of  
15 federal funds under the federally-assigned program;

16 f. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and implementing  
17 regulations issued at 24 CFR Part 1;

18 g. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284) as amended;

19 h. *Rights to Data and Copyrights*: Contractors and consultants agree to comply  
20 with all applicable provisions pertaining to the use of data and copyrights  
21 pursuant to 48 CFR Part 27.404-3, Federal Acquisition Regulations (FAR).

22 i. *Air Pollution Prevention and Control* (formally known as the *Clean Air Act*)  
23 (*42 U.S.C.A. 7401 et seq.*) and the *Federal Water Pollution Control Act* (*33*  
24 *U.S.C.A. Section 1251 et seq.*), as amended: Contracts and subgrants of  
25 amounts in excess of \$100,000 shall contain a provision that requires the  
26 recipient to agree to comply with all applicable standards, orders or regulations  
27 issued pursuant to the *Clean Air Act* (*42 U.S.C.A. 7401 et seq.*) and the *Federal*  
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1                    *Water Pollution Control Act* as amended (33 U.S.C.A. Section 1251 *et seq.*),  
2                    Violations shall be reported to the Federal awarding agency and the Regional  
3                    Office of the Environmental Protection Agency (EPA).

4                    j. *Anti-Lobbying Certification (31 U.S.C.A. 1352)*: The language of the  
5                    certification set forth below shall be required in all contracts or subcontracts  
6                    entered into in connection with this grant activity and all BORROWERS shall  
7                    certify and disclose accordingly. This certification is a material representation  
8                    of fact upon which reliance was placed when this transaction was made or  
9                    entered into. Submission of this certification is a prerequisite for making or  
10                    entering into this transaction imposed by. Section 1352, Title 31, U.S. code.  
11                    Any person who fails to file the required certification shall be subject to a civil  
12                    penalty of not less than \$10,000 and no more than \$100,000 for such failure.

13                    “The undersigned certifies, to the best of his or her knowledge or belief, that:  
14                    No Federal appropriated funds have been paid or will be paid, by or on behalf  
15                    of it, to any person for influencing or attempting to influence an officer or  
16                    employee of any agency, a Member of Congress, an officer or employee of  
17                    Congress, or an employee of a Member of Congress in connection with the  
18                    awarding of any Federal contract, the making of any Federal grant, the making  
19                    of any Federal loan, the entering into of any cooperative agreement, and the  
20                    extension, continuation, renewal, amendment, or modification of any Federal  
21                    contract, grant, loan, or cooperative agreement;

22                    If any funds other than Federal appropriated funds have been paid or will be  
23                    paid to any person for influencing or attempting to influence an officer or  
24                    employee of any agency, a Member of Congress, an officer or employee of  
25                    Congress, or an employee of a Member of Congress in connection with this  
26                    Federal contract, grant loan or cooperative agreement, he/she will complete and  
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1 submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in  
2 accordance with its instructions.”

3 k. *Debarment and Suspension (Executive Orders (E.O.) 12549 and 12689)*: No  
4 contract award shall be made to parties listed on the governmentwide exclusions  
5 in the System for Award Management (SAM), in accordance with OMB  
6 guidelines at 2 CFR 180 that implement Executive Orders (E.O.s) 12549 and  
7 12689, “Debarment and Suspension.” SAM Exclusions contains the names of  
8 parties debarred, suspended, or otherwise excluded by agencies, as well as  
9 parties declared ineligible under statutory or regulatory authority other than  
10 E.O. 12549. Contractors with awards that exceed the small purchase threshold  
11 shall provide the required certification regarding its exclusion status and that of  
12 its principal employees.

13 l. *Drug-Free Workplace Requirements*: The Anti-Drug Abuse Act of 1988 (41  
14 U.S.C.A. Section 8101-8103) requires grantees (including individuals) of  
15 federal agencies, as a prior condition of being awarded a grant, to certify that  
16 they will provide drug-free workplaces. Each potential recipient must certify  
17 that it will comply with drug-free workplace requirements in accordance with  
18 the Act and with HUD's rules at 2 CFR Part 2424.

19 m. *Access to Records and Records Retention*: The BORROWER or Contractor,  
20 and any sub-consultants or sub-contractors, shall allow all duly authorized  
21 Federal, State, and/or County officials or authorized representatives access to  
22 the work area, as well as all books, documents, materials, papers, and records  
23 of the BORROWER or Contractor, and any sub-consultants or sub-contractors,  
24 that are directly pertinent to a specific program for the purpose of making  
25 audits, examinations, excerpts, and transcriptions. The BORROWER or  
26 Contractor, and any sub-consultants or sub-contractors, further agree to  
27 maintain and keep such books, documents, materials, papers, and records, on a  
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1 current basis, recording all transactions pertaining to this agreement in a form  
2 in accordance with generally acceptable accounting principles. All such books  
3 and records shall be retained for such periods of time as required by law,  
4 provided, however, notwithstanding any shorter periods of retention, all books,  
5 records, and supporting detail shall be retained for a period of at least five (5)  
6 years after the expiration of the term of this Agreement, or final payment is  
7 made, whichever is later.

8 n. *Federal Employee Benefit Clause*: No member of or delegate to the Congress  
9 of the United States, and no Resident Commissioner shall be admitted to any  
10 share or part of this agreement or to any benefit to arise from the same.

11 o. *Energy Efficiency*: Mandatory standards and policies relating to energy  
12 efficiency which are contained in the State energy conservation plan issued in  
13 compliance with the Energy Policy and Conservation Act (Pub. L. 94 - 163,  
14 Dec. 22, 1975; 42 U.S.C.A. Section 6201, et. seq., 89 Stat.871).

15 p. *Procurement of Recovered Materials (2 CFR 200.322.)*: A non-Federal entity  
16 that is a state agency or agency of a political subdivision of a state and its  
17 contractors must comply with 42 U.S.C. Section 6002 of the Solid Waste  
18 Disposal Act, as amended by the Resource Conservation and Recovery Act.  
19 The requirements of Section 6002 include procuring only items designated in  
20 guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247  
21 that contain the highest percentage of recovered materials practicable,  
22 consistent with maintaining a satisfactory level of competition, where the  
23 purchase price of the item exceeds \$10,000 or the value of the quantity acquired  
24 by the preceding fiscal year exceeded \$10,000; procuring solid waste  
25 management services in a manner that maximizes energy and resource  
26 recovery; and establishing an affirmative procurement program for  
27 procurement of recovered materials identified in the EPA guidelines. The  
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1 requirements of 2 CFR 200.322, as amended effective November 12, 2020, are  
2 hereby included in this Agreement as appropriate and to the extent consistent  
3 with law.

4 q. Other Federal requirements and nondiscrimination. As set forth in 24 CFR part  
5 5, sub part A, BORROWER is required to include the following requirements:  
6 nondiscrimination and equal opportunity under Section 282 of the Act;  
7 disclosure; debarred, suspended, or ineligible contractors; and drug-free  
8 workplace.

9 r. Affirmative marketing and minority outreach program. BORROWER must  
10 adopt affirmative marketing procedures and requirements. These must include:

11 (i) Methods for informing the public, owners, and potential tenants about  
12 Federal fair housing laws and the affirmative marketing policy (e.g.,  
13 the use of the Equal Housing Opportunity logotype or slogan in press  
14 releases and solicitations for owners, and written communication to fair  
15 housing and other groups).

16 (ii) Requirements and practices that BORROWER must adhere to in order  
17 to carry out the affirmative marketing procedures and requirements  
18 (e.g., use of commercial media, use of community contacts, use of the  
19 Equal Housing Opportunity logotype or slogan, and display of fair  
20 housing poster).

21 (iii) Procedures to be used by BORROWER to inform and solicit  
22 applications from persons in the housing market area who are not likely  
23 to apply without special outreach (e.g., use of community  
24 organizations, employment centers, fair housing groups, or housing  
25 counseling agencies).

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(iv) Records that will be kept describing actions taken by BORROWER to affirmatively market units and records to assess the results of these actions.

(v) A description of how BORROWER will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(vi) BORROWER must prescribe procedures to establish and oversee a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by BORROWER with such persons or entities, public and private, in order to facilitate the activities of COUNTY to provide affordable housing authorized under this Act or any other Federal housing law. Section 24 CFR 85.36(e) provided affirmative steps to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services. The steps include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

- 1 (3) Dividing total requirements, when economically feasible, into  
2 smaller tasks or quantities to permit maximum participation by  
3 small and minority business, and women`s business enterprises.  
4 (4) Establishing delivery schedules, where the requirement  
5 permits, which encourage participation by small and minority  
6 business, and women`s business enterprises.  
7 (5) Using the services and assistance of the Small Business  
8 Administration, and the Minority Business Development  
9 Agency of the Department of Commerce.  
10 (6) Requiring the prime contractor, if subcontracts are to be let, to  
11 take the affirmative steps listed in (1) through (5) above of this  
12 section.

- 13 s. Displacement, relocation, and acquisition. The relocation requirements of  
14 Title II and the acquisition requirements of Title III of the Uniform Relocation  
15 Assistance and Real Property Acquisition Policies Act of 1970, and the  
16 implementing regulations at 24 CFR Part 42. BORROWER must ensure that  
17 it has taken all reasonable steps to minimize the displacement of persons as a  
18 result of this Project.
- 19 t. Lead-based paint. The ARPA-Assisted Units are subject to the lead-based  
20 paint requirements of 24 CFR Part 35 issued pursuant to the Lead-Based Paint  
21 Poisoning Prevention Act (42 U.S.C. 4821, et seq.). The lead-based paint  
22 provisions of 24 CFR 982.401 (j), except 24 CFR 982.401 (j)(1)(i), also apply,  
23 irrespective of the applicable property standard under §92.251.
- 24 u. Labor. Every contract for the construction of housing that includes twelve (12)  
25 or more units assisted with ARPA funds must contain a provision requiring the  
26 payment of not less than the wages prevailing in the locality, as predetermined  
27 by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-  
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1 276a-5), to all laborers and mechanics employed in the development of any  
2 part of the housing. Such contracts must also be subject to the overtime  
3 provisions, as applicable, of the Contract Work Hours and Safety Standards  
4 Act (40 U.S.C. 327-332). BORROWER must apply most current wage rate  
5 determination at the date of execution of this Agreement.

- 6 v. Model Energy Code published by the Council of American Building Officials.
- 7 w. Consultant Activities. No person providing consultant services in an employer-  
8 employee type relationship shall receive more than a reasonable rate of  
9 compensation for personal services paid with ARPA funds.
- 10 x. Uniform Administrative Requirements of 2 CFR Part 200 as now in effect and  
11 as may be amended from time to time. Federal awards expended as a recipient  
12 or a subrecipient, as defined therein, would be subject to single audit. The  
13 payments received for goods or services provided as a vendor would not be  
14 considered Federal awards.
- 15 y. BORROWER shall include written agreements that include all provisions of  
16 **Section 17** if BORROWER provides ARPA funds to for-profit owners or  
17 developers, non-profit owners or developers, sub-recipients, homeowners,  
18 homebuyers, tenants receiving tenant-based rental assistance, or contractors.
- 19 z. Immigration requirements of Federal Register, Vol. 62, No. 221, Department  
20 of Justice Interim Guidance on Verification of Citizenship, Qualified Alien  
21 Status and Eligibility Under Title IV of the Personal Responsibility and Work  
22 Opportunity Reconciliation Act of 1996 ("PRWORA"). Final Attorney  
23 General's Order issued pursuant to PRWORA is specified under Federal  
24 Register Vol. 66, No. 10, Department of Justice Final Specification of  
25 Community Programs Necessary for Protection of Life or Safety Under Welfare  
26 Reform Legislation.

1           aa. BORROWER shall comply with all applicable local, state and federal laws in  
2           addition to the above-mentioned laws.

3           18. INCOME TARGETING REQUIREMENTS. BORROWER shall make the  
4 Navigation Shelter available to people that are experiencing homelessness, at risk of  
5 homelessness, or experiencing housing insecurity (“Qualified Population”).

6 If the Navigation Center is not used to provide shelter and services to the Qualified Populations,  
7 then COUNTY and BORROWER mutually agree that this Agreement will self-terminate and any  
8 ARPA Loan funds drawn shall be returned within thirty (30) calendar days. Upon such  
9 termination, this Agreement shall become null and void. COUNTY and BORROWER shall be  
10 released and discharged respectively from their obligations under this Agreement. All cost  
11 incurred by each party on the Project will be assumed respectively.

12           19. INTENTIONALLY OMITTED

13           20. INTENTIONALLY OMITTED.

14           21. FEDERAL REQUIREMENTS. BORROWER shall comply with the provisions of  
15 the ARPA Act and any amendments thereto and all applicable federal regulations and guidelines  
16 now or hereafter enacted pursuant to the Act in addition to the federal provisions attached hereto  
17 as Exhibit \_\_\_\_\_.

18           22. SALE, ASSIGNMENT OR OTHER TRANSFER OF THE PROJECT.  
19 BORROWER hereby covenants and agrees not to sell, assign, transfer or otherwise dispose of  
20 the Project or any portion thereof, without obtaining the prior written consent of the COUNTY,  
21 which consent shall be conditioned upon receipt by the COUNTY of reasonable evidence  
22 satisfactory to the COUNTY in its sole discretion, that transferee has assumed in writing and in  
23 full, and is reasonably capable of performing and complying with the BORROWER’s duties and  
24 obligations under this Agreement, provided, however Borrower shall not be released of all  
25 obligations hereunder which accrue from and after the date of such sale.

26           23. INDEPENDENT CONTRACTOR. BORROWER and its agents, servants and  
27 employees shall act at all times in an independent capacity during the term of this Agreement,  
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1 and shall not act as, shall not be, nor shall they in any manner be construed to be agents, officers,  
2 or employees of COUNTY.

3       24.    NONDISCRIMINATION. Borrower shall abide by 24 CFR 570.602 which  
4 requires that no person in the United States shall on the grounds of race, color, national origin,  
5 religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to  
6 discrimination under any program or activity receiving Federal financial assistance made  
7 available pursuant to the Act. Under the Act, Section 109 directs that the prohibitions against  
8 discrimination of the basis of age under the Age Discrimination Act and the prohibitions against  
9 discrimination of the basis of disability under Section 504 shall apply to programs or activities  
10 receiving Federal financial assistance under Title I programs. The policies and procedures  
11 necessary to ensure enforcement of Section 109 are codified in 24 CFR Part 6. In addition,  
12 BORROWER shall not discriminate on the basis of race, gender, religion, national origin,  
13 ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of  
14 any contractors or consultants, to participate in subcontracting/subconsulting opportunities.  
15 BORROWER understands and agrees that violation of this clause shall be considered a material  
16 breach of this Lease and may result in termination, debarment or other sanctions. This language  
17 shall be incorporated into all contracts between BORROWER and any contractor, consultant,  
18 subcontractor, subconsultants, vendors and suppliers. BORROWER shall comply with the  
19 provisions of the California Fair Employment and Housing Act (Government Code Sections  
20 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended, and all  
21 Administrative Rules and Regulations issued pursuant to said Acts and Orders with respect to its  
22 use of the Property.

23       BORROWER herein covenants by and for itself, its successors and assigns, and all persons  
24 claiming under or through them, that this Covenant is made and accepted upon and subject to the  
25 following conditions: There shall be no discrimination against or segregation of any person or  
26 group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the  
27 Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and  
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1 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,  
2 in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall  
3 the transferee itself or any person claiming under or through him or her, establish or permit any  
4 such practice or practices of discrimination or segregation with reference to the selection, location,  
5 number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property.

6 BORROWER, its successors and assigns, shall refrain from restricting the rental, sale, or  
7 lease of the Property or any portion thereof, on the basis of race, color, creed, religion, sex, sexual  
8 orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and  
9 contract entered into with respect to the Property, or any portion thereof, after the date of this  
10 Agreement shall contain or be subject to substantially the following nondiscrimination or  
11 nonsegregation clauses:

12 a. In deeds: "The grantee herein covenants by and for himself or herself, his or her  
13 heirs, executors, administrators, and assigns, and all persons claiming under or  
14 through them, that there shall be no discrimination against or segregation of,  
15 any person or group of persons on account of any basis listed in subdivision (a)  
16 or (d) of Section 12955 of the Government Code, as those bases are defined in  
17 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p)  
18 of Section 12955, and Section 12955.2 of the Government Code, in the sale,  
19 lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises  
20 herein conveyed, nor shall the grantee or any person claiming under or through  
21 him or her, establish or permit any practice or practices of discrimination or  
22 segregation with reference to the selection, location, number, use or occupancy  
23 of tenants, lessees, subtenants, sublessees, or vendees in the premises herein  
24 conveyed. The foregoing covenants shall run with the land."

25 b. In leases: "The lessee herein covenants by and for himself or herself, his or her  
26 heirs, executors, administrators, and assigns, and all persons claiming under or  
27 through him or her, and this lease is made and accepted upon and subject to the  
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1 following conditions: That there shall be no discrimination against or  
2 segregation of any person or group of persons, on account of any basis listed in  
3 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases  
4 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of  
5 subdivision (p) of Section 12955, and Section 12955.2 of the Government  
6 Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or  
7 enjoyment of the premises herein leased nor shall the lessee himself or herself,  
8 or any person claiming under or through him or her, establish or permit any  
9 such practice or practices of discrimination or segregation with reference to the  
10 selection, location, number, use, or occupancy, of tenants, lessees, sublessees,  
11 subtenants, or vendees in the premises herein leased.”

- 12 c. In contracts: “There shall be no discrimination against or segregation of any  
13 person or group of persons, on account of any basis listed in subdivision (a) or  
14 (d) of Section 12955 of the Government Code, as those bases are defined in  
15 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p)  
16 of Section 12955, and Section 12955.2 of the Government Code, in the sale,  
17 lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor  
18 shall the transferee itself or any person claiming under or through him or her,  
19 establish or permit any such practice or practices of discrimination or  
20 segregation with reference to the selection, location, number, use, or  
21 occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

22 In addition to the obligations and duties of BORROWER set forth herein, BORROWER  
23 shall, upon notice from COUNTY, promptly pay to COUNTY all fees and costs, including  
24 administrative and attorneys’ fees, incurred by COUNTY in connection with responding to or  
25 defending any discrimination claim brought by any third party and/or local, state or federal  
26 government entity, arising out of or in connection with this Agreement or the Covenant Agreement  
27 attached hereto.  
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1           25.    PROHIBITION AGAINST CONFLICTS OF INTEREST:

- 2           a. BORROWER and its assigns, employees, agents, consultants, officers and  
3           elected and appointed officials shall become familiar with and shall comply  
4           with the conflict of interest provisions in OMB Circular A-110, 24 CFR 85.36,  
5           24 CFR 84.42, 24 CFR 92.356 and Policy Manual #A-11, attached hereto as  
6           **Exhibit E** and by this reference incorporated herein.
- 7           b. BORROWER understands and agrees that no waiver or exception can be  
8           granted to the prohibition against conflict of interest except upon written  
9           approval of HUD pursuant to 24 CFR 92.356(d). Any request by BORROWER  
10          for an exception shall first be reviewed by COUNTY to determine whether such  
11          request is appropriate for submission to HUD. In determining whether such  
12          request is appropriate for submission to HUD, COUNTY will consider the  
13          factors listed in 24 CFR 92.356(e).
- 14          c. Prior to any funding under this Agreement, BORROWER shall provide  
15          COUNTY with a list of all employees, agents, consultants, officers and elected  
16          and appointed officials who are in a position to participate in a decision-making  
17          process, exercise any functions or responsibilities, or gain inside information  
18          with respect to the ARPA activities funded under this Agreement. BORROWER shall also promptly disclose to COUNTY any potential conflict,  
19          including even the appearance of conflict that may arise with respect to the  
20          ARPA activities funded under this Agreement.
- 21          d. Any violation of this section shall be deemed a material breach of this  
22          Agreement, and the Agreement shall be immediately terminated by COUNTY.

23           26.    INTENTIONALLY OMITTED.

24           27.    PROJECT MONITORING AND EVALUATION.

- 25           a. Inspections. During the Affordability Period, COUNTY will perform on-site  
26           inspections of the Navigation Center to determine compliance with the property  
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1 standards and to verify the information submitted by the owners in accordance  
2 with requirements. The on-site inspections must occur within 12 months after  
3 Covenant Agreement and at least once every 3 years thereafter during the  
4 Affordability Period. If there are observed deficiencies for any of the  
5 inspectable items in the property standards established by COUNTY, a follow-  
6 up on-site inspection to verify that deficiencies are corrected must occur within  
7 12 months. COUNTY may establish a list of non-hazardous deficiencies for  
8 which correction can be verified by third party documentation (e.g., paid  
9 invoice for work order) rather than re-inspection. Health and safety deficiencies  
10 must be corrected immediately. COUNTY must adopt a more frequent  
11 inspection schedule for properties that have been found to have health and  
12 safety deficiencies

13 28. MONITORING FEE. BORROWER shall not be required to pay an annual  
14 compliance monitoring fee to the COUNTY.

15 29. ACCESS TO PROJECT SITE. COUNTY, state and/or federal awarding agencies  
16 shall have the right to access the Project site and the Property at all reasonable times, and upon  
17 completion of the Project upon reasonable written notice to BORROWER, to review the  
18 operation of the Project in accordance with this Agreement.

19 30. EVENTS OF DEFAULT. The occurrence of any of the following events shall  
20 constitute an "Event of Default" under this Agreement:

- 21 a. Monetary Default. (1) BORROWER's failure to pay when due any sums  
22 payable under this Agreement, the Covenant Agreement, the ARPA Note or  
23 any advances made by COUNTY under this Agreement; (2) BORROWER's or  
24 any agent of BORROWER's use of ARPA Act funds for costs other than those  
25 costs permitted under this Agreement or for uses inconsistent with terms and  
26 restrictions set forth in this Agreement; (3) BORROWER's or any agent of  
27 BORROWER's failure to make any other payment of any assessment or tax  
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1 due under this Agreement, and /or (4) default under the terms of any senior  
2 loan documents or any other instrument or document secured against the  
3 Property;

4 b. Non-Monetary Default. (1) Discrimination by BORROWER or  
5 BORROWER's agent(s) on the basis of characteristics prohibited by this  
6 Agreement or applicable law; (2) the imposition of any encumbrances or liens  
7 on the Project without COUNTY's prior written approval that are prohibited  
8 under this Agreement or that have the effect of reducing the priority or  
9 invalidating the lien of the ARPA Deed of Trust; (3) BORROWER's failure to  
10 obtain and maintain the insurance coverage required under this Agreement; (4)  
11 any material default under this Agreement, the ARPA Loan Deed of Trust,  
12 Covenant Agreement, ARPA Note or any document executed by the County in  
13 connection with this Agreement, and /or (5) a default under the terms of any  
14 senior loan documents or any other instrument or document secured against the  
15 Property or the Project;

16 c. General Performance of Loan Obligations. Any substantial or continuous or  
17 repeated breach by BORROWER or BORROWER's agents of any material  
18 obligations of BORROWER under this Agreement;

19 d. General Performance of Other Obligations. Any substantial or continuous or  
20 repeated breach by BORROWER or BORROWER's agents of any material  
21 obligations of BORROWER related to the Project imposed by any other  
22 agreement with respect to the financing, development, or operation of the  
23 Project; whether or not COUNTY is a party to such agreement; but only  
24 following any applicable notice and cure periods with respect to any such  
25 obligation;

26 e. Representations and Warranties. A determination by COUNTY that any of  
27 BORROWER's representations or warranties made in this Agreement, any  
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1 statements made to COUNTY by BORROWER, or any certificates, documents,  
2 or schedules supplied to COUNTY by BORROWER were false in any material  
3 respect when made, or that BORROWER concealed or failed to disclose a  
4 material fact to COUNTY.

5 f. Damage to Project. In the event that the Project is materially damaged or  
6 destroyed by fire or other casualty, and BORROWER receives an award or  
7 insurance proceeds sufficient for the repair or reconstruction of the Project, and  
8 BORROWER does not use such award or proceeds to repair or reconstruct the  
9 Project.

10 g. Bankruptcy, Dissolution and Insolvency. BORROWER's or general partner  
11 and co-general partner of BORROWER's (1) filing for bankruptcy, dissolution,  
12 or reorganization, or failure to obtain a full dismissal of any such involuntary  
13 filing brought by another party before the earlier of final relief or ninety (90)  
14 days after such filing; (2) making a general assignment for the benefit of  
15 creditors; (3) applying for the appointment of a receiver, trustee, custodian, or  
16 liquidator, or failure to obtain a full dismissal of any such involuntary  
17 application brought by another party before the earlier of final relief or ninety  
18 (90) days after such filing; (4) insolvency; or (5) failure, inability or admission  
19 in writing of its inability to pay its debts as they become due.

20 31. NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. Formal notices,  
21 demands and communications between the COUNTY and the BORROWER shall be  
22 sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt  
23 requested, to the principal offices of the COUNTY and the BORROWER, as designated in  
24 Paragraph 53, below. Such written notices, demands and communications may be sent in the  
25 same manner to such other addresses as either party may from time to time designate by mail  
26 as provided in this **Section 30**. Any notice that is transmitted by electronic facsimile  
27 transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its  
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1 transmission; any notice that is personally delivered (including by means of professional  
2 messenger service, courier service such as United Parcel Service or Federal Express, or by U.S.  
3 Postal Service), shall be deemed received on the documented date of receipt by the recipient;  
4 and any notice that is sent by registered or certified mail, postage prepaid, return receipt required  
5 shall be deemed received on the date of delivery thereof.

- 6 a. Subject to the Force Majeure Delay, as provided in **Section 9**, failure or delay  
7 by BORROWER to perform any term or provision of this Agreement  
8 constitutes a default under this Agreement. BORROWER must immediately  
9 commence to cure, correct or remedy such failure or delay and shall complete  
10 such cure, correction or remedy with reasonable diligence.
- 11 b. COUNTY shall give written notice of default to BORROWER, specifying the  
12 default complained of by COUNTY. Failure or delay in giving such notice  
13 shall not constitute a waiver of any default, nor shall it change the time of  
14 default. Except as otherwise expressly provided in this Agreement, any failures  
15 or delays by COUNTY in asserting any of its rights and remedies as to any  
16 default shall not operate as a waiver of any default or of any such rights or  
17 remedies. Delays by COUNTY in asserting any of its rights and remedies shall  
18 not deprive COUNTY of its right to institute and maintain any actions or  
19 proceedings which it may deem necessary to protect, assert or enforce any such  
20 rights or remedies.
- 21 c. If a monetary event of default occurs, prior to exercising any remedies  
22 hereunder, COUNTY shall give BORROWER written notice of such default.  
23 BORROWER shall have a period of ten (10) days after such notice is given  
24 within which to cure the default prior to exercise of remedies by COUNTY.
- 25 d. If a non-monetary event of default occurs, prior to exercising any remedies  
26 hereunder, COUNTY shall give BORROWER written notice of such default.  
27 If the default is reasonably capable of being cured within thirty (30) days,  
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1 BORROWER shall have such period to effect a cure prior to exercise of  
2 remedies by COUNTY. If the default is such that it is not reasonably capable  
3 of being cured within thirty (30) days, and BORROWER (i) initiates corrective  
4 action within said period, and (ii) diligently, continually, and in good faith  
5 works to effect a cure as soon as possible, then BORROWER shall have such  
6 additional time as is reasonably necessary to cure the default prior to exercise  
7 of any remedies by the injured party, but in no event no more than sixty (60)  
8 days from the date of the notice of default. In no event shall COUNTY be  
9 precluded from exercising remedies if its security becomes or is about to  
10 become materially jeopardized by any failure to cure a default or the default is  
11 not cured within sixty (60) days after the first notice of default is given.

12 e. Any cure tendered by BORROWER'S Affiliate shall be accepted or rejected on  
13 the same basis as if tendered by BORROWER.

14 32. COUNTY REMEDIES. Upon the occurrence of an Event of Default, after notice  
15 and opportunity to cure, COUNTY's obligation to disburse ARPA funds shall terminate, and  
16 COUNTY shall also have the right, but not the obligation to, in addition to other rights and  
17 remedies permitted by this Agreement or applicable law, proceed with any or all of the  
18 following remedies in any order or combination COUNTY may choose in its sole discretion:

- 19 a. Terminate this Agreement, in which event the entire ARPA Loan amount as  
20 well as any other monies advanced to BORROWER by COUNTY under this  
21 Agreement including administrative costs, shall immediately become due and  
22 payable to COUNTY at the option of COUNTY.
- 23 b. Bring an action in equitable relief (1) seeking the specific performance by  
24 BORROWER of the terms and conditions of this Agreement, and/or (2)  
25 enjoining, abating, or preventing any violation of said terms and conditions,  
26 and/or (3) seeking declaratory relief.
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1 c. Accelerate the ARPA Loan and demand immediate full payment of the  
2 principal payment outstanding and all accrued interest under the ARPA Note,  
3 as well as any other monies advanced to BORROWER by COUNTY under this  
4 Agreement.

5 d. Enter the Project and take any remedial actions necessary in its judgment with  
6 respect to hazardous materials that COUNTY deems necessary to comply with  
7 hazardous materials laws or to render the Project suitable for occupancy, which  
8 costs shall be due and payable by BORROWER to COUNTY.

9 e. Enter upon, take possession of, and manage the Project, either in person, by  
10 agent, or by a receiver appointed by a court, and collect rents and other amounts  
11 specified in the assignment of rents in the Deed of Trust and apply them to  
12 operate the Project or to pay off the ARPA Loan or any advances made under  
13 this Agreement, as provided for by the ARPA Deed of Trust.

14 f. Pursue any other remedies allowed at law or in equity.

15 33. RESERVED.

16 34. BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that  
17 it has access to professional advice and support to the extent necessary to enable BORROWER  
18 to fully comply with the terms of this Agreement, and to otherwise carry out the Project, (2)  
19 that it is duly organized, validly existing and in good standing under the laws of the State of  
20 California, (3) that it has the full power and authority to undertake the Project and to execute  
21 this Agreement, (4) that the persons executing and delivering this Agreement are authorized to  
22 execute and deliver such documents on behalf of BORROWER and (5) that neither  
23 BORROWER nor any of its principals is presently debarred, suspended, proposed for  
24 debarment, declared ineligible, or voluntarily excluded from participation in connection with  
25 the transaction contemplated by this Agreement.

26 35. BORROWER'S CERTIFICATION. BORROWER certifies, to the best of its  
27 knowledge and belief, that:



- 1 a. No federally appropriated funds have been paid or will be paid, by or on behalf  
2 of the undersigned, to any person for influencing or attempting to influence an  
3 officer or employee of any agency, a member of Congress, an officer or  
4 employee of Congress, or an employee of a member of Congress in connection  
5 with the awarding of any federal contract, the making of any federal grant, the  
6 making of any federal loan, the entering into of any cooperative agreement, and  
7 the extension, continuation, review, amendment, or modification of any federal  
8 contract, grant, loan, or cooperative agreement.
- 9 b. If any funds other than federally appropriated funds have been paid or will be  
10 paid to any person for influencing or attempting to influence an officer or  
11 employee of any agency, a member of Congress, an officer or employee of  
12 Congress, or an employee of a member of Congress in connection with this  
13 federal contract, grant, loan, or cooperative agreement, the undersigned shall  
14 complete and submit Standard Form-LLL, "Disclosure Form to Report  
15 Lobbying," in accordance with its instructions.
- 16 c. The undersigned shall require that the language of this certification be included  
17 in the award documents for all sub-awards at all tiers (including subcontracts,  
18 sub-grants, and contracts under grants, loans, and cooperative agreements) and  
19 that BORROWER shall certify and disclose accordingly. This certification is a  
20 material representation of fact upon which reliance was placed when this  
21 transaction was made or entered into.

22 36. HOLD HARMLESS AND INDEMNIFICATION. BORROWER shall indemnify  
23 and hold harmless the County of Riverside, its Agencies, Boards, Districts, Special Districts and  
24 Departments, their respective directors, officers, Board of Supervisors, elected and appointed  
25 officials, employees, agents and representatives (collectively the "Indemnified Parties") from any  
26 liability whatsoever, based or asserted upon any services of BORROWER, its officers,  
27 employees, subcontractors, agents or representatives arising out of their performance under this  
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1 Agreement, including but not limited to property damage, **bodily injury**, or death or any other  
2 element of any kind or nature whatsoever arising from the performance of BORROWER, its  
3 officers, agents, employees, subcontractors, agents or representatives under this Agreement.  
4 BORROWER shall defend, at its sole expense, all costs and fees including, but not limited, to  
5 attorney fees, cost of investigation, defense and settlements or awards, the County of Riverside,  
6 its Agencies, Districts, Special Districts and Departments, their respective directors, officers,  
7 Board of Supervisors, elected and appointed officials, employees, agents and representatives in  
8 any claim or action based upon such alleged acts or omissions.

9 With respect to any action or claim subject to indemnification herein by BORROWER,  
10 BORROWER shall, at their sole cost, have the right to use counsel of their own choice and shall  
11 have the right to adjust, settle, or compromise any such action or claim without the prior consent  
12 of COUNTY; provided, however, that any such adjustment, settlement or compromise in no  
13 manner whatsoever limits or circumscribes BORROWER'S indemnification to COUNTY as set  
14 forth herein.

15 BORROWER's obligation hereunder shall be satisfied when BORROWER has provided  
16 to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action  
17 or claim involved.

18 The specified insurance limits required in this Agreement shall in no way limit or  
19 circumscribe BORROWER's obligations to indemnify and hold harmless COUNTY herein from  
20 third party claims.

21 In the event there is conflict between this clause and California Civil Code Section 2782,  
22 this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not  
23 relieve BORROWER from indemnifying COUNTY to the fullest extent allowed by law.

24 BORROWER's obligations set forth in this **Section 35** shall survive the expiration or  
25 earlier termination of this Agreement.

1           37.    TERMINATION.

2           a.    BORROWER.    BORROWER may terminate this Agreement prior to  
3                    disbursement of any ARPA Loan funds by COUNTY in accordance with the  
4                    applicable ARPA Act regulations.

5           b.    COUNTY. Notwithstanding the provisions of **Section 36(a)**, COUNTY may  
6                    suspend or terminate this Agreement upon written notice to BORROWER of  
7                    the action being taken and the reason for such action in the event one of the  
8                    following events occur:

9                    (i) In the event BORROWER fails to perform the covenants herein  
10                    contained at such times and in such manner as provided in this  
11                    Agreement after the applicable notice and cure provision hereof; or

12                   (ii) In the event there is a conflict with any federal, state or local law,  
13                    ordinance, regulation or rule rendering any material provision, in the  
14                    judgment of COUNTY of this Agreement invalid or untenable; or

15                   (iii) In the event the ARPA funding identified in **Section 1** above is  
16                    terminated or otherwise becomes unavailable.

17           c.    This Agreement may be terminated or funding suspended in whole or in part  
18                    for cause. Cause shall be based on the failure of BORROWER to materially  
19                    comply with either the terms or conditions of this Agreement after the  
20                    expiration of all applicable notice and cure provisions hereof. Upon suspension  
21                    of funding, BORROWER agrees not to incur any costs related thereto, or  
22                    connected with, any area of conflict from which COUNTY has determined that  
23                    suspension of funds is necessary.

24           d.    Upon expiration or earlier termination of this Agreement, BORROWER shall  
25                    transfer to COUNTY any unexpended ARPA funds in its possession at the time  
26                    of expiration of the Agreement as well as any accounts receivable held by  
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1           BORROWER which are attributable to the use of ARPA funds awarded  
2           pursuant to this Agreement.

3           38.    AFFORDABILITY RESTRICTIONS. COUNTY and BORROWER, on behalf of  
4 its successors and assigns, hereby declare their express intent that the restrictions set forth in this  
5 Agreement shall continue in full force and effect for the duration of the Affordability Period (as  
6 defined in **Section 14** above). Each and every contract, deed or other instrument hereafter  
7 executed covering and conveying the Property or any portion thereof shall be held conclusively  
8 to have **been** executed, delivered and accepted subject to such restrictions, regardless of whether  
9 such restrictions are set forth in such contract, deed or other instrument. BORROWER shall  
10 execute and record as a lien against the Property, a Covenant Agreement, substantially  
11 conforming in form and substance to the Covenant Agreement attached hereto as **Exhibit G** and  
12 incorporated herein by this reference, setting forth the affordability use and income restriction  
13 required in this Agreement.

14           39.    MECHANICS LIENS AND STOP NOTICES. If any claim of mechanics lien is  
15 filed against the Project or a stop notice affecting the ARPA Loan is served on COUNTY,  
16 BORROWER must, within twenty (20) calendar days of such filing or notification of service,  
17 either pay and fully discharge the lien or stop notice, obtain a release of the lien or stop notice by  
18 delivering to COUNTY a surety bond in sufficient form and amount, or provide COUNTY with  
19 other assurance reasonably satisfactory to COUNTY that the lien or stop notice will be paid or  
20 discharged.

21           40.    ENTIRE AGREEMENT. It is expressly agreed that this Agreement embodies the  
22 entire agreement of the parties in relation to the subject matter hereof, and that no other agreement  
23 or understanding, verbal or otherwise, relative to this subject matter, exists between the parties at  
24 the time of execution.

25           41.    AUTHORITY TO EXECUTE. The persons executing this Agreement or exhibits  
26 attached hereto on behalf of the parties to this Agreement hereby warrant and represent that they  
27 have the authority to execute this Agreement and warrant and represent that they have the  
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1 authority to bind the respective parties to this Agreement to the performance of its obligations  
2 hereunder.

3 42. WAIVER. Failure by a party to insist upon the strict performance of any of the  
4 provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon  
5 the default of the other party, shall not constitute a waiver of such party's rights to insist and  
6 demand strict compliance by the other party with the terms of this Agreement thereafter.

7 43. INTERPRETATION AND GOVERNING LAW. This Agreement and any  
8 dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the  
9 State of California. This Agreement shall be construed as a whole according to its fair language  
10 and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of  
11 construction to the effect that ambiguities are to be resolved against the drafting party shall not  
12 be employed in interpreting this Agreement, all parties having been represented by counsel in the  
13 negotiation and preparation hereof.

14 44. JURISDICTION AND VENUE. Any action at law or in equity arising under this  
15 Agreement or brought by a party hereto for the purpose of enforcing, construing or determining  
16 the validity of any provision of this Agreement shall be filed in the Superior Court of Riverside  
17 County, State of California, and the parties hereto waive all provisions of law providing for the  
18 filing, removal or change of venue to any other court or jurisdiction.

19 45. SEVERABILITY. Each paragraph and provision of this Agreement is severable  
20 from each other provision, and if any provision or part thereof is declared invalid, the remaining  
21 provisions shall nevertheless remain in full force and effect.

22 46. MINISTERIAL ACTS. COUNTY's Director of HWS, or designee, is authorized  
23 to take such ministerial actions as may be necessary or appropriate to implement the terms,  
24 provisions, and conditions of this Agreement as it may be amended from time to time by both  
25 parties.

26 47. MODIFICATION OF AGREEMENT. COUNTY or BORROWER may consider  
27 it in its best interest to change, modify or extend a term or condition of this Agreement, provided  
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1 such change, modification or extension is agreed to in writing by the other party. Any such  
2 change, extension or modification, which is mutually agreed upon by COUNTY and  
3 BORROWER shall be incorporated in written amendments to this Agreement. Such amendments  
4 shall not invalidate this Agreement, nor relieve or release COUNTY or BORROWER from any  
5 obligations under this Agreement, except for those parts thereby amended. No amendment to this  
6 Agreement shall be effective and binding upon the parties, unless it expressly makes reference to  
7 this Agreement, is in writing, is signed and acknowledged by duly authorized representatives of  
8 all parties, and approved by the COUNTY.

9 48. CONDITIONAL COMMITMENT.

- 10 a. Acquisition. BORROWER must acquire the Property by March 1, 2022.
- 11 b. Construction. BORROWER must demonstrate that it is working towards  
12 obtaining financing to reconstruct the Project in accordance to the scheduled  
13 Completion Deadline.
- 14 c. Completion. The Project must be completed no later than two (2) years from  
15 the Effective Date of this Agreement (the "Completion Deadline"). If  
16 BORROWER is unable to meet the condition as required by this **Section 48**  
17 including Extension, then COUNTY and BORROWER mutually agree that this  
18 Agreement will self-terminate and any ARPA Loan funds disbursed to  
19 BORROWER to date shall be returned to COUNTY within thirty (30) calendar  
20 days of such termination. Upon such termination, this Agreement shall become  
21 null and void. COUNTY and BORROWER shall be released and discharged  
22 respectively from their obligations under this Agreement, except for those  
23 provisions which by their terms survive termination. All costs incurred by each  
24 party on the Project will be assumed respectively.

25 49. INTENTIONALLY OMITTED.

26 50. INTENTIONALLY OMITTED.

1           51.    EXHIBITS AND ATTACHMENTS. Each of the attachments and exhibits  
2 attached hereto is incorporated herein by this reference.

3           52.    MEDIA RELEASES. BORROWER agrees to allow COUNTY to provide input  
4 regarding all media releases regarding the Project. Any publicity generated by BORROWER for  
5 the Project must make reference to the contribution of COUNTY in making the Project possible.  
6 COUNTY's name shall be prominently displayed in all pieces of publicity generated by  
7 BORROWER, including flyers, press releases, posters, signs, brochures, and public service  
8 announcements. BORROWER agrees to cooperate with COUNTY in any COUNTY-generated  
9 publicity or promotional activities with respect to the Project.

10          53.    NOTICES. All notices, requests, demands and other communication required or  
11 desired to be served by either party upon the other shall be addressed to the respective parties as  
12 set forth below or the such other addresses as from time to time shall be designated by the  
13 respective parties and shall be sufficient if sent by United States first class, certified mail, postage  
14 prepaid, or express delivery service with a receipt showing the date of delivery.

15           COUNTY

16           Director HWS  
17           County of Riverside  
18           3403 10<sup>th</sup> Street, Suite 300  
19           Riverside, CA 92501

BORROWER

                  City Manager  
                  City of Palm Springs  
                  3200 E. Tahquitz Canyon Way  
                  Palm Springs, CA 9262

20          54.    COUNTERPARTS. This Agreement may be signed by the different parties hereto  
21 in counterparts, each of which shall be an original but all of which together shall constitute one  
22 and the same agreement.

23          55.    EFFECTIVE DATE. The effective date of this Agreement is the date the parties  
24 execute the Agreement ("Effective Date"). If the parties execute the Agreement on more than one  
25 date, then the last date the Agreement is executed by a party shall be the Effective Date.

26          56.    FURTHER ASSURANCES. BORROWER shall execute any further documents  
27 consistent with the terms of this Agreement, including documents in recordable form, as the  
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1 COUNTY may from time to time find necessary or appropriate to effectuate its purposes in  
2 entering into this Agreement.

3 57. NONLIABILITY OF COUNTY OFFICIALS AND EMPLOYEES. No member,  
4 official, employee or consultant of the COUNTY shall be personally liable to the BORROWER,  
5 or any successor in interest, in the event of any default or breach by the COUNTY or for any  
6 amount which may become due to the BORROWER or to its successor, or on any obligations  
7 under the terms of this Agreement.

8 58. CONSTRUCTION AND INTERPRETATION OF AGREEMENT.

- 9 a. The language in all parts of this Agreement shall in all cases be construed  
10 simply, as a whole and in accordance with its fair meaning and not strictly for  
11 or against any party. The parties hereto acknowledge and agree that this  
12 Agreement has been prepared jointly by the parties and has been the subject of  
13 arm's length and careful negotiation over a considerable period of time, that  
14 each party has been given the opportunity to independently review this  
15 Agreement with legal counsel, and that each party has the requisite experience  
16 and sophistication to understand, interpret, and agree to the particular language  
17 of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute  
18 regarding the interpretation of this Agreement, this Agreement shall not be  
19 interpreted or construed against the party preparing it, and instead other rules  
20 of interpretation and construction shall be utilized.
- 21 b. If any term or provision of this Agreement, the deletion of which would not  
22 adversely affect the receipt of any material benefit by any party hereunder, shall  
23 be held by a court of competent jurisdiction to be invalid or unenforceable, the  
24 remainder of this Agreement shall not be affected thereby and each other term  
25 and provision of this Agreement shall be valid and enforceable to the fullest  
26 extent permitted by law. It is the intention of the parties hereto that in lieu of  
27 each clause or provision of this Agreement that is illegal, invalid, or  
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1 unenforceable, there be added as a part of this Agreement an enforceable clause  
2 or provision as similar in terms to such illegal, invalid, or unenforceable clause  
3 or provision as may be possible.

4 c. The captions of the articles, sections, and subsections herein are inserted solely  
5 for convenience and under no circumstances are they or any of them to be  
6 treated or construed as part of this instrument.

7 d. References in this instrument to this Agreement mean, refer to and include this  
8 instrument as well as any riders, exhibits, addenda and attachments hereto  
9 (which are hereby incorporated herein by this reference) or other documents  
10 expressly incorporated by reference in this instrument. Any references to any  
11 covenant, condition, obligation, and/or undertaking "herein," "hereunder," or  
12 "pursuant hereto" (or language of like import) means, refer to, and include the  
13 covenants, obligations, and undertakings existing pursuant to this instrument  
14 and any riders, exhibits, addenda, and attachments or other documents affixed  
15 to or expressly incorporated by reference in this instrument.

16 e. As used in this Agreement, and as the context may require, the singular includes  
17 the plural and vice versa, and the masculine gender includes the feminine and  
18 vice versa.

19 59. TIME OF ESSENCE. Time is of the essence with respect to the performance of  
20 each of the covenants and agreements contained in this Agreement.

21 60. BINDING EFFECT. This Agreement, and the terms, provisions, promises,  
22 covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties  
23 hereto and their respective heirs, legal representatives, successors and assigns.

24 61. NO THIRD PARTY BENEFICIARIES. The parties to this Agreement  
25 acknowledge and agree that the provisions of this Agreement are for the sole benefit of COUNTY  
26 and BORROWER, and not for the benefit, directly or indirectly, of any other person or entity,  
27 except as otherwise expressly provided herein.

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62. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS.

- a. This Agreement shall be executed in three duplicate originals each of which is deemed to be an original. This Agreement, including all attachments hereto and exhibits appended to such attachments shall constitute the entire understanding and agreement of the parties.
- b. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Property.
- c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the COUNTY or the BORROWER, and all amendments hereto must be in writing and signed by the appropriate authorities of the COUNTY and the BORROWER. This Agreement and any provisions hereof may be amended by mutual written agreement by the BORROWER and the COUNTY.

(SIGNATURES ON THE NEXT PAGE)

IN WITNESS WHEREOF, COUNTY and BORROWER have executed this Agreement as of the dates written below.

COUNTY:

BORROWER:

COUNTY OF RIVERSIDE, a political subdivision of the State of California

CITY OF PALM SPRINGS, a California charter city and municipal corporation

By: \_\_\_\_\_  
Heidi Marshall, Director HWS

By: \_\_\_\_\_  
Justin Clifton, City Manager

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

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

**(Above signatures need to be notarized)**

APPROVED AS TO FORM:  
GREGORY P. PRIAMOS  
County Counsel

By: \_\_\_\_\_  
Amrit Dhillon  
Deputy County Counsel

<INSERT CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT>

**EXHIBIT "A"**

**Borrower:** City of Palm Springs  
**Address:** 3200 E. Tahquitz Way, Palm Springs, CA 92262  
**Project Title:** Navigation Center  
**Location:** 3589 McCarthy Road, Palm Springs, CA 92262, APN: 669-420-019

**Project Description:**

BORROWER proposes to utilize \$5,740,000.00 in ARPA funds to acquire property located at 3589 McCarthy Road, Palm Springs, CA 92262 ("Property"). BORROWER proposes to acquire and rehabilitate the Property, reconfigure the layout of the existing building to provide transitional housing and wrap around services to homeless individuals or individuals at risk of homelessness, or experiencing housing insecurity ("Qualified Population").

**Legal Description of Property:**

Real property in the City of Palm Springs, County of Riverside, State of California, described as follows:

LOT B, AS SHOWN ON LOT LINE ADJUSTMENT GRANT DEED LLA 09-01, AS EVIDENCED BY DOCUMENT RECORDED NOVEMBER 25, 2009 AS INSTRUMENT NO. [2009-0612113](#) OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 17371, IN CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN [BOOK 105 PAGE 93](#) OF PARCEL MAPS, RECORDS OF SAID COUNTY, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID PARCEL 1 SHOWN AS HAVING A BEARING OF "NORTH 89° 41' 05" WEST", A DISTANCE OF "429.95 FEET" ON SAID PARCEL MAP, SAID PORTION OF SAID PARCEL 1, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 00° 08' 00" WEST, ON THE WESTERLY LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 460.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00° 05' 56" WEST, A DISTANCE OF 85.05 FEET; THENCE SOUTH 00° 08' 02" WEST, A DISTANCE OF 130.11 FEET; THENCE SOUTH 00° 10' 36" WEST, A DISTANCE OF 126.52 FEET; THENCE SOUTH 89° 45' 43" EAST, A DISTANCE OF 464.23 FEET;

THENCE NORTH 00° 08' 42" EAST, A DISTANCE OF 263.86 FEET; THENCE NORTH 00° 06' 52" EAST, A DISTANCE OF 76.82 FEET; THENCE NORTH 89° 38' 20" WEST, A DISTANCE OF 464.22 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ONE-SIXTEENTH OF ALL COAL, OIL, GAS AND OTHER MINERAL, DEPOSITS AS RESERVED IN THE PATENT EXECUTED BY THE STATE OF CALIFORNIA RECORDED MAY 22, 1936 IN [BOOK 282, PAGE 274](#) OF OFFICIAL RECORDS.

APN: 669-420-019

**Exhibit A-1**

**IMPLEMENTATION SCHEDULE**

<b>Milestone</b>	<b>Completion Date</b>
1. Acquisition of Property	March 1, 2022
2. Construction Start Deadline	January 1, 2023
3. Completion of Navigation Center	January 25, 2024
4. Navigation Open to the Public	February 1, 2024

EXEMPT RECORDING FEE CODE 6103

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

County of Riverside  
Housing and Workforce Solutions  
3403 10<sup>th</sup> Street, Suite 300  
Riverside, CA 92501  
Attn. Juan Garcia

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST, SECURITY  
AGREEMENT AND FIXTURE FILING**  
(WITH ASSIGNMENT OF RENTS)

This DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (WITH ASSIGNMENT OF RENTS) is made this \_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, (hereinafter referred to as "Trustor"), whose address is \_\_\_\_\_, Attention: \_\_\_\_\_. The trustee is Housing and Workforce Solutions ("Trustee"). The beneficiary is the County of Riverside, a political subdivision of the State of California, (hereinafter called "Beneficiary"), whose address is 5555 Arlington Avenue, Riverside, CA 92504.

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION the following property (the "Trust Estate"):

(A) That certain fee interest in the real property in the City of Riverside, County of Riverside, State of California more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (such interest in real property is hereafter referred to as the "Subject Property");

(B) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (the "Improvements");

(C) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefiting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the "Appurtenances"). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the "Real Property");

(D) All rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the Trustor's use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the "Rents");

(E) all present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the "UCC"), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, theater equipment, seating, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor (the "Goods," and together with the Real Property, the "Property"); and

(F) all present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the Ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types of intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the "Intangibles").

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the "Personal Property"). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a "secured party" under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9334 and 9502(b) of the UCC.



FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

- i. due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:
  - (a) that certain Promissory Note in favor of the Beneficiary ("County" therein) executed by Trustor ("Borrower" therein) of even date herewith (the "ARPA Note") in the principal amount of \$5,740,000.00.
  - (b) that certain Loan Agreement for the Use of ARPA Act Funds dated \_\_\_\_\_, 2022 and recorded in the Official Records ("Official Records") of the County of Riverside concurrently herewith, between Trustor ("Borrower" therein) and Beneficiary ("County" therein) (the "ARPA Loan Agreement"); and
  - (c) that certain Covenant Agreement dated \_\_\_\_\_, 20220 and recorded concurrently herewith in the Official Records, between Trustor ("Borrower" therein) and Beneficiary ("County" therein) ("Covenant Agreement").
- ii. payment of indebtedness of the Trustor to the Beneficiary not to exceed ONE MILLION NINE HUNDRED THOUSAND DOLLARS (the "ARPA Loan") according to the terms of the ARPA Note.

Said ARPA Note, ARPA Loan Agreement and Covenant Agreement (collectively, referred to as the "Secured Obligations") and all of their terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby. The ARPA Note, ARPA Loan Agreement and Covenant Agreement as used herein shall mean, refer to and include the ARPA Note, ARPA Loan Agreement and Covenant Agreement, as well as any riders, exhibits, addenda, implementation agreements, amendments, or attachments thereto (which are hereby incorporated herein by this reference). Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the ARPA Loan Agreement.

The ARPA Loan evidenced by the ARPA Note and secured by this Deed of Trust is being made pursuant to the Coronavirus Aid, Relief, and Economic Security Act (Section 5001, Public Law 116-136) (the "ARPA Act"). Pursuant to the ARPA Loan Agreement, the maturity date of the ARPA Loan shall be the later to occur of (i) July 1, 2077 or (ii) fifty five (55) years from recordation of the Covenant Agreement for the last building completed as part of the Project (as defined in the ARPA Loan Agreement) ("ARPA Loan Term")

TRUSTOR COVENANTS that the Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the fee interest of the Property. Trustor warrants and will defend generally the title to the Property against all claims and demands, subject to such encumbrances of record.

**AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR  
COVENANTS AND AGREES:**

1. That Trustor shall pay the ARPA Note at the time and in the manner provided therein, and perform the obligations of the Trustor as set forth in the ARPA Loan Agreement and Covenant Agreement at the time and in the manner respectively provided therein.

2. That Trustor shall not permit or suffer the use of any of the property for any purpose other than the use set forth in the ARPA Loan Agreement and Covenant Agreement.

3. That the Secured Obligations are incorporated in and made a part of the Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.

4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the ARPA Loan Agreement and Covenant Agreement.

4a. That upon default hereunder or under any of the Secured Obligations and after giving notice and opportunity to cure, Beneficiary shall be entitled to the appointment of receiver by any court having jurisdiction, without notice, to take possession and protect the Property described herein and operate same and collect the rents, profits and income therefrom

5. **Payment of Principal and Interest; Prepayment and Late Charges.** Trustor shall promptly pay when due the principal of and interest on the debt evidenced by the ARPA Note and any late charges due under the ARPA Note. Payments on the ARPA Note shall be deferred annually and forgiven at the end of the Term of the Agreement if the BORROWER has complied with the terms of the ARPA Loan

6. **Taxes and Insurance.** Trustor shall pay before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Deed of Trust, directly to the person owed payment. Trustor shall promptly furnish to Beneficiary receipts evidencing the payments.

a. Should Trustor fail to make any payment or to do any act herein provided, then Beneficiary or Trustee, but without obligation so to do and upon written notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

7. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Beneficiary under **Section 5** shall be applied: first, to interest due; second, to principal due; and last, to any late charges due under the ARPA Note.

8. **Prior Deeds of Trust; Charge; Liens.** Trustor shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Deed of Trust, and leasehold payments or ground rents, if any, subject to applicable cure periods directly to the person owed payment. Trustor shall pay these obligations in the manner provided in **Section 6**.

a. Except for the liens permitted in writing by the Beneficiary, Trustor shall promptly discharge any other lien which shall have attained priority over this Deed of Trust unless Trustor: (1) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Beneficiary; (2) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Beneficiary's opinion operate to prevent the enforcement of the lien; or (3) bond around the lien (4) secures from the holder of the lien an agreement satisfactory to Beneficiary subordinating the lien to this Deed of Trust. Except for the liens approved herein, if Beneficiary determines that any part of the Property is subject to a lien which may attain priority over this Deed of Trust, Beneficiary may give Trustor a notice identifying the lien. Trustor shall satisfy such lien or take one or more of the actions set forth above within 30 days of the giving of notice.

9. **Priority of ARPA Deed of Trust.** The ARPA Deed of Trust shall be in a first priority lien position.

10. **Hazard or Property Insurance.** Trustor shall keep the improvements now existing or hereafter erected on the Property insured against loss of fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Beneficiary reasonably requires insurance. This insurance shall be maintained in the amounts and for the periods as required in the ARPA Loan Agreement. The insurance carrier providing the insurance shall be chosen by Trustor subject to Beneficiary's approval which shall not be unreasonably withheld. If Trustor fails to maintain coverage described above, Beneficiary may, at Beneficiary's option, obtain coverage to protect Beneficiary's rights in the Property in accordance with **Section 12**.

a. All insurance policies and renewals shall be reasonably acceptable to Beneficiary and shall include a standard mortgagee clause. All requirements hereof pertaining to insurance shall be deemed satisfied if the Trustor complies with the insurance requirements under this Deed of Trust and the ARPA Loan Agreement. Trustor shall promptly give to Beneficiary certificates of insurance showing the coverage is in full force and effect and that Beneficiary is named as additional insured. In the event of loss, Trustor shall give prompt notice to the insurance carrier, the Senior Lien Holder, if any, and Beneficiary. Beneficiary may make proof of loss if not made promptly by the Senior Lien Holder, if any, or the Trustor.

b. Unless Beneficiary and Trustor otherwise agree in writing and subject to the rights of senior lenders, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided Trustor determines that such restoration or repair is economically feasible and there is no default continuing beyond the expiration of all applicable cure periods. If Trustor determines that such restoration or repair is not economically feasible or if a default exists after

expiration of all applicable cure periods, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. If the Property is abandoned by Trustor, or if Trustor fails to respond to Beneficiary within 30 days from the date notice is mailed by Beneficiary to Trustor that the insurance carrier offers to settle a claim for insurance benefits, Beneficiary is authorized to collect and apply the insurance proceeds at Beneficiary's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

c. Unless Beneficiary and Trustor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of Note. If under **Section 27** the Property is acquired by Beneficiary, Trustor's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Beneficiary to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

d. Notwithstanding the above, the Beneficiary's rights to collect and apply the insurance proceeds hereunder shall be subject and subordinate to the rights of a Senior Lien Holder, if any, to collect and apply such proceeds in accordance with a Senior Lien Holder Deed of Trust.

11. **Preservation, Maintenance and Protection of the Property; Trustor's Loan Application; Leaseholds.** Trustor shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property; normal wear and tear excepted. Trustor shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Beneficiary's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Deed of Trust or Beneficiary's security interest. Trustor may cure such a default and reinstate, as provided in **Section 23**, by causing the action or proceeding to be dismissed with a ruling that, in Beneficiary's good faith determination, precludes forfeiture of the Trustor's interest in the Property or other material impairment of the lien created by this Deed of Trust or Beneficiary's security interest. Trustor shall also be in default if Trustor, during the loan application process, gave materially false or inaccurate information or statements to Beneficiary (or failed to provide Beneficiary with any material information) in connection with the loan evidenced by the ARPA Note, including, but not limited to representations concerning Trustor's use of Property for transitional housing. If this Deed of Trust is on a leasehold, Trustor shall comply with all provisions of the lease. If Trustor acquires fee title to the Property, the leasehold and the fee title shall not merge unless Beneficiary agrees to the merger in writing.

a. The Trustor acknowledges that this Property is subject to certain use and occupancy restrictions (which may be further evidenced by a separate agreement recorded in the land records where the Property is located), limiting the Property's use to transitional housing. The use and occupancy restrictions may limit the Trustor's ability to rent the Property. The violation of any use and occupancy restrictions may, if not prohibited by federal law, entitle the Beneficiary to the remedies provided in **Section 27** hereof.

12. **Protection of Beneficiary's Rights in the Property.** If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or there is a legal proceeding that may significantly affect Beneficiary's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then, subject to notice to Trustor and any applicable grace periods or cure periods, Beneficiary may do and pay for whatever is necessary to protect the value of the Property and Beneficiary's rights in the Property. Beneficiary's actions may include paying any sums secured by a lien which has priority over this Deed of Trust, appearing in court, paying reasonable attorneys' fees, and entering on the Property

to make repairs. Although Beneficiary may take action under this **Section 12**, Beneficiary does not have to do so.

a. Any amounts disbursed by Beneficiary under this **Section 12** shall become additional debt of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the ARPA Note rate and shall be payable, with interest, upon notice from Beneficiary to Trustor requesting payment.

13. **Reserved.**

14. **Inspection.** Beneficiary or its agent may make reasonable entries upon and inspections of the Property. Beneficiary shall give Trustor at least forty-eight (48) hours advanced notice in connection with an inspection specifying reasonable cause for the inspection.

15. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary, subject to the terms of a Senior Lien Holder Deed of Trust, if any.

a. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Trustor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the taking, unless Trustor and Beneficiary otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Trustor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Trustor and Beneficiary otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due. Notwithstanding the foregoing, so long as the value of Beneficiary's lien is not impaired, any condemnation proceeds may be used by Trustor for repair and/or restoration of the project.

b. If the Property is abandoned by Trustor, or if, after notice by Beneficiary to Trustor that the condemner offers to make an award or settle a claim for damages, Trustor fails to respond to Beneficiary within 30 days after the date the notice is given, Beneficiary is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due.

c. Unless Beneficiary and Trustor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payments referred to in **Sections 5 and 6** or change the amount of such payments.

16. **Trustor Not Released; Forbearance By Beneficiary Not a Waiver.** Except in connection with any successor in interest approved by Beneficiary in writing, extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by

Beneficiary to any successor in interest of Trustor shall not operate to release the liability of the original Trustor or Trustor's successors in interest. Beneficiary shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Trustor or Trustor's successors in interest. Any forbearance by Beneficiary in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

17. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Deed of Trust shall bind and benefit the successors and assigns of Beneficiary and Trustor, subject to the provisions of **Section 22**. Trustor's covenants and agreements shall be joint and several.

18. **Loan Charges.** If the loan secured by this Deed of Trust is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Trustor which exceeded permitted limits will be promptly refunded to Trustor. Beneficiary may choose to make this refund by reducing the principal owed under the ARPA Note or by making a direct payment to Trustor. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

19. **Notices.** Any notice to Trustor provided for in this Deed of Trust shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Trustor's mailing address stated herein or any other address Trustor designates by notice to Beneficiary. All such notices to Trustor shall also be provided to the investment limited partner at the address set forth in the ARPA Loan Agreement. Any notice to Beneficiary shall be given by first class mail to Beneficiary's address stated herein or any other address Beneficiary designates by notice to Trustor. Any notice required to be given to a Senior Lien Holder shall be given by first class mail to such other address the Senior Lien Holder designates by notice to the Trustor. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor or Beneficiary when given as provided in this Section.

20. **Governing Law; Severability.** This Deed of Trust shall be governed by federal law and the laws of the State of California. In the event that any provision or clause of this Deed of Trust or the ARPA Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision. To this end the provisions of this Deed of Trust and the ARPA Note are declared to be severable. Any action at law or in equity arising under this Deed of Trust or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the Superior Courts of Riverside County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

21. **Trustor's Copy.** Trustor shall be given one conformed copy of the ARPA Note and of this Deed of Trust.

22. **Transfer of the Property or a Beneficial Interest in Trustor.** Except as otherwise allowed under the ARPA Loan Agreement, if all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Trustor is sold or transferred and Trustor is not a natural person) without Beneficiary's prior written consent (including a transfer of all or any part of the Property to any person who, at initial occupancy of the Property, does not use the Property for transitional housing) Beneficiary may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Beneficiary if exercise is prohibited by federal law as of the date of this Deed of Trust. Nothing in this Deed of Trust shall be deemed to require Beneficiary's approval of a transfer of a limited partnership interest in the Trustor or of a conveyance of an easement interest in the Property for utility purposes.

a. If Beneficiary exercises the aforementioned option, Beneficiary shall give Trustor and the Senior Lien Holder, prior written notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Trustor must pay all sums secured by this Deed of Trust. If Trustor fails to pay these sums prior to the expiration of this period, Beneficiary may invoke any remedies permitted by this Deed of Trust without further notice or demand on Trustor.

b. Notwithstanding anything to the contrary contained herein, upon written notice to Beneficiary, Trustor may, without Beneficiary's consent: (i) admit limited partners to Trustor, and provide for the purchase of any such limited partnership interest or interests by Trustor's general partner; (ii) remove for cause any General Partner by a limited partner of the Trustor, and the replacement thereof, pursuant to the Partnership Agreement, provided Beneficiary receives 5 business days advance written notice of such removal. Without limiting Trustor's obligation to provide advance notice of such removal for cause of any General Partner by a limited partner and the replacement thereof set forth in the immediately preceding sentence, amendments to the Partnership Agreement required to effectuate the Permitted Transfer set forth in this clause shall not require the consent of the Beneficiary; provided, however, Trustor shall provide Beneficiary with an executed copy of such amended agreement within 10 days of execution thereof; (ii) Transfer the Project to a Permitted Affiliate (as defined in the ARPA Loan Agreement); (iii) lease for occupancy of all or any of the ARPA-Assisted Units (as defined in the ARPA Loan Agreement); (iv) grant easements or permits to facilitate the development of the Property in accordance with the ARPA Loan Agreement (collectively a "Permitted Transfer"). All Permitted Transfers shall be subject to reasonable review of documentation by the Beneficiary.

23. **Trustor's Right to Reinstate.** If Trustor meets certain conditions, Trustor shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust; or (b) entry of a judgment enforcing this Deed of Trust. Those conditions are that Trustor: (a) pays Beneficiary all sums which then would be due under this Deed of Trust and the ARPA Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's rights in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unchanged. Upon reinstatement by Trustor, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under **Section 22**.

24. **Sale of Note; Change of Loan Servicer.** The ARPA Note or a partial interest in the ARPA Note (together with this Deed of Trust) may be sold one or more times without prior notice to Trustor. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Deed of Trust. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Trustor will be given written notice of the change in accordance with **Section 19** above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

25. **No Assignment.** The ARPA Note and this Deed of Trust shall not be assigned by Trustor without the Beneficiary's prior written consent and the consent of the Senior Lender.

26. **Hazardous Substances.** Trustor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Trustor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses, construction, and to maintenance of the Property.

a. Trustor shall promptly give Beneficiary written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Trustor has actual knowledge. If Trustor learns, or is notified in writing by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law.

b. As used in this **Section 26**, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials, excluding household products in normal quantities. As used in this **Section 26**, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

27. **Acceleration; Remedies.** Beneficiary shall give notice to Trustor prior to acceleration following Trustor's breach of any covenant or agreement in this Deed of Trust. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, which shall not be more than ten (10) calendar days from the date of the mailing of the notice for a monetary default, or a date, which shall not be more than thirty (30) calendar days from the mailing of the notice for a non-monetary default, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Trustor of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Trustor to acceleration and sale. If the default is not cured by the Trustor on or before the date specified in the notice, and the Senior Lien Holder or the investor limited partner have not cured the default within that same period, subject to any



non-recourse provisions set forth in Section 8 of the Note, then Beneficiary at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided in this **Section 27**, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

a. If Beneficiary invokes the power of sale, Beneficiary or Trustee shall mail copies of a notice of sale in the manner prescribed by applicable law to Trustor, the investor limited partner, the Senior Lien Holder and to the other persons prescribed by applicable law. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Trustee, without demand on Trustor, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property to any later time on the same date by public announcement at the time and place of any previously scheduled sale. Beneficiary or its designee may purchase the Property at any sale.

b. Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

28. **Release.** Upon payment of all sums secured by this Deed of Trust, or upon forgiveness of all sums at the end of the ARPA Loan Term as provided herein, Beneficiary shall release this Deed of Trust without charge to Trustor. Trustor shall pay any recordation costs. The lien of the Covenant Agreement shall not be released or reconveyed until the expiration of the term set forth therein notwithstanding the payment of all sums secured by this Deed of Trust.

29. **Substitute Trustee.** Beneficiary, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

30. **Modifications of Senior Loan Documents.** Any agreement or arrangement, in which a Senior Lender waives, postpones, extends, reduces, or modifies any provisions of the Senior Lien Holder Deed of Trust or any other Senior Lenders loan documents, including any provisions requiring the payment of money, shall require the prior written approval of Beneficiary.

31. **Prohibition against tenancy under foreclosure.** Notwithstanding anything to the contrary set forth in this Deed of Trust or in any documents secured by this Deed of Trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that, in no event will any action be taken which violates Section 42(h)(6)(E)(ii) of the U.S. Internal Revenue Code of 1986, as amended, regarding prohibitions against evicting, terminating tenancy or increasing rent of tenants for a period of three (3) years after acquisition of a building by foreclosure or deed-in-lieu of foreclosure.

32. **General Partner Change.** Except as otherwise provided in the ARPA Loan Agreement, the withdrawal, removal, and/or replacement of a non-Affiliate general partner of the Trustor pursuant to the terms of the Partnership Agreement shall not constitute a default under any of the Secured Obligations, and any such actions shall not accelerate the maturity of the ARPA Loan, provided that any required substitute general partner is reasonably acceptable to Beneficiary and is selected with reasonable promptness, subject to Section 22.b above. Any proposed General Partner replacement shall have the qualifications and financial responsibility as reasonably determined by Beneficiary necessary and adequate to fulfill the obligations undertaken in the ARPA Loan Agreement, as amended.

33. **Removal, Demolition or Alteration of Personal Property and Fixtures.** Except to the extent permitted by the following sentence, no personal property or fixtures shall be removed, demolished or materially altered without the prior written consent of the Beneficiary. Trustor may remove and dispose of, free from the lien of this Deed of Trust, such personal property and fixtures as from time to time become worn out or obsolete, providing that, (a) the same is done in the ordinary course of business, and (2) either (i) at the time of, or prior to, such removal, any such personal property or fixtures are replaced with other personal property or fixtures which are free from liens other than encumbrances permitted hereunder and which have a value at least equal to that of the replaced personal property and fixtures (and by such removal replacement Trustor shall be deemed to have subjected such replacement personal property and fixtures to the lien of this Deed of Trust), or (ii) such personal property and fixtures may not require replacement if functionally, economically or operationally obsolete and so long as the fair market value of and operational efficiency of the Project is not reduced or adversely effected thereby.

**[Remainder of Page Blank]**

**[Signatures on Following Page]**

**BY SIGNING BELOW, TRUSTOR accepts and agrees to the terms and covenants contained in this Deed of Trust.**

TRUSTOR:

CITY OF PALM SPRINGS, a California charter city  
and municipal corporation,

By: \_\_\_\_\_  
Justin Clifton, City Manager

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

**(Signature needs to be notarized)**

**< CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT >**

## EXHIBIT "A"

### LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Palm Springs, County of Riverside, State of California, described as follows:

LOT B, AS SHOWN ON LOT LINE ADJUSTMENT GRANT DEED LLA 09-01, AS EVIDENCED BY DOCUMENT RECORDED NOVEMBER 25, 2009 AS INSTRUMENT NO. [2009-0612113](#) OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 17371, IN CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN [BOOK 105 PAGE 93](#) OF PARCEL MAPS, RECORDS OF SAID COUNTY, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID PARCEL 1 SHOWN AS HAVING A BEARING OF "NORTH 89° 41' 05" WEST", A DISTANCE OF "429.95 FEET" ON SAID PARCEL MAP, SAID PORTION OF SAID PARCEL 1, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 00° 08' 00" WEST, ON THE WESTERLY LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 460.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00° 05' 56" WEST, A DISTANCE OF 85.05 FEET; THENCE SOUTH 00° 08' 02" WEST, A DISTANCE OF 130.11 FEET; THENCE SOUTH 00° 10' 36" WEST, A DISTANCE OF 126.52 FEET; THENCE SOUTH 89° 45' 43" EAST, A DISTANCE OF 464.23 FEET;

THENCE NORTH 00° 08' 42" EAST, A DISTANCE OF 263.86 FEET; THENCE NORTH 00° 06' 52" EAST, A DISTANCE OF 76.82 FEET; THENCE NORTH 89° 38' 20" WEST, A DISTANCE OF 464.22 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ONE-SIXTEENTH OF ALL COAL, OIL, GAS AND OTHER MINERAL, DEPOSITS AS RESERVED IN THE PATENT EXECUTED BY THE STATE OF CALIFORNIA RECORDED MAY 22, 1936 IN [BOOK 282, PAGE 274](#) OF OFFICIAL RECORDS.

APN: 669-420-019

# EXHIBIT “C”

**PROMISSORY NOTE (ARPA Loan)**

**\$5,740,000.00**

**Riverside, CA**

In installments as hereafter stated, for value received, \_\_\_\_\_ (“Borrower”), promises to pay the COUNTY OF RIVERSIDE, a political subdivision of the State of California (“COUNTY”), or order, at 5555 Arlington Avenue, Riverside, CA 92504, the sum of Five Million Nine Hundred Thousand Dollars (U.S. \$5,740,000.00) (the “ARPA Loan” or “Note Amount”) which at the time of payment is lawful for the payment of public and private debts.

This Promissory Note (“Note”) is given in accordance with that certain Loan Agreement for the Use of ARPA Act funds executed by COUNTY and Borrower, dated as of \_\_\_\_\_, and recorded in the Official Records (“Official Records”) of the County of Riverside on or about the date hereof (the “ARPA Loan Agreement”). Except to the extent otherwise expressly defined in this Note, all capitalized terms shall have the meanings ascribed to such terms in the ARPA Loan Agreement. The Note is secured by a Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) executed by Borrower for the benefit of the County dated \_\_\_\_\_, and recorded on or about the date hereof in the Official Records (the “ARPA Deed of Trust” or “Deed of Trust”). The rights and obligations of the Borrower and COUNTY under this Note shall be governed by the ARPA Loan Agreement and the following terms:

- (1) The ARPA Loan evidenced by this Note and secured by the Deed of Trust are being made pursuant to the Coronavirus Aid, Relief, and Economic Security Act (Section 5001, Public Law 116-136), herein after (the "ARPA Act"). Borrower agrees for itself, its successors and assigns, that the use of the Property shall be subject to the restrictions on rent and occupancy set forth in the ARPA Act regulations, the ARPA Loan Agreement and that certain Covenant Agreement dated on or about the date hereof and recorded concurrently herewith in the Official Records, between Borrower and County.
- (2) That the ARPA Loan will not accrue any interest per annum, and shall be deferred payments shall be deferred if the Project is in compliance with the ARPA Loan Agreement and forgiven in its entirety at the end of the Term of the ARPA Loan Agreement.
- (3) This Note may be prepaid in whole or in part by the undersigned at any time without prepayment penalty or premium, provided however notwithstanding such prepayment, Borrower shall be required to adhere to the affordability restrictions contained in the Covenants until the expiration of the term contained therein.
- (4) Subject to the provisions and limitations of this Paragraph 8, the obligation to repay the Note Amount is a nonrecourse obligation of Borrower and its officers. Neither Borrower nor its officers shall have any personal liability for repayment of the Note Amount, except as provided in this Paragraph 8. The sole recourse of the County shall be the exercise of its rights against the Property (or any portion thereof) and any related security for the ARPA Loan; provided, however, that the foregoing shall not (i) constitute a waiver of any other obligation evidenced by this Note or the Deed of Trust; (ii) limit the right of the COUNTY to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Note and the Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Borrower; (iii) release or impair either this Note or the Deed of Trust; (iv)

prevent or in any way hinder the COUNTY from exercising, or constitute a defense, an affirmative defense, a counterclaim or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing this Note or as prescribed by law or in equity in case of default; (v) prevent or in any way hinder the COUNTY from exercising, or constitute a defense, an affirmative defense, a counterclaim or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing this Note; or (vi) affect in any way the validity of any guarantee or indemnity from any person of all or any of the obligations evidenced and secured by this Note and the Deed of Trust. Notwithstanding the first sentence of this Section 8, the COUNTY may recover directly from Borrower or, unless otherwise prohibited by any applicable law, from any other party: (a) any damages, costs and expenses incurred by the COUNTY as a result of fraud, misrepresentation or any criminal act or acts of Borrower or any general partner, shareholder, officer, director or employee of Borrower, or of any member or general partner of Borrower, or of any general partner of such member or general partner; (b) any damages, costs and expenses incurred by the COUNTY as a result of any misappropriation of funds provided to pay costs as described in the ARPA Loan Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds; and (c) any misappropriation of rental proceeds resulting in the failure to pay taxes, assessments, or other charges that could create statutory liens on the Project and that are payable or applicable prior to any foreclosure under the Deed of Trust..

- (5) The occurrence of any of the following events shall constitute an "Event of Default" under this Note after notice and opportunity to cure pursuant to the terms set forth in the ARPA Loan Agreement:
- a. Monetary Default. (1) Borrower's failure to pay when due any sums payable under the ARPA Note or any advances made by COUNTY under this Agreement, (2) Borrower's or any agent of Borrower's use of ARPA funds for costs other than those costs permitted under the ARPA Loan Agreement or for uses inconsistent with terms and restrictions set forth in this Agreement, and/or (3) Borrower's or any agent of Borrower's failure to make any other payment of any assessment or tax due under the ARPA Loan Agreement;
  - b. Non-Monetary Default - Operation. (1) Discrimination by Borrower or Borrower's agent on the basis of characteristics prohibited by this Agreement or applicable law, (2) the imposition of any encumbrances or liens on the Project without COUNTY's prior written approval that are prohibited under this agreement or that have the effect of reducing the priority or invalidating the lien of the ARPA Deed of Trust, (3) Borrower's failure to obtain and maintain the insurance coverage required under the ARPA Loan Agreement, (4) any material default under the ARPA Loan Agreement, ARPA Deed of Trust with Assignment of Rents, Covenant Agreement, ARPA Note, or any document executed by the County in connection with this Agreement, and/or (4) default past any applicable notice and cure period under the terms of the ARPA Deed of Trust or any other instrument or document secured against the Property;



- c. General Performance of Loan Obligations. Any substantial or continuous or repeated breach by Borrower or Borrower's agents of any material obligations on Borrower imposed in the ARPA Loan Agreement; and
  - d. General Performance of Other Obligations. Any substantial or continuous or repeated breach by Borrower or Borrower's agents of any material obligations on the Project imposed by any other agreement with respect to the financing, development, or operation of the Project; whether or not COUNTY is a party to such agreement.
- (6) COUNTY shall give written notice of default to Borrower, specifying the default complained of by the COUNTY. Borrower shall have ten (10) calendar days from the mailing of the notice for a monetary default, by which such action to cure must be taken. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.
  - (7) Any failures or delays by COUNTY in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by COUNTY in asserting any of its rights and remedies shall not deprive COUNTY of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
  - (8) If the rights created by this Note shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations shall be completely performed and paid. In the event that any provision or clause of this Note conflicts with applicable law, such conflict will not affect other provisions of this Note which can be given effect without the conflicting provision, and to this end the provisions of the Note are declared to be severable.
  - (9) Borrower hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Note, and expressly agrees that, without in any way affecting the liability of Borrower hereunder, the COUNTY may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this Note. Borrower further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this Note, or on any deed of trust, security agreement, guaranty or other agreement now or hereafter securing this Note.
  - (10) Should default be made in payment of principal and interest when due and such default shall continue beyond the applicable notice and cure period provided in the ARPA Loan Agreement, the whole sum of principal and interest shall become immediately due at the option of the holder of this Note. Principal and interest are payable in lawful money of the United States. If action be instituted on this Note, the undersigned promises to pay such sums as the Court may fix as attorney's fees.
  - (11) This Note has been negotiated and entered in the State of California, and shall be governed by, construed and enforced in accordance with the internal laws of the State of California, applied to contracts made in California by California domiciliaries to be wholly performed in California. Any action at law or in equity arising under this Note or brought by a party

hereto for the purpose of enforcing, construing or determining the validity of any provision of this Note shall be filed in the Superior Court of Riverside County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

- (12) No modification, rescission, waiver, release or amendment of any provision of this Note shall be made except by a written agreement executed by Borrower and the duly authorized representative of the COUNTY.
- (13) The COUNTY may, in its sole and absolute discretion, assign its rights under this Note and its right to receive repayment of the Note Amount without obtaining the consent of Borrower.
- (14) In no event shall Borrower assign or transfer any portion of this Note or any rights herein without the prior express written consent of the COUNTY, which consent the COUNTY may give or withhold in its sole and absolute discretion. In the absence of specific written agreement by the COUNTY, no unauthorized assignment or transfer, or approval thereof by the COUNTY, shall be deemed to relieve Borrower or any other party from any obligations under the ARPA Loan Agreement or this Note. This provision shall not affect or diminish the COUNTY's assignment rights under this Note.
- (15) Except as to the permitted deeds of trust identified herein, Borrower shall not encumber the Property for the purpose of securing financing either senior or junior in priority or subordinated to the Deed of Trust without the prior written approval of the COUNTY in its sole and absolute discretion.
- (16) The relationship of Borrower and the COUNTY pursuant to this Note is that of debtor and creditor and shall not be, or be construed to be, a joint venture, equity venture, partnership or other relationship.
- (17) (a) Formal notices, demands and communications between the County and Borrower shall be deemed sufficiently given if made in writing and dispatched by any of the following methods to the addresses of the COUNTY and Borrower as set forth below: (i) registered or certified mail, postage prepaid, return receipt requested (in which event, the notice shall be deemed delivered on the date of receipt thereof); (ii) electronic facsimile transmission, followed on the same day by delivery of a "hard" copy via first-class mail, postage prepaid (in which event, the notice shall be deemed delivered on the date of its successful facsimile transmission as evidenced by a facsimile confirmation or "kick-out" sheet); or (iii) personal delivery, including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service (in which event, the notice shall be deemed delivered on the documented date of receipt). Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.  
  
(b) The address of the COUNTY for purposes of receiving notices pursuant to this Note shall be 5555 Arlington Avenue, Riverside, California 92504, Attention: Director HWS. The facsimile number for the COUNTY's receipt of notices is (951) 352-4852.

- (c) The address of Borrower for purposes of receiving notices pursuant to this Note is 4164 Brockton Ave., Riverside, CA 92501, Attention: Chief Executive Officer.
- (18) The captions and headings in this Note are for convenience only and are not to be used to interpret or define the provisions hereof.
- (19) The undersigned, if comprising more than one person or entity, shall be jointly and severally liable hereunder.
- (20) This Note shall be binding upon Borrower and its heirs, successors and assigns, and shall benefit the COUNTY and its successors and assigns.

IN WITNESS WHEREOF, Borrower has executed this Note as of the day and year first set forth above.

**BORROWER:**

~~CITY OF PALMDALE, CALIFORNIA~~  
 Young School of Leadership, a charter city  
 TruEvolution and municipal corporation,  
 a nonprofit public benefit corporation,

By: \_\_\_\_\_  
 Justin Clifton, City Manager  
 Gabriel Maldonado, Chief Executive Officer

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

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

**EXHIBIT "D"**

## EXHIBIT D

### § 135.38 Section 3 Clause

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to

Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

## Prohibition Against Conflicts of Interest

### **EXHIBIT "E"**

§ 92.356 Conflict of interest.

(a) **Applicability.** In the procurement of property and services by participating jurisdictions, State recipients, and sub-recipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) **Conflicts prohibited.** No persons described in **paragraph (c)** of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with ARPA funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a ARPA-Assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) **Persons covered.** The conflict of interest provisions of **paragraph (b)** of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of COUNTY, State recipient, or sub-recipient which are receiving ARPA funds.

(d) **Exceptions: Threshold requirements.** Upon the written request of the recipient, HUD may grant an exception to the provisions of **paragraph (b)** of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the ARPA Act and the effective and efficient administration of COUNTY's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) **Factors to be considered for exceptions.** In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of **paragraph (d)** of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in **paragraph (c)** of this section;

(5) Whether undue hardship will result either to COUNTY or the person affected when weighed against the public interest served by avoiding the prohibited conflict;

(6) Any other relevant considerations.

Owners/Participants and Developers.

(1) No owner, developer, or sponsor of a project assisted with ARPA funds (or officer, employee, agent or consultant of the owner, developer, or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a ARPA-Assisted affordable housing unit in a project. This provision does not apply to an individual who receives ARPA funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) Exceptions. Upon written request of owner or developer, COUNTY may grant an exception to the provisions of **paragraph (f)(1)** of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the ARPA Act and the effective and efficient administration of the owner's or developer's ARPA-Assisted project. In determining whether to grant a requested exception, COUNTY shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and

(v) Any other factor relevant to COUNTY's determination, including the timing of the requested exception.



TOPIC: CONFLICT OF INTEREST CODED  
RIVERSIDE COUNTY  
Housing & Workforce Solutions  
DATE: MARCH 1999

This Conflict of Interest Code is written to comply with Federal Regulations (24 CFR Part 85). These Regulations, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" require that grantees and sub-grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.

- 1) No employee, officer, or agent of the grantee shall participate in the selection, in the award or in the administration of a contract supported by Federal Funds if a conflict of interest, real or apparent, would be involved.
- 2) Such a conflict will arise when:
  - i) The employee, officer or agent;
  - ii) Any member of the immediate family;
  - iii) His/Her partners; or
  - iv) An organization which employs, or is about to employ any of the above has a financial or other interest in the firm's selection for award.
- 3) The grantee's or sub-grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to sub-agreements except as noted in Section 4.
- 4) A grantee's or sub-grantee's officers, employees or agents will be presumed to have a financial interest in a business if their financial interest exceeds the following:
  - i) Any business entity in which the official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.
  - ii) Any real property in which the official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.
  - iii) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the official within 12 months prior to the time when the decision is made.
  - iv) Any business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management.
  - v) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the official within 12 months prior to the time when the decision is made.
- 5) For purposes of **Section 4**, indirect investment or interest means any investment or interest owned by the spouse or dependent child of an official, by an agent on behalf of an official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or more.

**Exhibit F:** Sample Tenant Checklist

# **EXHIBIT “G”**

Covenant Agreement

1 NO FEE FOR RECORDING PURSUANT  
TO GOVERNMENT CODE SECTION 6103

2 Order No.  
3 Escrow No.  
4 Loan No.

5 RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

6 County of Riverside  
7 Housing and Workforce Solutions  
8 3403 10<sup>th</sup> Street, Suite 300  
Riverside, CA 92501  
Attn. Juan Garcia

9 SPACE ABOVE THIS LINE FOR RECORDERS USE

10 **COVENANT AGREEMENT**

11 This Covenant Agreement PROJECT LEGACY (“Covenant”) is made and entered into as  
12 of the day of \_\_\_\_\_, 2022 by and between the COUNTY OF  
13 RIVERSIDE, a political subdivision of the State of California (“COUNTY”), and  
14 \_\_\_\_\_ (“OWNER”).

15 **RECITALS**

16 WHEREAS, OWNER owns that certain real property located at  
17 \_\_\_\_\_ in the County of Riverside, also identified as APNs  
18 \_\_\_\_\_ more specifically described in the legal description  
19 attached hereto as **Exhibit A** and incorporated herein by this reference (the “Property”);

20 WHEREAS, on \_\_\_\_\_ COUNTY and OWNER entered into that certain  
21 Loan Agreement for the Use of ARPA Act Funds dated \_\_\_\_\_, 2022 and recorded  
22 in the Official Records (“Official Records”) of the County of Riverside concurrently herewith (the  
23 “ARPA Loan Agreement” or “Agreement”) which provides for, among other things, the  
24 acquisition of the Property, to provide transitional housing and wrap around services to homeless  
25 individuals or individuals at risk of homelessness, or experiencing housing insecurity. The  
26 proposed development provide up to 80 beds of transitional housing and wrap around services to  
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1 promote self-sufficiency (collectively, the "Project").

2 WHEREAS, the beds at the Project will be reserved as ARPA-Assisted Units ("ARPA-  
3 Assisted Units") in which for homeless individuals or individuals at risk of homelessness whose  
4 incomes do not exceed 30% of the area median income for the County of Riverside at the time of  
5 initial occupancy,, transitional basis. ("ARPA-Assisted Units"). Capitalized terms not defined  
6 herein shall have the meaning ascribed to them in the ARPA Loan Agreement;

7 WHEREAS, the County is providing funding under the Coronavirus Aid, Relief, and  
8 Economic Security Act (Section 5001, Public Law 116-136), herein after "ARPA Act," for the  
9 purposes of providing decent, safe, and sanitary transitional housing to homeless individuals or  
10 individuals at risk of homelessness;

11 WHEREAS, pursuant to the ARPA Loan Agreement, COUNTY loaned to OWNER  
12 \$5,740,000.00 derived from ARPA funds ("ARPA Loan"), to pay for a portion of the acquisition  
13 and rehabilitation expenses of the Project, as more fully described in the ARPA Loan Agreement.  
14 The ARPA Loan is evidenced by a Promissory Note executed by OWNER, in favor of the  
15 COUNTY dated on or about the date hereof ("ARPA Loan Note") and secured by that certain  
16 Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) executed by  
17 OWNER, for the benefit of COUNTY and recorded in the Official Records concurrently herewith  
18 ("ARPA Loan Deed of Trust"); and

19 WHEREAS, pursuant to the ARPA Loan Agreement, OWNER has agreed to acquire and  
20 rehabilitate the Project on the Property and ensure the ARPA-Assisted Units are occupied by  
21 Qualified Individuals consistent with the ARPA Act requirements and as set forth more  
22 specifically below.

23 NOW, THEREFORE, in consideration of the mutual covenants and agreements, and for  
24 other good and valuable consideration, the receipt and sufficiency of which are hereby  
25 acknowledged, OWNER, on behalf of itself and its successors, assigns, and each successor in  
26 interest to the Property or any part thereof, hereby declares as follows:

1           1)     RESTRICTIONS. The recitals set forth above are true and correct and incorporated  
2 herein. This Covenant shall continue in full force and effect for the later of (i) fifty-five (55) years  
3 from the recordation of the Covenant Agreement for the last building for which construction is  
4 completed for the Project on the Property, or (ii) July 1, 2077 (“Term” or “Affordability Period”).  
5 For the duration of the Term, the Property shall be held, sold and conveyed, subject to the following  
6 covenants, conditions, and restrictions:

7                   a)     All the beds at the Project shall be restricted as ARPA-Assisted Units  
8 provided to homeless individuals or individuals at risk of homelessness whose incomes do not  
9 exceed 30% of the area median income for the County of Riverside, at the time of initial  
10 occupancy. The ARPA-Assisted Units shall be a “floating” designation on the Property such that  
11 the requirements of this Agreement will be satisfied so long as the total number of ARPA-Assisted  
12 Units remains the same throughout the Affordability Period and the substituted ARPA-Assisted  
13 Unit is comparable in terms of size, features, and number of bedrooms to the originally designates  
14 ARPA Assisted Unit;

15                   b)     OWNER shall comply with the terms of the ARPA Loan Agreement, ARPA  
16 Loan Note, ARPA Loan Deed of Trust and any other instrument secured against the Property.

17           2)     SENIOR PRIORITY. Notwithstanding anything to the contrary contained in the  
18 ARPA Loan Agreement, including any of its attachments, this Covenant Agreement shall be in  
19 first priority lien position and senior to all other security instruments including but not limited to  
20 the deed of trust for the benefit of the County of Riverside securing the ARPA Loan.

21           3)     COMPLIANCE WITH LAWS AND REGULATIONS. During the Term of this  
22 Covenant, OWNER, for itself and on behalf of its successors and assigns, shall adhere to and  
23 comply with all federal, state and local laws, regulations and ordinances., including, but not limited  
24 to the following:

25                   a)     The Coronavirus Aid, Relief, and Economic Security Act (Section 5001,  
26 Public Law 116-136).

1           b) Other Federal requirements and nondiscrimination. As set forth in 24 CFR  
2 part 5, Subpart A, OWNER is required to include the following requirements: nondiscrimination  
3 and equal opportunity under Section 282 of the Act; disclosure; debarred, suspended, or ineligible  
4 contractors; and drug-free workplace.

5           c) Affirmative marketing and minority outreach program. OWNER must  
6 adopt affirmative marketing procedures and requirements. These must include:

7                 (1) Methods for informing the public, owners, and potential tenants about  
8 Federal fair housing laws and the affirmative marketing policy (e.g., the use of the Equal Housing  
9 Opportunity logotype or slogan in press releases and solicitations for owners, and written  
10 communication to fair housing and other groups).

11                (2) Requirements and practices that OWNER must adhere to in order to  
12 carry out the affirmative marketing procedures and requirements (e.g., use of commercial media,  
13 use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display  
14 of fair housing poster).

15                (3) Procedures to be used by OWNER to inform and solicit applications  
16 from persons in the housing market area who are not likely to apply without special outreach (e.g.,  
17 use of community organizations, employment centers, fair housing groups, or housing counseling  
18 agencies).

19                (4) Records that will be kept describing actions taken by OWNER to  
20 affirmatively market units and records to assess the results of these actions.

21                (5) A description of how OWNER will annually assess the success of  
22 affirmative marketing actions and what corrective actions will be taken where affirmative  
23 marketing requirements are not met.

24                (6) OWNER must prescribe procedures to establish and oversee a minority  
25 outreach program to ensure the inclusion, to the maximum extent possible, of minorities and  
26 women, and entities owned by minorities and women, including, without limitation, real estate  
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1 firms, construction firms, appraisal firms, management firms, financial institutions, investment  
2 banking firms, underwriters, accountants, and providers of legal services, in all contracts entered  
3 into by OWNER with such persons or entities, public and private, in order to facilitate the  
4 activities of COUNTY to provide affordable housing authorized under this Act or any other  
5 Federal housing law. Section 24 CFR 85.36(e) provided affirmative steps to assure that minority  
6 business enterprises and women business enterprises are used when possible in the procurement  
7 of property and services. The steps include:

8 (i) Placing qualified small and minority businesses and women's  
9 business enterprises on solicitation lists.

10 (ii) Assuring that small and minority businesses, and women's  
11 business enterprises are solicited whenever they are potential sources.

12 (iii) Dividing total requirements, when economically feasible, into  
13 smaller tasks or quantities to permit maximum participation by small and minority business, and  
14 women's business enterprises.

15 (iv) Establishing delivery schedules, where the requirement permits,  
16 which encourage participation by small and minority business, and women's business enterprises.

17 (v) Using the services and assistance of the Small Business  
18 Administration, and the Minority Business Development Agency of the Department of  
19 Commerce.

20 4) MAINTENANCE OF THE IMPROVEMENTS. OWNER, on behalf of itself and  
21 its successors, assigns, and each successor in interest to the Property and Project or any part thereof  
22 hereby covenants to and shall protect, maintain, and preserve the Property in compliance with all  
23 applicable federal and state law and regulations and local ordinances. In addition, OWNER, its  
24 successors and assigns, shall maintain the improvements on the Property in the same aesthetic and  
25 sound condition (or better) as the condition of the Property at the time of the recordation of the  
26 Covenant Agreement for the Project, reasonable wear and tear excepted. This standard for the  
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1 quality of maintenance of the Property shall be met whether or not a specific item of maintenance  
2 is listed below. However, representative items of maintenance shall include frequent and regular  
3 inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or  
4 replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash  
5 receptacles and removal of litter; sweeping of public sidewalks adjacent to the Property, on-site  
6 walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of  
7 all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing  
8 vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular  
9 program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a  
10 regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining  
11 security devices in good working order. In the event OWNER, its successors or assigns fails to  
12 maintain the Property in accordance with the standard for the quality of maintenance, the  
13 COUNTY or its designee shall have the right but not the obligation to enter the Property upon  
14 reasonable notice to OWNER, correct any violation, and hold OWNER, or such successors or  
15 assigns responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the  
16 Property.

17 5) NONDISCRIMINATION. OWNER shall not discriminate on the basis of race,  
18 gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation,  
19 selection, hiring or treatment of any contractors or consultants, to participate in  
20 subcontracting/subconsulting opportunities. OWNER understands and agrees that violation of this  
21 clause shall be considered a material breach of this Lease and may result in termination, debarment  
22 or other sanctions. This language shall be incorporated into all contracts between OWNER and  
23 any contractor, consultant, subcontractor, subconsultants, vendors and suppliers. OWNER shall  
24 comply with the provisions of the California Fair Employment and Housing Act (Government  
25 Code Sections 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended, and  
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1 all Administrative Rules and Regulations issued pursuant to said Acts and Orders with respect to  
2 its use of the Property.

3           6)     OWNER herein covenants by and for itself, its successors and assigns, and all  
4 persons claiming under or through them, that this Covenant is made and accepted upon and subject  
5 to the following conditions: There shall be no discrimination against or segregation of any person  
6 or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the  
7 Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and  
8 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,  
9 in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall  
10 the transferee itself or any person claiming under or through him or her, establish or permit any  
11 such practice or practices of discrimination or segregation with reference to the selection, location,  
12 number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property.

13           7)     OWNER, its successors and assigns, shall refrain from restricting the rental, sale,  
14 or lease of the Property or any portion thereof, on the basis of race, color, creed, religion, sex,  
15 sexual orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and  
16 contract entered into with respect to the Property, or any portion thereof, after the date of this  
17 Agreement shall contain or be subject to substantially the following nondiscrimination or  
18 nonsegregation clauses:

19                   a) In deeds: "The grantee herein covenants by and for himself or herself, his or her  
20 heirs, executors, administrators, and assigns, and all persons claiming under or through them, that  
21 there shall be no discrimination against or segregation of, any person or group of persons on  
22 account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as  
23 those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of  
24 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease,  
25 sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall  
26 the grantee or any person claiming under or through him or her, establish or permit any practice or  
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1 practices of discrimination or segregation with reference to the selection, location, number, use or  
2 occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed.  
3 The foregoing covenants shall run with the land.”

4           b) In leases: “The lessee herein covenants by and for himself or herself, his or her  
5 heirs, executors, administrators, and assigns, and all persons claiming under or through him or her,  
6 and this lease is made and accepted upon and subject to the following conditions: That there shall  
7 be no discrimination against or segregation of any person or group of persons, on account of any  
8 basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are  
9 defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of  
10 Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing,  
11 transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee  
12 himself or herself, or any person claiming under or through him or her, establish or permit any  
13 such practice or practices of discrimination or segregation with reference to the selection, location,  
14 number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises  
15 herein leased.”

16           c) In contracts: “There shall be no discrimination against or segregation of any  
17 person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955  
18 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m)  
19 and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government  
20 Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor  
21 shall the transferee itself or any person claiming under or through him or her, establish or permit  
22 any such practice or practices of discrimination or segregation with reference to the selection,  
23 location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the  
24 land.”

25           In addition to the obligations and duties of OWNER set forth herein, OWNER shall,  
26 upon notice from COUNTY, promptly pay to COUNTY all fees and costs, including  
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1 administrative and attorneys' fees, incurred by COUNTY in connection with responding to or  
2 defending any discrimination claim brought by any third party and/or local, state or federal  
3 government entity, arising out of or in connection with the Agreement or this Covenant.

4 8) INSURANCE. Without limiting or diminishing OWNER's obligation to indemnify  
5 or hold COUNTY harmless, OWNER shall procure and maintain or cause to be maintained, at its  
6 sole cost and expense, the following insurance coverage's during the term of this Covenant.

7 a) Worker's Compensation Insurance. If OWNER has employees as defined  
8 by the State of California, OWNER shall maintain statutory Workers' Compensation Insurance  
9 (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers'  
10 Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per  
11 person per accident. The policy shall be endorsed to waive subrogation in favor of the County of  
12 Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

13 b) Commercial General Liability Insurance. Commercial General Liability  
14 insurance coverage, including but not limited to, premises liability, contractual liability, products  
15 and completed operations liability, personal and advertising injury, and cross liability coverage,  
16 covering claims which may arise from or out of OWNER's performance of its obligations  
17 hereunder. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts,  
18 and Departments, their respective directors, officers, Board of Supervisors, employees, elected or  
19 appointed officials, agents or representatives as Additional Insured. Policy's limit of liability shall  
20 not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a  
21 general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times  
22 the occurrence limit.

23 c) Vehicle Liability Insurance. If vehicles or mobile equipment are used in the  
24 performance of the obligations under this Covenant, then OWNER shall maintain liability  
25 insurance for all owned, non-owned or hired vehicles so used in an amount not less than  
26 \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate  
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1 limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence  
2 limit. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and  
3 Departments, their respective directors, officers, Board of Supervisors, employees, elected or  
4 appointed officials, agents or representatives as Additional Insured or provide similar evidence of  
5 coverage approved by County's Risk Manager ("Risk Manager").

6 d) General Insurance Provisions – All Lines.

7 (1) Any insurance carrier providing insurance coverage hereunder shall be  
8 admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8)  
9 unless such requirements are waived, in writing, by Risk Manager. If Risk Manager waives a  
10 requirement for a particular insurer such waiver is only valid for that specific insurer and only for  
11 one policy term.

12 (2) OWNER's insurance carrier(s) must declare its insurance self-insured  
13 retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall  
14 have the prior written consent of Risk Manager. Upon notification of self-insured retention  
15 unacceptable to COUNTY, and at the election of Risk Manager, OWNER's carriers shall either:  
16 (a) reduce or eliminate such self-insured retention, or (b) procure a bond which guarantees payment  
17 of losses and related investigations, claims administration, and defense costs and expenses.

18 (3) OWNER shall cause OWNER's insurance carrier(s) to furnish the  
19 County of Riverside with copies of the Certificate(s) of Insurance and Endorsements effecting  
20 coverage as required herein, and 2) if requested to do so orally or in writing by Risk Manager,  
21 provide copies of policies including all Endorsements and all attachments thereto, showing such  
22 insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall  
23 contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given  
24 to the County of Riverside prior to any material modification, cancellation, expiration or reduction  
25 in coverage of such insurance. OWNER shall not continue operations until COUNTY has been  
26 furnished Certificate(s) of Insurance and copies of endorsements and if requested, copies of  
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1 policies of insurance including all endorsements and any and all other attachments as required  
2 herein. An individual authorized by the insurance carrier to do so, on its behalf, shall sign the  
3 original endorsements for each policy and the Certificate of Insurance.

4 (4) It is understood and agreed to by the parties hereto that OWNER's  
5 insurance shall be construed as primary insurance, and COUNTY's insurance and/or deductibles  
6 and/or self-insured retention's or self-insured programs shall not be construed as contributory.

7 (5) If, during the term of this Covenant or any extension thereof, there is a  
8 material change in the scope of services or there is a material change in the equipment to be used  
9 in the performance of the scope of work which will add additional exposures (such as the use of  
10 aircraft, watercraft, cranes, etc.), then COUNTY reserves the right to adjust the types of insurance  
11 required under this Covenant and the monetary limits of liability for the insurance coverage's  
12 currently required herein, if, in Risk Manager's reasonable judgment, the amount or type of  
13 insurance carried by OWNER has become inadequate.

14 (6) OWNER shall pass down the insurance obligations contained herein to  
15 all tiers of subcontractors.

16 (7) OWNER agrees to notify COUNTY in writing of any claim by a third  
17 party or any incident or event that may give rise to a claim arising from the performance of the  
18 Agreement.

19 9) HOLD HARMLESS/INDEMNIFICATION. OWNER shall indemnify and hold  
20 harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their  
21 respective directors, officers, Board of Supervisors, elected and appointed officials, employees,  
22 agents and representatives (individually and collectively hereinafter referred to as Indemnitees)  
23 from any liability whatsoever, based or asserted upon any services of OWNER, its officers,  
24 employees, subcontractors, agents or representatives arising out of or in any way relating to this  
25 Agreement, including but not limited to property damage, bodily injury, or death or any other  
26 element of any kind or nature whatsoever arising from the performance of OWNER, its officers,  
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1 employees, subcontractors, agents or representatives Indemnitors from this Agreement. OWNER  
2 shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost  
3 of investigation, defense and settlements or awards, the Indemnites in any claim or action based  
4 upon such alleged acts or omissions. With respect to any action or claim subject to indemnification  
5 herein by OWNER shall, at their sole cost, have the right to use counsel of their own choice and  
6 shall have the right to adjust, settle, or compromise any such action or claim without the prior  
7 consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in  
8 no manner whatsoever limits or circumscribes OWNER's indemnification to Indemnites as set  
9 forth herein. OWNER's obligation hereunder shall be satisfied when OWNER has provided to  
10 COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action  
11 or claim involved. The specified insurance limits required in this Agreement shall in no way limit  
12 or circumscribe OWNER's obligations to indemnify and hold harmless the Indemnites herein  
13 from third party claims. In the event there is conflict between this clause and California Civil Code  
14 Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation  
15 shall not relieve OWNER from indemnifying the Indemnites to the fullest extent allowed by law.  
16 The indemnification set forth in this paragraph 14 shall survive the expiration and earlier  
17 termination of this Covenant.

18 10) NOTICES. All Notices provided for in this Covenant shall be deemed received  
19 when personally delivered, or two (2) days following mailing by certified mail, return receipt  
20 requested. All mailing shall be addressed to the respective parties at their addresses set forth  
21 below, or at such other address as each party may designate in writing and give to the other party:

22 COUNTY  
23 Director HWS  
24 County of Riverside  
25 5555 Arlington Avenue  
26 Riverside, CA 92504

BORROWER  
Chief Executive Officer  
City of Palm Springs  
32000 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

1           11) REMEDIES. COUNTY shall have the right, in the event of any breach of any such  
2 agreement or covenant, to exercise all available rights and remedies, and to maintain any actions  
3 at law or suit in equity or other proper proceedings to enforce the curing of such breach of  
4 agreement or covenant.

5           12) TERM. The non-discrimination covenants, conditions and restrictions contained in  
6 Section 6 of this Covenant shall remain in effect in perpetuity. Every other covenant, condition  
7 and restriction contained in this Covenant shall continue in full force and effect for the Term, as  
8 defined in **Section 1** of this Covenant.

9           13) NOTICE AND CURE. Prior to exercising any remedies hereunder, the COUNTY  
10 shall give OWNER notice of such default pursuant to section 9 above. Any monetary default shall  
11 be cured within ten (10) days of delivery of written notice. Except as otherwise set forth herein,  
12 if a non-monetary default is reasonably capable of being cured within thirty (30) days of delivery  
13 of such notice of default, OWNER shall have such period to effect a cure prior to exercise of  
14 remedies by COUNTY. If the non-monetary default is such that it is not reasonably capable of  
15 being cured within thirty (30) days of delivery of such notice of default, and OWNER (a) initiates  
16 corrective action within said period, and (b) diligently, continually, and in good faith works to  
17 effect a cure as soon as possible, then OWNER shall have such additional time as is reasonably  
18 necessary to cure the default prior to exercise of any remedies by the COUNTY; but in no event  
19 no later than sixty (60) days from delivery of such notice of default, subject to force majeure  
20 (including government restrictions, pandemics, and acts of God). COUNTY, upon providing  
21 OWNER with any notice of default under this Covenant, shall, within a reasonable time, provide  
22 a copy of such default notice to a Permitted Lender who has given written notice to COUNTY of  
23 its interest in the Property and Project. From and after such notice has been delivered to a Permitted  
24 Lender and the Owner's limited partner, such Permitted Lender shall have the same period for  
25 remedying the default complained of as the cure period provided to OWNER pursuant to this  
26 Section 18. COUNTY shall accept performance by a Permitted Lender or limited partner of Owner  
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1 as if the same had been done by OWNER.

2 14) If a violation of any of the covenants or provisions of this Covenant remains  
3 uncured after the respective time period set forth in this **Section 14**, COUNTY and its successors  
4 and assigns, without regard to whether COUNTY or its successors and assigns is an owner of any  
5 land or interest therein to which these covenants relate, may institute and prosecute any  
6 proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation  
7 or to compel specific performance by OWNER of its obligations hereunder. No delay in enforcing  
8 the provisions hereof as to any breach or violation shall impair, damage or waive the right of any  
9 party entitled to enforce the provisions hereof or to obtain relief against or recover for the  
10 continuation or repetition of such breach or violations or any similar breach or violation hereof at  
11 any later time.

12 15) Any cure tendered by Owner's limited partner shall be accepted or rejected on the  
13 same basis as if tendered by OWNER.

14 16) SALE, ASSIGNMENT OR TRANSFER OF THE PROJECT OR PROPERTY.  
15 OWNER hereby covenants and agrees not to sell, transfer, assign or otherwise dispose of the  
16 Project, the Property or any portion thereof, without obtaining the prior written consent of  
17 COUNTY, in its sole discretion. Any sale, assignment, or transfer of the Project or Property, shall  
18 be memorialized an assignment and assumption agreement the form and substance of which have  
19 been first approved in writing by the COUNTY in its sole discretion. Such assignment and  
20 assumption agreement shall, among other things, provide that the transferee has assumed in writing  
21 and in full, and is reasonably capable of performing and complying with OWNER's duties and  
22 obligations under the ARPA Loan Agreement and this Covenant, provided, however OWNER  
23 shall not be released of all obligations under the ARPA Loan Agreement and this Covenant.

24 17) AMENDMENTS OR MODIFICATIONS. This Covenant may be changed or  
25 modified only by a written amendment signed by authorized representatives of both parties.

26 18) GOVERNING LAW; VENUE; SEVERABILITY. This Covenant shall be  
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1 governed by the laws of the State of California. Any legal action related to the performance or  
2 interpretation of this Covenant shall be filed only in the Superior Court of the State of California  
3 located in Riverside, California, and the parties waive any provision of law providing for a change  
4 of venue to another location. In the event any provision in this Covenant is held by a court of  
5 competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will  
6 nevertheless continue in full force without being impaired or invalidated in any way.

7 19) BINDING EFFECT. The rights and obligations of this Covenant shall bind and  
8 inure to the benefit of the respective heirs, successors and assigns of the parties.

9 20) PERMITTED MORTGAGES. No violation or breach of the covenants, conditions,  
10 restrictions, provisions or limitations contained in this Covenant shall defeat or render invalid or  
11 in any way impair the lien or charge of any deed of trust or mortgage permitted by the ARPA Loan  
12 Agreement or the lien or charge of a deed of trust made by OWNER for the benefit of any lender  
13 first approved in writing by the COUNTY (each, a "Permitted Lender") and nothing herein or in  
14 the ARPA Loan Agreement shall prohibit or otherwise limit the exercise of a Permitted Lender's  
15 rights and remedies thereunder, including a foreclosure or deed-in-lieu of foreclosure and  
16 subsequent transfer thereafter.

17 21) SEVERABILITY. In any event that any provision, whether constituting a separate  
18 paragraph or whether contained in a paragraph with other provisions, is hereafter determined to be  
19 void and unenforceable, it shall be deemed separated and deleted from the agreement and the  
20 remaining provisions of this Agreement shall remain in full force and effect.

21 22) PROJECT MONITORING AND EVALUATION.

22 a) Occupant Checklist. OWNER shall submit an Occupant Checklist Form to  
23 COUNTY, as shown in **Exhibit F** of the ARPA Loan Agreement, and may be revised by  
24 COUNTY, summarizing the occupants of the ARPA-Assisted Units. The Occupant Checklist  
25 Form shall be submitted upon issuance of a Permanent Certificate of Occupancy and thereafter,  
26 on a semi-annual basis on or before March 31st and September 30th.

1           b)     Inspections. During the Affordability Period, COUNTY must perform on-  
2 site inspections of ARPA-Assisted Units to determine compliance with the property standards.  
3 The on-site inspections shall occur within 12 months after Covenant Agreement and at least once  
4 every 3 years thereafter during the Affordability Period. If there are observed deficiencies for  
5 any of the inspectable items in the property standards established by COUNTY, a follow-up on-  
6 site inspection to verify that deficiencies are corrected must occur within 12 months. COUNTY  
7 may establish a list of non-hazardous deficiencies for which correction can be verified by third  
8 party documentation (e.g., paid invoice for work order) rather than re-inspection. Health and  
9 safety deficiencies must be corrected immediately. COUNTY must adopt a more frequent  
10 inspection schedule for properties that have been found to have health and safety deficiencies.  
11 The property owner must annually certify to the COUNTY that each building and all ARPA  
12 Assisted Units in the project are suitable for occupancy, taking into account State and local health,  
13 safety, and other applicable codes, ordinances, and requirements, and the ongoing property  
14 standards established by the participating jurisdiction. Inspections must be based on a statistically  
15 valid sample of units appropriate for the size of the COUNTY ARPA-Assisted project, as set forth  
16 by HUD through notice.

17           23)    ACCESS TO PROJECT SITE. Representatives of the COUNTY and HUD shall  
18 have the right of access to the Property, upon 24 hours' written notice to OWNER (except in the  
19 case of an emergency, in which case COUNTY and/or HUD shall provide such notice as may be  
20 practical under the circumstances), without charges or fees, during normal business hours to review  
21 the operation of the Project in accordance with this Covenant and the Agreement.

22           24)    COUNTERPARTS. This Covenant may be signed by the different parties hereto in  
23 counterparts, each of which shall be an original, but all of which together shall constitute one and  
24 the same agreement.

25           25)    Recitals. The Recitals set forth above are true and correct and incorporated herein  
26 by this reference.

1           26) This Covenant and the Agreement set forth and contain the entire understanding  
2 and agreement of the parties hereto. There are no oral or written representations, understandings,  
3 or ancillary covenants, undertakings or agreements, which are not contained or expressly referred  
4 to within this Covenant, and the Agreement, including all amendments and modifications to the  
5 Agreement.

6 ///

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8                                   [Remainder of Page Intentionally Blank]

9                                   [SIGNATURES ON THE NEXT PAGE]

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IN WITNESS WHEREOF, COUNTY and OWNER have executed this Covenant as of the dates written below.

COUNTY:

BORROWER:

COUNTY OF RIVERSIDE, a political subdivision of the State of California

By: \_\_\_\_\_  
Heidi Marshall, Director HWS

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

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

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

**(Above signatures need to be notarized)**

APPROVED AS TO FORM:  
GREGORY P. PRIAMOS, County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

**(COUNTY and OWNER signatures need to be notarized)**

**< CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT >**

## EXHIBIT "A"

### LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Palm Springs, County of Riverside, State of California, described as follows:

LOT B, AS SHOWN ON LOT LINE ADJUSTMENT GRANT DEED LLA 09-01, AS EVIDENCED BY DOCUMENT RECORDED NOVEMBER 25, 2009 AS INSTRUMENT NO. [2009-0612113](#) OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 17371, IN CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN [BOOK 105 PAGE 93](#) OF PARCEL MAPS, RECORDS OF SAID COUNTY, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID PARCEL 1 SHOWN AS HAVING A BEARING OF "NORTH 89° 41' 05" WEST", A DISTANCE OF "429.95 FEET" ON SAID PARCEL MAP, SAID PORTION OF SAID PARCEL 1, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 00° 08' 00" WEST, ON THE WESTERLY LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 460.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00° 05' 56" WEST, A DISTANCE OF 85.05 FEET; THENCE SOUTH 00° 08' 02" WEST, A DISTANCE OF 130.11 FEET; THENCE SOUTH 00° 10' 36" WEST, A DISTANCE OF 126.52 FEET; THENCE SOUTH 89° 45' 43" EAST, A DISTANCE OF 464.23 FEET;

THENCE NORTH 00° 08' 42" EAST, A DISTANCE OF 263.86 FEET; THENCE NORTH 00° 06' 52" EAST, A DISTANCE OF 76.82 FEET; THENCE NORTH 89° 38' 20" WEST, A DISTANCE OF 464.22 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ONE-SIXTEENTH OF ALL COAL, OIL, GAS AND OTHER MINERAL, DEPOSITS AS RESERVED IN THE PATENT EXECUTED BY THE STATE OF CALIFORNIA RECORDED MAY 22, 1936 IN [BOOK 282, PAGE 274](#) OF OFFICIAL RECORDS.

APN: 669-420-019

# **EXHIBIT “H”**

Request for Notices

NO FEE FOR RECORDING PURSUANT  
TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

County of Riverside  
Housing, Homelessness Prevention and  
Workforce Solutions  
5555 Arlington Avenue  
Riverside, CA 92504  
Attn: Juan Garcia

SPACE ABOVE THIS LINE FOR RECORDERS USE

### REQUEST for NOTICE UNDER SECTION 2924b CIVIL CODE

In accordance with Civil Code, Section 2924b, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust dated \_\_\_\_\_, and recorded concurrently herewith in the Official Records of the County of Riverside, California, executed by \_\_\_\_\_, a \_\_\_\_\_, as Trustor in which California Department of Housing and Community Development is named as Beneficiary, and First American Title Company as Trustee, and describing land referred to in this Report is situated in the County of Riverside, State of California, and is described as follows:

Real property in the County of Riverside, State of California, described as follows:

All notices to be mailed to:

Attn: Director HWS  
County of Riverside  
Housing Division  
5555 Arlington Avenue  
Riverside, California 92504

Request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust

**NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.**

COUNTY OF RIVERSIDE DEPARTMENT OF HOUSING  
AND WORKFORCE SOLUTIONS

\_\_\_\_\_  
Heidi Marshall, Director HWS



NO FEE FOR RECORDING PURSUANT  
TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

County of Riverside  
Housing, Homelessness Prevention and  
Workforce Solutions  
5555 Arlington Avenue  
Riverside, CA 92504  
Attn: Mervyn Manalo

SPACE ABOVE THIS LINE FOR RECORDERS USE

**REQUEST for NOTICE UNDER SECTION 2924b CIVIL CODE**

In accordance with Civil Code, Section 2924b, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust dated \_\_\_\_\_, and recorded concurrently herewith in the Official Records of the County of Riverside, California, executed by \_\_\_\_\_, a \_\_\_\_\_, as Trustor in which City of \_\_\_\_\_ is named as Beneficiary, and First American Title Company as Trustee, and describing land referred to in this Report is situated in the County of Riverside, City of Palm Springs, State of California, and is described as follows:

Real property in the County of Riverside, State of California, described as follows:

All notices to be mailed to:

Attn: Director HWS  
County of Riverside  
Housing Division  
5555 Arlington Avenue  
Riverside, California 92504

Request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust

**NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.**

COUNTY OF RIVERSIDE DEPARTMENT OF HOUSING  
AND WORKFORCE SOLUTIONS

\_\_\_\_\_  
Heidi Marshall, Director HWS

# Exhibit I

## Sample

### Contractor Debarment Certification Form

#### Excluded Parties Lists System (EPLS)

The purpose of EPLS is to provide a single comprehensive list of individuals and firms excluded by Federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits.

The EPLS was established to ensure that agencies solicit offers from, award contracts, grants, or financial or non-financial assistance and benefits to, and consent to subcontracts with responsible contractors/vendors only and not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion action) that party from participation in an affected program.

In July 2012, all records from CCR/FedReg, ORCA, and EPLS, active or expired, were moved to the System for Award Management (SAM). SAM is a Federal Government owned and operated free web site that consolidates the capabilities in CCR/FedReg, ORCA, and EPLS.

The County of Riverside requires that each contractor/vendor hold the required federal/state/local license for the service provided.

Please complete the following verification process for each contractor/vendor:

- STEP 1: Visit <https://www.sam.gov/portal/public/SAM/>
- STEP 2: Under "Search Records", enter the company name and press enter.
- STEP 3: Click "Print" on the Search Results page.
- STEP 4: Repeat steps 2 & 3 for variations of the name of contractor/vendor (individual last name or firm).
- STEP 5: Attach print out of search results to this certification as supporting documentation.
- STEP 6: Attach to this certification as supporting documentation a copy of contractor/vendor license for the service provided.

By signing below ARPA Recipient, developer name, has verified the contractor/vendor known as, name of contractor/vendor, was not listed in the Excluded Parties Lists System and has the required contractor/vendor license as of date of verification.

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DEVELOPER SIGNATURE

## EXHIBIT J

1. **ORDERS OF LOCAL, STATE OR FEDERAL HEALTH OFFICIALS; EXECUTIVE ORDERS.** County and Contractor mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 epidemic, or take other official actions, subsequent to the execution of this Agreement that Parties to this Agreement cannot presently predict. County and Contractor mutually acknowledge and agree that this Agreement shall be subject to the provisions of any such official action or order, particularly but not limited to Executive Orders of the Governor of the State of California and Orders of the County Public Health Officer, and the like (“Official Actions”), and if the provisions of any such Official Actions materially impact the terms of this Agreement, the provisions of those Official Actions shall govern.

a. In the event that such Official Actions make the services provided to the County under this Agreement illegal, unlawful, or contrary to public policy, County shall provide written notice to Contractor in the manner described herein, and County and Contractor mutually agree that this Agreement shall terminate as of the date of that Official Action, at no penalty to County. In such an event, County shall pay outstanding fees to due to Contractor pro-rated from the date of the Official Action, along with all other remaining sums due to Contractor, within thirty (30) calendar days from the date of that Official Action.

b. The parties acknowledge that Contractor is providing the services for emergency purposes at the request of the County under the California Emergency Services Act (the “Act” (California Government Code §§ 8550 et seq.)). Pursuant to California Government Code §8655, the County and as such, is subject to certain immunities with respect thereto and shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of the County or any employee of the County in carrying out the provisions of the Act.

c. CONTRACTOR acknowledges and agrees that this Agreement is subject to the federal Uniform Administrative Requirements, Cost principles and Audit Requirements for Federal Awards (**2 C.F.R. Part 200**), including the federal provisions attached hereto, and incorporated herein. Should there be any conflict between the provisions of this Agreement and Exhibit J, the terms and conditions in Exhibit J shall govern, unless the more restrictive provision herein is otherwise required to control as a condition of FEMA funding.

d. Should funding be allocated through American Rescue Plan Act (ARPA; (Title VI of the Social Security Act Section 602 et seq.)), the COUNTY will administer and distribute those funds in accordance with ARPA. ARPA requires that payments from the Coronavirus Fiscal Recovery Fund be used to respond to the public health emergency or its negative economic impacts, to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay, provide government services to the extent the reduction of revenue due to COVID-19 public health emergency, and to make necessary investments in water, sewer or broadband infrastructure. It is effective beginning May 17, 2021 and ends on December 31, 2024.

2. **NON-DISCRIMINATION.** Contractor shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900

et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

3. EQUAL EMPLOYMENT OPPORTUNITY/ FAIR EMPLOYMENT PRACTICES/ FEDERAL PROVISIONS. During the performance of this Agreement, the Contractor shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

- a. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Executive Order 11246 of Sept. 23, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor, the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and of the rules, regulations or standards adopted by the County to implement such article.

- b. The Contractor shall comply with the provisions of the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.

4. OTHER FEDERAL PROVISIONS. Contractor acknowledges and agrees that this Agreement is subject to the federal requirements for seeking FEMA reimbursements, including the federal provisions provided below.

#### 4.1 CLEAN AIR ACT.

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.

The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### 4.2. FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.

The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### 4.3. DEBARMENT AND SUSPENSION CLAUSE

This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### 4.4. BYRD ANTI- LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient who in turn will forward the certification(s) to the County.

#### APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an

employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

CONTRACTOR

By \_\_\_\_\_  
Date \_\_\_\_\_

#### 4.5. PROCUREMENT OF RECOVERED MATERIALS

In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### 4.6. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- i. The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The Contractor agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- iv. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

#### 4.7. DEPARTMENT OF HOMELAND SECURITY SEAL, LOGO, FLAGS

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

#### 4.8. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

#### 4.9. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

#### 4.10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

#### 4.11 FEDERAL PREVAILING WAGE

DAVIS-BACON ACT COMPLIANCE (applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

To the extent required by any Federal grant programs applicable to expected funding or reimbursement expenses incurred in connection with the services provided under this Agreement, Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below.

- A. The Contractor shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>. Additionally, wages are required to be paid not less than once a week.
- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at [www.wdol.gov](http://www.wdol.gov). Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop down menu for State, select, "California." In the drop down menu for County, select "Riverside." In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

The Federal minimum wage rates for this project are predetermined by the United States Secretary of Labor. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California DIR for similar classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The County will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.



4.12. CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

- A. Compliance: Contractor agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.
- B. Overtime: No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- C. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the provisions of paragraph B of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. Withholding for unpaid wages and liquidated damages: Contractor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

4.13. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT— Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 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 HUD.

414. RIGHTS TO DATA AND COPYRIGHTS – Contractors and consultants agree to comply with all applicable provisions pertaining to the use of data and copyrights pursuant to 48 CFR Part 27.4, Federal Acquisition Regulations (FAR).

4.15. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services As used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as

part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service 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. Page 9

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system;

and

ii. Are not used as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it

undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. Page 10

- (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

#### 4.16 REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

##### 1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of [Public Law 110-417](#), as amended ([41 U.S.C. 2313](#)). As required by section 3010 of [Public Law 111-212](#), all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

##### 2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
  - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - (4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### 3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### 5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes -

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.


**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF STATE FINANCIAL ASSISTANCE**

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September 9, 2021

**MEMORANDUM FOR:** All Potential Applicants

**FROM:** Jennifer Seeger, Deputy Director  
Division of State Financial Assistance 

**SUBJECT:** Homekey Program  
Notice of Funding Availability, Round 2

The California Department of Housing and Community Development (Department) is pleased to announce the availability of approximately \$1.45 billion of Homekey Program (Homekey) grant funding through this Round 2 Notice of Funding Availability (NOFA). Building on the success of both [Project Roomkey](#) and the first round of Homekey, this significant investment continues a statewide effort to sustain and rapidly expand housing for persons experiencing homelessness or At Risk of Homelessness, and who are, thereby, inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic.

Of the \$1.45 billion in Homekey funding, \$1.2 billion is derived from the Coronavirus State Fiscal Recovery Fund (CSFRF) established by the federal American Rescue Plan Act of 2021 (ARPA) (Public Law 117-2) and \$250 million is State General Fund. The \$250 million in State General Fund money is intended to supplement the acquisition of, and to provide initial operating subsidies for, Homekey sites to promote project feasibility. Five percent of the \$1.45 billion in Homekey funds is for Department administrative costs. Projects receiving an award from the state's direct allocation of the federal ARPA must expend the funds within eight months of the date of award. The portion of a project's award associated with State General Fund must be expended by June 30, 2026.

Due to the potential for program oversubscription, eligible applicants are encouraged to submit their completed application as soon as possible. The Department will be accepting the applications on a continuous, Over-the-Counter basis from the release of the Homekey application in late September until May 2, 2022, or until the available funds are exhausted, whichever occurs first. Applicants must submit a complete application available at <https://homekey.hcd.ca.gov/content/apply>.

On September 30, 2021, the Department will hold a webinar to review the Homekey NOFA and application process. To register, please go to the Department's [Homekey webpage](#). To receive information on the workshop and other updates, please subscribe to the Department's Homelessness Prevention Programs listserv at [http://www.hcd.ca.gov/HCD\\_SSI/subscribe-form.html](http://www.hcd.ca.gov/HCD_SSI/subscribe-form.html).

If you have any questions, please submit them to [Homekey@hcd.ca.gov](mailto:Homekey@hcd.ca.gov).

# Homekey Program

## Notice of Funding Availability, Round 2



**Gavin Newsom, Governor  
State of California**

**Lourdes M. Castro Ramírez, Secretary  
Business, Consumer Services and Housing Agency**

**Gustavo Velasquez, Director  
California Department of Housing and Community Development**

2020 West El Camino Avenue, Sacramento, CA 95833 Telephone: (916) 263-2771  
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September 9, 2021



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# HOMEKEY PROGRAM

## NOTICE OF FUNDING AVAILABILITY

### Article I – Program Overview

#### Section 100. Notice of Funding Availability (NOFA)

The California Department of Housing and Community Development (Department) is pleased to announce the availability of approximately \$1.45 billion in Homekey funding to sustain and rapidly expand the inventory of housing for people experiencing homelessness or At Risk of Homelessness and who are, thereby, inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases. Before the COVID-19 pandemic, homelessness data showed Black, Indigenous, and People of Color (BIPOC) were overrepresented in the homelessness system. The pandemic made racial disparities more apparent, and communities are dealing with the additional disproportionate impact of illness and death among people experiencing homelessness. Homekey recognizes these impacts and encourages Eligible Applicants to examine disproportionate impacts in their own communities and to develop strategies to address these impacts.

Homekey is an opportunity for state, regional, and local public entities to develop a broad range of housing types, including but not limited to hotels, motels, hostels, single-family homes and multifamily apartments, adult residential facilities, and manufactured housing, and to convert commercial properties and other existing buildings to Permanent or Interim Housing for the Target Population.

Of the \$1.45 billion in Homekey grant funds, \$1.2 billion is derived 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). In addition, \$250 million is derived from the state's General Fund to supplement the acquisition of, and to provide initial operating subsidies for, Homekey sites.

#### Section 101. Authorizing Legislation and Applicable Law

Assembly Bill No. 140 (2021-2022 Reg. Sess.) provided the statutory basis for Round 2 of the Homekey Program by adding section 50675.1.3 to the Health and Safety Code (HSC), and it exempted certain Round 2 Homekey Projects from the California Environmental Quality Act (CEQA) by adding section 50675.1.4 to the HSC. The statutory scheme includes new construction of dwelling units as an eligible use and establishes a set-aside of funds for projects serving Homeless Youth and Youth at Risk of Homelessness.

HSC section 50675.1.3, subdivision (e) states, "The Department of Housing and Community Development may adopt guidelines for the expenditure of the funds appropriated to the department, and for the administration of the program. The guidelines shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code."

This NOFA serves as the Department's guidelines for the expenditure of Homekey funds and the administration of the Homekey Program. As such, this NOFA establishes the terms, conditions, forms, procedures, and other mechanisms that the Department deems

necessary to exercise its powers and to perform its duties pursuant to the Homekey Program. The matters set forth herein are regulatory mandates and are adopted as regulations that have the dignity of statutes. (*Ramirez v. Yosemite Water Company, Inc.* (1999) 20 Cal. 4th 785, 799 [85 Cal.Rptr.2d 844].)

The Multifamily Housing Program (MHP) (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the HSC), and as subsequently amended, is hereby incorporated by reference. In accordance with HSC section 50675.1.3, subdivision (d), in the event of a conflict between this NOFA and the MHP, the provisions of this NOFA are controlling.

The MHP Final Guidelines (MHP Guidelines), effective June 19, 2019, and as subsequently amended, are hereby incorporated by reference. In the event of a conflict between any of this NOFA and the MHP Guidelines, the provisions of this NOFA are controlling.

The Department will only amend this NOFA as necessary and in accordance with the Department's guideline authority pursuant to HSC section 50675.1.3, subdivision (e).

All other criteria and matters set forth within the NOFA shall also govern the Tribal Entity set-aside that is further described below, unless and except to the extent expressly provided to the contrary by terms set forth within this NOFA and subject to any potential modification or waiver under or pursuant to Assembly Bill No. 1010 (Stats.2019, c. 660), which is set forth in HSC section 50406, subdivision (p).

#### Section 102. Program Timeline

Homekey funds will be available to Eligible Applicants on a continuous, Over-the-Counter (OTC) basis, rather than on a competitive basis. The following table summarizes the anticipated Homekey Program timeline.

Table 1: Anticipated Timeline for Homekey Applications

NOFA release	September 9, 2021
Application release	Late September 2021
Stakeholder Webinar	September 30, 2021
Final day to submit an application within geographic set-asides and within period for timely submission of application bonus award	January 31, 2022
Application period for statewide pool opens	February 1, 2022
Final application due date	May 2, 2022, or until funds are exhausted, whichever occurs first
Award announcements	Continuous, with individual awards generally announced within 45 days of the Department's receipt of a complete and accurate application and all required supplemental documentation
Standard Agreements issued	Continuous, after the Department's receipt of required information and documentation
Grantee Expenditure and Program Report, annually for five years subsequent to contract execution	Annually by January 31

The Department reserves the right to modify the projected timeline at any time.

## Article II – Program Requirements

### Section 200. Eligible Applicants

- i. Cities, counties, cities and counties, and all other state, regional, and Local Public Entities, including councils of government, metropolitan planning organizations, and regional transportation planning agencies designated in Section 29532.1 of the Government Code; or
- ii. Tribal Entities.

For purposes of this NOFA, a “Local Public Entity” is defined in accordance with HSC section 50079. Such definition includes the duly constituted governing body of an Indian reservation or rancheria; a tribally designated housing entity, as specified; and a housing authority, as specified.

Each of the foregoing entities may apply independently, or each entity may apply jointly with a nonprofit or for-profit corporation as a Co-Applicant.

## Section 201. Eligible Uses

Awarded funds must be used to provide housing for the Target Population of individuals and families experiencing Homelessness or who are At Risk of Homelessness 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. With respect to the list of eligible uses below, an Eligible Applicant may choose to target Project Roomkey properties, or other, non-Project Roomkey properties. The list of eligible uses is as follows:

- i. 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.
- ii. Master leasing of properties for non-congregate housing.
- iii. Conversion of units from nonresidential to residential.
- iv. New construction of dwelling units.
- v. The purchase of affordability covenants and restrictions for units.
- vi. Relocation costs for individuals who are being displaced as a result of the Homekey Project.
- vii. Capitalized operating subsidies for units purchased, converted, constructed, or altered with funds provided pursuant to HSC section 50675.1.3.

## Section 202. Eligible Projects

The Department welcomes and will consider a variety of innovative housing solutions as eligible projects. The following list of eligible projects is not exhaustive.

- i. Conversion of nonresidential structures to residential dwelling units.
- ii. Conversion of commercially zoned structures, such as office or retail spaces, to residential dwelling units.
- iii. Adult residential facilities, residential care facilities for the elderly, manufactured housing, and other buildings with existing residential uses.
- iv. Multifamily rental housing projects.
- v. Excess state-owned properties.
- vi. Shared housing or scattered site housing is permitted as long as the resulting housing has common ownership, financing, and property management, and each household signs a lease.
- vii. The Department may, in its sole and absolute discretion, provide express written approval of structures lacking a permanent foundation, such as manufactured homes,

recreational vehicles, and floating homes, for temporary use only. The Department encourages applicants to explore financing alternatives to Homekey for such structures. Applicants that wish to access Homekey funds for these special uses shall submit, in their application, a detailed explanation of how the use will meet all Homekey Program requirements, including the requirements for use and affordability restrictions set forth at Section 208 of this NOFA.

Applicants seeking the Department's approval of structures lacking a permanent foundation are encouraged to discuss their options at the required pre-application consultation.

- viii. **Existing Homekey Assisted Units, previously awarded under the first round of Homekey funding, are ineligible for funding under this NOFA.**

#### Section 203. Geographic Distribution and Set-Asides

COVID-19 impacts people who are experiencing or who are at risk of Homelessness throughout California. As such, the Department would like to ensure jurisdictions throughout the state have an equitable opportunity to apply for Homekey funds to protect the health and safety of their most vulnerable residents.

To this end, the Department has divided the state into eight regions, as outlined in Table 2, below. The regions are largely aligned with the various Councils of Government (COGs). As detailed in Table 3 below, each region has funding reserved. Each region's share of the Homekey allocation is calculated based on its proportionate share of persons experiencing homelessness as indicated by both the sheltered and unsheltered 2019 Homeless Point-in-Time (PIT) counts, plus its proportionate share of extremely low-income (ELI) renter households that are paying more than 50 percent of their income for rent.

The Department has established a four-month priority application period from the release date of the Homekey application in late September through January 31, 2022. During this prioritization period, the Department will group applications into one of the eight geographic regions, unless the application is prioritized for the Homeless Youth or Tribal Entity set-asides.

After January 31, 2022, the Department will stop grouping applications by geographic region, and instead deploy unused funds from any undersubscribed geographic region(s) to fund subsequent applications statewide. The set-aside funding for Homeless Youth and Tribal Entities will remain unchanged. The Department will also redeploy undersubscribed and unused funds beginning May 2, 2022, as specified at Section 400 of this NOFA.

To further encourage the timely submission of Homekey applications, the Department will also award a bonus to applications submitted by January 31, 2022, as further detailed in Section 207.

Table 2: Counties by Geographic Distribution through January 31, 2022

Counties by Geographic Distribution			
<b>Los Angeles County</b>	<b>San Joaquin Valley</b>	<b>Central Coast</b>	<b>Balance of State (Cont.)</b>
<b>Bay Area</b>	Fresno	Monterey	Lassen
Alameda	Kern	San Benito	Mariposa
Contra Costa	Kings	San Luis Obispo	Mendocino
Marin	Madera	Santa Barbara	Modoc
Napa	Merced	Santa Cruz	Mono
San Francisco	San Joaquin	<b>Balance of State</b>	Nevada
San Mateo	Stanislaus	Alpine	Plumas
Santa Clara	Tulare	Amador	Shasta
Solano	<b>San Diego County</b>	Butte	Sierra
Sonoma	<b>Sacramento Area</b>	Calaveras	Siskiyou
<b>Southern California</b>	El Dorado	Colusa	Tehama
Imperial	Placer	Del Norte	Trinity
Orange	Sacramento	Glenn	Tuolumne
Riverside	Sutter	Humboldt	
San Bernardino	Yolo	Inyo	
Ventura	Yuba	Lake	

Table 3: Estimated Homekey Geographic Allocations

Region	PIT Count	Severely Rent-Burdened ELI	CSFRF Allocation	GF Allocation
Los Angeles County	58,936	395,380	\$296,715,462	\$61,966,491
Bay Area	35,028	196,270	\$165,312,376	\$34,524,079
Southern CA	15,360	188,835	\$101,785,576	\$21,257,049
San Joaquin Valley	10,064	100,400	\$60,041,459	\$12,539,146
San Diego County	8,102	88,470	\$50,514,984	\$10,549,623
Sacramento Area	8,167	68,640	\$45,065,261	\$9,411,495
Central Coast	8,157	35,795	\$35,671,365	\$7,449,660
Balance of State	7,464	30,834	\$32,093,517	\$6,702,457

**Set-Asides**

The \$1.45 billion in Homekey funds will be allocated as follows:

Table 4: Homekey Funding Categories

Category	CSFRF Allocation	GF Allocation
<b>Total Homekey Allocation</b>	<b>\$1,200,000,000</b>	<b>\$250,000,000</b>
Total Geographic Allocation	\$787,200,000	\$164,400,000
Discretionary Reserve at 20%	\$196,800,000	\$41,100,000
State Administrative at 5%	\$60,000,000	\$12,000,000
Tribal Set-Aside at 5%	\$60,000,000	\$12,500,000
Homeless Youth Set-Aside at 8%	\$96,000,000	\$20,000,000

The Department will reserve 20 percent of the Homekey money to address unforeseen circumstances and to ensure that funding is effectively aligned with need. (For instance, the Department may use this reserve money to fund high-scoring projects in oversubscribed regions.)

Of the total amount provided under this NOFA, set-asides shall be reserved for Homeless Youth and Tribal Entity Projects meeting the criteria set forth below, and in the amounts set forth in Table 4 above. Unless otherwise indicated, all scoring criteria and other NOFA provisions shall govern the set-aside awards provided under this NOFA.

1. Homeless Youth: Pursuant to HSC section 50675.1.3, subdivision (c), the Department will set aside eight percent (8%) of Homekey funding for Projects serving Homeless Youth, or Youth at Risk of Homelessness, as defined in 24 Code of Federal Regulations (CFR) part 578.3. Projects within this set-aside may expand the Target Population to include current and former foster youth through the age of 25.

This set-aside is not subject to geographic allocation, but the Department will aim to promote geographic equity. Homekey Projects are not required to serve Homeless Youth, or Youth at Risk of Homelessness. Homekey Projects proposing to serve Homeless Youth, or Youth at Risk of Homelessness, may also serve other qualifying members of the Target Population.

Projects that meet the threshold requirements of Sections 300-303, as well as the following criteria, will be prioritized for Homeless Youth set-aside funds:

- Have at least 25 percent (25%) of Assisted Units reserved for Homeless Youth or Youth at Risk of Homelessness; (See Section 304, 4a for points awarded)
- Have jointly applied and/or partnered with a nonprofit corporation(s), including community-based organization(s), with experience serving Homeless Youth, or Youth at Risk of Homelessness; and (see Section 304, 2a-c for points awarded)
- Have reasonable proximity to youth-centered amenities, including, but not limited to, community colleges, universities, trade schools, apprenticeship programs, employment programs, childcare centers for parenting youth, and community centers for youth (e.g., LGBTQ+ centers, drop-in youth centers). (See Section 304, 4g for points awarded)

The Department will also prioritize Projects that provide supportive services for Youth Assisted Units using a Positive Youth Development (PYD) model and trauma-informed care. Services may include, but are not limited to, case management, income supports, educational and employment counseling, life skills, legal assistance, health and wellness, and family connection services.

2. Tribal Entities: The Department will set aside five percent (5%) of the Homekey funding for Eligible Applicants that meet the definition of a Tribal Entity, as set forth and provided in this NOFA. This set-aside is not subject to geographic allocation, but the Department will aim to promote geographic equity.



The Department will endeavor to provide comprehensive technical assistance to Tribal Entities, and Tribal Entities are highly encouraged to utilize available technical assistance throughout the application process and during implementation of the Project.

The requirements set forth in this NOFA are subject to AB 1010 (Stats.2019, c. 660), which is set forth in HSC section 50406, subdivision (p). Accordingly, and pursuant to HSC section 50406, subdivision (p), (a) where the provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or legal structure would cause a violation or not satisfy the requirements of this NOFA, said requirements may be modified as necessary to ensure program compatibility; and (b) where provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity legal structure or agency create minor inconsistencies (as determined by the Director of the Department or a duly authorized designee thereof) with the requirements set forth in this NOFA, the Department may waive said requirements, as deemed necessary, to avoid an unnecessary administrative burden. Matters set forth or otherwise provided for in this NOFA that may be modified or waived include, without limitation, threshold scoring requirements and any other matters set forth in HSC section 50406, subdivision (p)(2). Tribal Applicants are accordingly encouraged to discuss any such potential modifications or waivers and their options in that regard at the required pre-application consultation.

#### Section 204. Program Deadlines

**Capital funds must be expended within eight months of the date of award.** For Projects that involve acquisition and are receiving capital awards, Grantees must expend the funds by the expenditure deadline and the project escrow must be closed by the expenditure deadline. To meet this requirement, the Department will provide ongoing support to assist Grantees and has developed an accelerated award and disbursement process.

Additionally, Grantees shall complete all applicable construction and/or Rehabilitation within 12 months of the date of award. All Projects shall achieve a full occupancy (fully occupied with consideration for an average of 10% vacancy rate at any given time) within 90 days of construction and/or Rehabilitation completion. The Grantee may ask the Department for an extension for construction and/or Rehabilitation completion, where it is clear that the extension is due to circumstances or conditions beyond their control and granting an extension will enable the Project to complete construction and/or Rehabilitation or achieve full occupancy of the Assisted Units. In cases where an extension for construction and/or Rehabilitation completion is granted by the Department, the deadlines for capital fund expenditure and full occupancy may be extended within the constraints of applicable law.

Pursuant to 31 CFR part 35.5, the Department may reimburse eligible costs incurred beginning on March 3, 2021. Applicants are encouraged to discuss their options at the required pre-application consultation.

**All operating funds must be fully expended by the Grantee by no later than June 30, 2026.**

## Section 205. Maximum Grant Amounts and Capital Funding Match

Homekey will fund a maximum grant amount per door, pursuant to the conditions of this section, which includes both the acquisition cost and any needed Rehabilitation or new construction. **The award will be the lower of the maximum grant amount, or the sum of the acquisition amount supported by an appraisal and any additional construction and Rehabilitation expenses as supported by documentation required by the Department.** "Door" refers to units at the time of the acquisition, which may differ from the number of units that are available after a conversion of the property. For those projects that undergo a future conversion, the number of units may need to be reduced in order to accommodate kitchenettes, additional bedrooms, space for supportive services and other amenities. For new construction and conversion of office, commercial, or other non-residential structures into residential dwelling units, Homekey will fund a maximum grant amount per completed Assisted Unit serving the Target Population, or an amount as supported by an appraisal, whichever is lower. "Assisted Unit" refers to units that are available after the construction or conversion of the property.

The Department will contribute a baseline amount per door, as outlined below, in whichever category is higher for the Assisted Unit. This baseline contribution does not require a local match.

### Unit Size -- Baseline Capital Amounts:

- i. Studio or one-bedroom units will receive a baseline amount of \$150,000 per door.
- ii. Two-bedroom units will receive a baseline amount of \$175,000 per door.
- iii. Three-bedroom or larger units will receive a baseline amount of \$200,000 per door.

Note that Homekey will fund "doors" based upon the number of units and unit size at the time of acquisition. In situations where units are combined to make larger units, awards will default to the number of doors and size of units at acquisition. In situations where multi-bedroom (two or more bedrooms) units at acquisition are divided into smaller unit sizes, awards will default to the number of doors and size of units with the lower baseline amount per door.

**OR**

### Sub-Populations Served -- Baseline Capital Amounts:

- i. Assisted Units reserved for those experiencing Chronic Homelessness will receive a baseline amount of \$200,000 per door.
- ii. Assisted Units reserved for Homeless Youth or Youth at Risk of Homelessness will receive a baseline amount of \$175,000 per door.

### Additional Contribution Amount – Local Match

Beyond the applicable baseline amount, the Eligible Applicant may leverage a 1:1 local match to provide up to \$100,000 in additional funds per door. For example, where the Applicant shows \$100,000 in matching funds, the Department will fund no more than \$250,000 for a 1-bedroom Assisted Unit, \$275,000 for a 2-bedroom Assisted Unit,

\$300,000 for a 3+ bedroom Assisted Unit, \$300,000 for an Assisted Unit serving those experiencing Chronic Homelessness, and \$275,000 per door for an Assisted Unit serving Homeless Youth/Youth at Risk of Homelessness.

Appendix A shows how maximum funding awards from Homekey vary with different per-door costs, unit types, and Applicant contribution levels.

For relocation costs, the Department will pay for one-half of the relocation cost per door in addition to the capital award. For example, if a Project includes \$15,000 in relocation costs, then the Department will pay for \$7,500 of that relocation cost.

For the purchase of affordability covenants and restrictions, and for master-leasing, the Department may size the award per door based on a recent market study within the past year which conforms to guidelines adopted by the Tax Credit Allocation Committee (TCAC), and/or a rent roll, and/or other supporting documentation. For these uses, the maximum Homekey contribution per door shall not exceed the maximum amounts referenced in this section for acquisition, Rehabilitation, and new construction.

#### Section 206. Operating Subsidies and Match

- i. Where an operating subsidy is requested, the total amount of operating subsidy per Assisted Unit is limited as follows:
  - a. Assisted Units reserved for those experiencing Chronic Homelessness, for Homeless Youth, or for Youth at Risk of Homelessness shall not exceed \$1,400 per month; and
  - b. All other Assisted Units shall not exceed \$1,000 per month.
- ii. The total duration of the operating subsidy (as described in i. above) is tied to the amount of the Applicant's matching funds, and is limited as follows:
  - a. If Projects can demonstrate a commitment of three years of non-Homekey operating funds for Assisted Units, the Department will provide an operating subsidy sized for two years.
  - b. If Projects can demonstrate a commitment of four or more years of non-Homekey operating funds for Assisted Units, the Department will provide an operating subsidy sized for three years.
  - c. If Projects have application scores of 140 or more, the Department may consider providing an operating subsidy sized for three years without the Applicant demonstrating a commitment of four or more years of non-Homekey operating funds.
- iii. Operating subsidy may pay for necessary, recurring Project Operating Expenses in an amount approved by the Department. Qualifying expenses include utilities, maintenance, management fees, taxes, licenses, and supportive services costs, but not debt service or required reserve account deposits. Operating Expenses should be included in the Project's submitted budget.

- iv. If requesting an operating subsidy, the Eligible Applicant must submit a letter of support from the local Continuum of Care (CoC) or Housing Authority confirming the need for an operating subsidy and evidencing that other operating funding, such as rental subsidies, were sought for the Project, but the funding isn't available for this use. A letter template and a list of potential Homekey complementary funding can be found on the Homekey [webpage](#).
- v. The Homekey-funded portion of the operating subsidy must be expended (liquidated) by June 30, 2026, with the Grantee establishing a capitalized operating subsidy reserve and disbursing the funds as outlined in this NOFA.
- vi. Eligible Applicants are required to demonstrate a five-year commitment to provide operating funds for the proposed project. The first two years of operating funds may include an award from Homekey. Operating match may be obtained from any source, including any federal, state, local, private, or philanthropic source. Eligible Applicants will have an opportunity to discuss the match requirements and potential match sources during the pre-application consultation.

Additionally, the following requirements apply to operating match contributions:

- i. The Eligible Applicant must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Homekey funds; and
- ii. If the State General Funds are used to satisfy the matching requirements of another program, then funding from that program may not be used to fulfill the matching requirements of the Homekey Program.

### Section 207. Bonus Awards

#### Timely Submission of Application

The Department will award an additional \$10,000 per Assisted Unit as a bonus award for each Project with a timely submission of a complete application to the Department by January 31, 2022. Application packages that are incomplete or that do not meet the filing requirements will not be awarded the bonus award. This bonus may be used for either operating or capital expenses.

#### Expedited Occupancy

The Department will award \$10,000 per Assisted Unit as a conditional bonus amount for Projects meeting the following expedited occupancy timeframe:

- i. Project's Assisted Units achieve full occupancy (with consideration for an average of 10 percent vacancy) within eight (8) months of the date of award.

This bonus award can be used for operating costs only, including the reimbursement of operating costs already incurred. Projects eligible for this bonus award must commit to achieving full occupancy within eight (8) months after the award date. Projects will not receive the bonus award if reaching full occupancy in eight (8) months was not planned in their application, nor required in their Standard Agreement.

The Department will not disburse the conditional bonus amount until proof of full occupancy (rent roll) is provided to the Department within eight (8) months of the date of award. Once the documentation is deemed sufficient by the Department, the Grantee may submit a request for funds disbursement. If Grantee fails to meet the expedited occupancy timeframe as indicated in their application, the Department may reallocate the conditional bonus amount to fund other Eligible Applicants.

#### Section 208. Affordability Term

The Grantee shall duly encumber all Interim Housing, Transitional Housing, and Congregate Shelter Projects with a 15-year covenant, declaration, regulatory agreement, or similar use restriction that (a) is recorded in first position against the Project real property for the benefit of the Department, (b) restricts the use, operation, occupancy, and affordability of the Project in accordance with all applicable requirements of this NOFA and all other Program requirements, and (c) is otherwise in form and substance acceptable to the Department.

The Grantee shall duly encumber all Permanent Housing Projects with a 55-year covenant, declaration, regulatory agreement, or similar use restriction that (a) is recorded in first position against the Project real property 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 all applicable requirements of this NOFA and all other 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.

#### Section 209. Flexibility

The Department recognizes the limited availability of local, state, and federal funds, and the corresponding imperative for flexibility in the Homekey Program. Therefore, subject to the Department's advance written approval, a Grantee may use a capital expenditure award to fund the proposed project's operating costs, or an operating award to fund the proposed capital expenditure, so long as the aggregate Homekey award is expended on eligible uses.

### **Article III – Threshold and Scoring Criteria**

#### Section 300. Threshold Requirements

To be eligible to receive funding, all Projects must meet the following requirements as they relate to the Eligible Applicant and the project types:

- i. Applications may be submitted independently by an Eligible Applicant, as defined in Section 200 and Article VII. Alternatively, each of the foregoing Eligible Applicants may apply jointly with a nonprofit or for-profit corporation as Co-Applicant.
- ii. Projects must serve persons qualifying as members of the Target Population.
- iii. Applications must include an initial plan for providing supportive services based on the anticipated needs of the Target Population and any proposed sub-populations to be served by the Project. The initial plan shall be reasonably detailed and

comprehensive, as determined by the Department in its sole and absolute discretion. The supportive services plan shall provide a description of the services that will be available at the housing site including but not limited to case management, behavioral health services, physical health services, assistance obtaining benefits and essential documentation, and education and employment services. The plan shall include a description of the on-site staffing plan proposed to deliver these services. Also, the plan shall describe the approach to securing and/or connecting residents to off-site services including primary care and other needed physical health and behavioral health services as well as other tenancy supports.

- iv. Applications must include an overview of the plan and timeline for any required entitlements, permits, and environmental clearances. Eligible Applicants will have an opportunity to discuss their land use and environmental clearance plans, and related statutory authorities during the pre-application consultation.
- v. Applications must include a completed Racial Demographic Data Worksheet, which reports CoC outcomes by race and ethnicity. The completed worksheet may be submitted by the Applicant and the template can be found on the Homekey [webpage](#).
- vi. The Grantee shall have site control of the property at the time of application, 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 shall be subject to the Department's approval. 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 all program requirements;
  - c. A leasehold estate held by a Tribal Entity in federal tribal trust lands property, or a valid sublease thereof that has been or will be approved by the Bureau of Indian Affairs;
  - d. An executed disposition and development agreement, or irrevocable offer of dedication to a public agency;
  - e. A sales contract, or other enforceable agreement for the acquisition of the property;
  - f. A letter of intent, executed by a sufficiently authorized signatory of the Eligible Applicant, that expressly represents to the Department, without condition or reservation, that, upon successful application, the Eligible Applicant 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 acknowledged by the party selling or otherwise conveying an interest in the subject property to the Eligible Applicant. If this form of evidence is relied upon at the time of application, the Department may impose additional milestones, in the Standard Agreement, regarding increased evidence of eventual site control closer to the likely close of escrow; or

- g. Other forms of site control that give the Department assurance (equivalent to items a. through f. above) that the Applicant will be able to complete the Project in a timely manner and in accordance with all the Program's objectives and requirements.
- h. For Applicants proposing sites that will require a use change for permanent housing, there should be a commitment and plan to facilitate or expedite those processes, so as to not delay expenditure and occupancy requirements.
- vii. The Eligible Applicant applying for the Homekey funding is the entity that the Department relies upon for experience and capacity, and will control the project during acquisition, development, and occupancy.
- viii. A development plan that supports acquisition of a site and fund expenditure before all program deadlines and demonstrates evidence of strong organizational and financial capacity to develop the project.
- ix. Assisted Units and other units of the Project must meet all applicable state and local requirements pertaining to rental housing, manufactured housing, including but not limited to requirements for minimum square footage, and requirements related to maintaining the project in a safe and sanitary condition.
- x. Applicants and Co-Applicants must be in good standing with the State of California and all agencies and departments thereof. By way of example and not limitation, an Applicant and Co-Applicant must be qualified to do business in the State of California and must be in good standing with the California Secretary of State and the California Franchise Tax Board. Applicants that are delinquent in meeting the material requirements of previous Department awards may, in the Department's reasonable discretion, fail threshold review.
- xi. The Department will require Eligible Applicants to submit a complete application with all required documents. The Department reserves the right to request clarification of unclear or ambiguous statements made in an application and other supporting documents.
- xii. Relocation Assistance Narrative. Applicant shall submit a concise, sufficiently detailed narrative to demonstrate its consideration of, and early engagement with, applicable relocation assistance laws and requirements. (This Relocation Assistance Narrative does not take the place of the relocation plan, or the Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement, that the Grantee shall submit as a condition of funding.) Applicant's Relocation Assistance Narrative shall include or identify the following:
  - a. A diagrammatic sketch of the Project site.
  - b. Clear, high-resolution photographs of the Project site and all improvements thereon (e.g., buildings, parking lots, billboards).
  - c. The projected dates of any Homekey-funded acquisition, construction, Rehabilitation, demolition, or similar development activities at the Project site.

- d. A description of any persons, businesses, or farm operations that will or may be displaced from the Project site by the foregoing development activities. Applicant shall specify whether any such displacement will be permanent or temporary.
  - i. If no such displacement will occur, Applicant shall conclude the narrative by expressly confirming that Applicant's eligible use(s) of the funds will not result in the displacement of any persons, businesses, or farm operations from the Project site.
  - ii. If such displacement will occur, Applicant shall further develop the narrative by including the additional elements set forth at (e) – (i) below.
- e. A description and evidence of attempts made to maintain the tenure of existing residents that may qualify under the criteria for the Target Population.
- f. A description of the aggregate relocation needs of the persons, businesses, or farm operations that will or may be displaced by the Homekey-funded activities.
- g. A brief description of how those relocation needs will be met, as well as the Applicant's projected timeline for fully meeting those needs, including the dates of planned notices to displaced persons, businesses, or farm operations.
- h. An identification of the Applicant's relocation consultant and/or relocation services provider in connection with the project site. Applicant shall also submit legible copies of its services contract or letter of intent with or to the relocation consultant and/or relocation services provider.
- i. Applicant's cost estimate (and associated funding strategy) for providing relocation assistance and benefits to the persons, businesses, or farm operations that will or may be displaced by the Homekey-funded activities.

#### Section 301. Permanent Housing Requirements

In addition to Section 300 above, Permanent Housing projects will also be evaluated on the following requirements:



- i. Funding commitments or other reasonable assurance to cover operations and service costs with specific funding sources (government/philanthropic/private) for the proposed project for five (5) years and a budget which covers operations and services costs through year 15 from the recordation of the use restriction.
- ii. If the Eligible Applicant is acquiring, rehabilitating, and operating a Permanent Housing project, the Eligible Applicant or Co-Applicant shall demonstrate the following minimum experience requirements:
  - a. Development, ownership, or operation of a project similar in scope and size to the proposed project; or development, ownership, or operation of at least two affordable rental housing projects in the last ten years, with at least one of those projects containing at least one unit housing a tenant who qualifies as a member of the Target Population.
  - b. The property manager and supportive service provider shall have three or more years of experience serving persons of the Target Population. If a property manager is not yet selected for the proposed project, the Eligible Applicant shall certify that this requirement will be reflected in any future solicitation or memorandum of understanding
  - c. Experience administering a Housing First program that includes principles of harm reduction and low barriers to entry.
- iii. One-for-one replacement of assisted housing
  - a. If the acquired housing or site is to be redeveloped/repositioned as part of the locality's overall goal to address the needs of the Target Population and the community, the Applicant shall provide as part of the application a commitment to ensure one-for-one replacement of units.
  - b. If the target site is going to be demolished before any occupancy by the Target Population, no one-for-one replacement commitment needs to be provided. The unit mix will be evaluated based on the project proposal.
  - c. The application shall include a site map indicating the original target housing location and all proposed housing location(s). If all proposed housing will be located within the neighborhood, no additional documentation is necessary. If replacement housing is proposed outside the target neighborhood, the application must also include a justification explaining why it is necessary to locate this replacement housing outside the target neighborhood (i.e., offsite) and how doing so supports and enables the Target Population to maintain housing.

### Section 302. Interim Housing Requirements

In addition to Section 300 above, Interim Housing projects will also be evaluated on the following requirements:

- i. Funding commitments or other reasonable assurance to cover operations and service costs with specific funding sources (government/philanthropic/private) for the

proposed project for five (5) years and submit a budget to cover operations and services costs through year 15 from the recordation of the use restriction.

- ii. If the Eligible Applicant is acquiring, rehabilitating, and/or operating an Interim Housing project, the Eligible Applicant or Co-Applicant shall demonstrate the following minimum experience requirements:
  - a. Successful development, ownership, or operation of an Interim Housing project, such as an emergency shelter or Transitional Housing for at least three of the last ten years for individuals who qualify as members of the Target Population;
  - b. Experience in linking Interim Housing program participants to Permanent Housing to ensure long-term housing stability; and
  - c. Experience administering a Housing First program that includes principles of harm reduction and low barriers to entry.

### Section 303. Other Requirements

- i. Units serving the Target Population and occupied units serving ELI households are eligible for funding.
  - a. Homekey may fund all units in a project or a portion of the units. If seeking Homekey funding for a portion of the units in a given project, Applicants must identify committed sources for the non-Homekey units. The non-Homekey units are not required to serve the Homekey Target Population.
  - b. If, at the time of acquisition, an existing tenant's household income is at or below the ELI limit, but the tenant does not qualify as a member of the Target Population, the tenant may remain in place and the unit may still be funded by Homekey. When, in the course of normal tenant turnover, the ineligible household moves from the unit, the unit shall thereafter be occupied by the Target Population. There should be no more than 49 percent of the Assisted Units that do not meet the Target Population. An existing household who meets the Target Population definition or was a member of the Target Population at the time they moved into the property will not be counted towards the 49 percent cap. Evidence confirming that existing tenants qualify as either ELI or Target Population will be required of the Applicant.
- ii. At year 15 from the recordation of the use restriction, in circumstances where the Grantee has exhausted available operating funding and demonstrated to the Department that the Project is no longer feasible, the Department may approve an increase in income levels, to the minimum extent required for fiscal integrity, in five percent increments of Assisted Units up to 50 percent AMI.
- iii. The Department reserves the right to set restrictions on the unit mix, rent levels, and other factors deemed necessary. To the maximum extent possible, these changes shall minimize the impact on the lowest income Project residents and shall be phased in as gradually as possible. If, following any increase in rents and income limits, or modification of Target Population occupancy requirements, new resources become available, or market demand changes, allowing reversion to the former income and

rent limits or Target Population occupancy requirements, the Department may re-impose these income limits and rent limits or Target Population occupancy requirements, in whole or in part, subject to an analysis of Project feasibility.

- iv. In addition to Section 300 above, Applicants purchasing affordability covenants and restrictions will also be evaluated on the following requirements:
  - a. The Grantees that purchase affordability covenants and restrictions for existing residential units shall restrict those units to individuals and families who are Homeless or who are At Risk of Homelessness, as defined in 24 CFR part 578.3. Such restriction shall run for at least 15 years.
- v. In addition to Section 300 above, master leasing projects will also be evaluated on the following requirements:
  - a. The Grantee shall provide a 15-year plan from the recordation of the use restriction to cover operations and service costs for the Project with specific funding sources (government/philanthropic/private). The Department may waive the requirement for a 15-year plan to cover operating and services costs in cases where master-leased units are intended for a shorter-term need, including, but not limited to, the housing of individuals temporarily displaced as a result of Rehabilitation, or immediate and short-term placement of individuals while permanent units are under construction.
  - b. The Department can consider and has the discretion to approve other master leasing timeframes and scenarios. Applicants are encouraged to discuss their options at the required pre-application consultation.

**Section 304. Application Scoring Criteria**

In addition to meeting the other minimum program requirements outlined in Article III, Applicants must score a **minimum of 120 points to be eligible for funding**. Scores will be based on the following:

Table 5: Homekey Application Scoring Criteria

Categories and Maximum Point Scores	Evaluation Criteria
1. Ability to expend funds timely and demonstration of operating leverage  <b>(Up to 40 points)</b>	a. Identification of the site suitable for development and evidence of site control, or a plan and timeline for obtaining site control along with other supporting evidence (e.g., letter of intent, an exclusive negotiating agreement, ground lease, etc.). <b>NOTE:</b> Sections 300-303 of this NOFA further outline site control requirements related to specific project type. <b>(Up to 20 points)</b> <ul style="list-style-type: none"> <li>- Fee title/leasehold (20 points)</li> <li>- Option agreement/sales contract (20 points)</li> <li>- Exclusive negotiating agreement (15 points)</li> <li>- Letter of intent (15 points)</li> </ul> b. Documented commitment of non-Homekey rental or operating subsidies that will be used to maintain the ongoing affordability of the project. <b>(Up to 20 points)</b>

Categories and Maximum Point Scores	Evaluation Criteria
	<p>Project-Based or Grantee-Based Enforceable Funding Commitments for operating assistance, or rental subsidies (including, but not limited to project-based vouchers, VASH vouchers, tenant-based vouchers, or locally funded rental assistance): (1 point for each 5 percentage increment of Assisted Units with committed funding, up to a maximum of 20 points)</p> <p>Contingencies in commitment documents based upon the receipt of Round 2 Homekey funding will not disqualify a source from being counted as committed. However, the Department must approve evidence that funding will reliably be available.</p>
<p>2. Experience (Up to 55 points)</p>	<p>a. Demonstration of Applicant or member(s) of development team's experience in development, ownership, or operation of a project(s) similar in scope and size to the proposed Project. <b>NOTE:</b> Sections 300-303 of this NOFA further outline threshold experience requirements related to specific project type. <b>(Up to 25 points)</b></p> <ul style="list-style-type: none"> <li>- Development, ownership, or operation of one project similar in scope and size to the proposed Project; or development, ownership, or operation of at least two affordable rental housing or interim projects in the last ten years, with at least one of those projects containing at least one unit housing a tenant who qualifies as a member of the Target Population. (10 points)</li> <li>- 5 additional points awarded for each additional project (development, ownership, or operation of affordable rental housing or interim projects in the last ten years serving at least one member of the Target Population) (up to 15 additional points)</li> </ul> <p>b. Demonstration of service provider's experience helping persons address barriers to housing stability and providing other support services, not necessarily within a housing project. Service provider may be Applicant, or a member of the development team described in Applicant's response to point category 2.c., below. Service provider experience must be with the specific population(s) housed within the Homekey units to count toward points in this section (e.g., families, singles, Homeless Youth, Chronically Homeless) <b>(Up to 15 points)</b></p> <ul style="list-style-type: none"> <li>- 1 point awarded for each year of service experience, up to a maximum of 15 points.</li> <li>- <b>NOTE:</b> Sections 300-303 of this NOFA further outline threshold experience requirements related to specific project type.</li> </ul> <p>c. Commitment letter(s) or MOU(s) documenting how the complete development and management team (which may include Applicant, developer, property manager, lead service provider, etc.) are connected and will work together on the Project. Applicants are encouraged to complete due diligence checklists to ensure all members of the team are aware of roles and responsibilities <b>(Up to 15 points)</b></p>
<p>3. Racial equity and Community Engagement (Up to 20 points)</p>	<p>a. <b>Racial Disparities Analysis (Up to 10 points)</b> Using the Racial Demographic Data Worksheet (in application), provide the Continuum of Care Outcomes by Race and Ethnicity and the following analysis. <b>NOTE:</b> Section 300 of this NOFA further outlines this threshold requirement.</p> <p>Using the data from the worksheet, provide a narrative analysis of the racial and ethnic disparities in systems outcomes. What are the root</p>

Categories and Maximum Point Scores	Evaluation Criteria
	<p>causes or factors leading to these racial inequities? For service providers with prior experience, provide an analysis of prior program outcomes.</p> <p>Detail how the Applicant will address racial and ethnic disparities in program outcomes at each stage of the project design and development.</p> <p>b. <b>Community Engagement (Up to 10 points)</b> Detail how the Applicant has engaged or will engage with the target community, including people currently experiencing homelessness and people with lived experience of homelessness, to inform the design of the project.</p> <p>Provide documentation of this engagement, including but not limited to meeting notes, community planning documents, MOU of partnership with community organization, etc.</p>
<p>4. Community impact and site selection <b>(Up to 92 points)</b></p>	<p>a. <b>The Project serves specific sub-populations (20 points)</b></p> <ul style="list-style-type: none"> <li>- 25% or more of Assisted Units are reserved for those experiencing Chronic Homelessness (20 points); <b>OR</b></li> <li>- 50% or more of Assisted Units are reserved for those experiencing Homelessness (20 points); <b>OR</b></li> <li>- 25% or more of Assisted Units are reserved for Homeless Youth or Youth at Risk of Homelessness (20 points);</li> </ul> <p>b. <b>Assisted Units include units for large family housing types (10 points)</b></p> <ul style="list-style-type: none"> <li>- At least twenty-five percent (25%) of the Assisted Units in the project shall be three-bedroom or larger units, <b>AND</b></li> <li>- At least an additional twenty-five percent (25%) of the Assisted Units in the project shall be two-bedroom or larger units, consistent with TCAC Regulations (4 CCR § 10325(g)(1)(A-I)), (10 points)</li> </ul> <p>c. <b>Commitment to 55 year deed restriction to serve Target Population, waiving any potential accommodation by the Department to increase income limits as described in Section 303. (Up to 20 points)</b></p> <ul style="list-style-type: none"> <li>- At least 25% of Assisted Units restricted (5 points)</li> <li>- At least 50% of Assisted Units restricted (10 points)</li> <li>- At least 75% of Assisted Units restricted (15 points)</li> <li>- 100% of Assisted Units restricted (20 points)</li> </ul> <p>d. <b>The extent to which the Project (with 20 or more units) commits to being accessible to persons with disabilities (Up to 10 points)</b></p> <ul style="list-style-type: none"> <li>- Exceeds the state and federal accessibility requirements set forth Section 505, specifically providing a minimum of 15 percent of units with features accessible to persons with mobility disabilities, as defined in 24 C.F.R. Section 8.22 and the parallel ADAAG 2010 and CBC provisions; (5 points)</li> <li>- A minimum of 10 percent of units with features accessible to persons with hearing or vision disabilities, as defined in 24 CFR Part 8.22 and the parallel ADAAG 2010 and CBC Chapter 11B provisions. (5 points)</li> </ul> <p>e. <b>The proposed project requires no Rehabilitation or construction, or the Rehabilitation/construction and full occupancy can be completed within eight (8) months of award. Those receiving points in this category are</b></p>

Categories and Maximum Point Scores	Evaluation Criteria
	<p>also able to utilize the bonus award as outlined in Section 207. <b>(10 points)</b></p> <p>f. For any project where the Applicant's capital match exceeds the minimum match required per Assisted Unit, one (1) point will be assigned for every \$10,000 over the minimum match required <b>(Up to 10 points)</b>;</p> <p><b>OR</b></p> <p>For any project where the average total cost per Assisted Unit is below the minimum baseline per door, one (1) point will be assigned for every \$10,000 under the baseline amount. <b>(Up to 10 points)</b></p> <p>g. <b>Site Selection (Up to 12 points)</b></p> <p>The project site is located within 1/2 mile of a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop OR the project includes an alternative transportation service for residents (e.g., van or dial-a-ride service), if costs of obtaining and maintaining the van and its service are included in the budget and the operating schedule is either on demand by tenants or a regular schedule is provided (4 points)</p> <p>The Project site is in proximity to essential services:</p> <ul style="list-style-type: none"> <li>i. Grocery store – within 1/2 mile of a full-scale grocery store/supermarket where staples, fresh meat, and fresh produce are sold. (1 mile for projects in rural areas) (2 points);</li> </ul> <p><b>NOTE:</b> If applying for TCAC, it is advisable that the grocery store be at least 25,000 gross interior square feet.</p> <ul style="list-style-type: none"> <li>ii. Health facility – within 1/2 mile (1 mile for projects in rural areas) of a qualifying medical clinic with a physician, physician's assistant, or nurse practitioner on-site for a minimum of 40 hours each week, or hospital (not merely a private doctor's office). A qualifying medical clinic must accept Medi-Cal payments, or Medicare payments, or Health Care for the Homeless, or have an equally comprehensive subsidy program for low-income patients; (1 point)</li> <li>iii. Library – within 1/2 mile of a book-lending public library (1 mile for projects in rural areas); (1 point)</li> <li>iv. Pharmacy – within 1/2 mile of a pharmacy (1 mile for projects in rural areas). May be included in a grocery store or health facility (2 points)</li> <li>v. For projects with units serving Homeless Youth: within one mile of at least two of the following: community colleges, universities, trade schools, apprenticeship programs, employment programs, childcare centers for parenting youth, and/or community centers for youth (e.g., LGBTQ+ centers, drop-in youth centers) (2 points)</li> </ul>
<p>5. <b>Negative Points (Up to -20 points)</b></p>	<p>a. For any project resulting in the permanent displacement of residents (not businesses or farm operations), as outlined below:</p> <ul style="list-style-type: none"> <li>- The project permanently displaces existing residents in 5% of total units. <b>(-5 points)</b></li> <li>- Applicants lose one point (up to an additional 15 points) for each additional percentage point of households displaced out of total units.</li> </ul>

In the event of program oversubscription, where Applicants have the same score and the same date and time stamp, the Department may consider additional criteria as a tiebreaker, including, but not limited to, cost-effectiveness, community impact, affirmatively furthering fair housing, innovative housing types, tenant stability and proximity to transit, and services and amenities.

## **Article IV. Application Submission, Review, and Award Process**

### Section 400. Application Process and Submission

For OTC funding, applications will be accepted and evaluated on a first-come, first-served basis at any time from the release of the application until May 2, 2022, or until the available funds are exhausted, whichever occurs first. Funds are awarded to those applicants that meet the minimum threshold criteria, including the minimum point score.

Homekey Round 2 application materials must be submitted electronically to the Department's [website](#).

Electronic Submission - Requirements for uploading the Homekey Round 2 Application and required supporting documentation, including naming conventions, are described in the Homekey Round 2 Application instructions/checklist tab. Applicants must upload all complete application materials to the Department's website no later than 11:59 p.m. Pacific Daylight Time on Wednesday, May 2, 2022, to the extent that funds remain available at that time.

Application packages that are incomplete or that do not meet the filing requirements will not be considered for funding but may be amended and resubmitted. Applications must be on the Department's forms and, forms cannot be altered or modified by the Applicant. Excel forms must be submitted in Excel format, not as a PDF document.

- i. Applications will be prioritized as described in Section 203.
- ii. The Department will evaluate applications for compliance with the minimum program requirements set forth in this NOFA.
- iii. After each Applicant has been certified to meet the minimum program requirements, each project must receive a minimum overall score of 120 points, as outlined in Section 304, to be considered for a funding award.
- iv. Each Applicant and Co-Applicant shall submit an authorizing resolution that, in the Department's reasonable determination, materially comports with the Program's requirements and is legally sufficient. In addition, each Co-Applicant shall submit a complete set of its organizational documents (including any amendments thereto). The Department will not disburse Homekey funds until it receives the foregoing documentation, as specified.
- v. Applicant shall provide documentation of its ability to obtain the insurance coverages outlined in Article VIII of this NOFA.
- vi. The application is a public record, which is available for public review pursuant to the California Public Records Act (CPRA) (Chapter 3.5 (commencing with Section 6250)

of Division 7 of Title 1 of the Government Code). After final Homekey awards have been issued, the Department may disclose any materials provided by the Applicant to any person making a request under the CPRA. The Department cautions Applicants to use discretion in providing information not specifically requested, including but not limited to, bank account numbers, personal phone numbers, and home addresses. By providing this information to the Department, the Applicant is waiving any claim of confidentiality and consents to the disclosure of submitted material upon request.

- vii. The Department reserves the right to do the following:
  - a. Score an application as submitted even if information is missing from the application;
  - b. Request clarification of unclear or ambiguous statements made in an application or request additional clarifying documentation or information; and
  - c. Beginning May 2, 2022, deploy unused funds from an undersubscribed set-aside to fund other Eligible Applicants for other subsets of the Target Population.

#### Section 401. Pre-Application Consultation and Technical Assistance

The Department requires all Applicants to engage in a pre-application consultation with the Department prior to applying. The consultation will allow the prospective Applicant to discuss the proposed project, along with other applicable programmatic considerations, including those related to site acquisition, the CEQA, land use and land entitlements, CoC coordination and services partnerships, and long-term financing approaches. Pre-application consultations will be available upon the release of this NOFA and may be requested by emailing [Homekey@hcd.ca.gov](mailto:Homekey@hcd.ca.gov).

#### Section 402. Award Process

The Department will send an award letter to the successful Applicant. Funds will be disbursed after the Standard Agreement has been fully executed and approved by the Department unless the Standard Agreement specifies conditions precedent to disbursement.

The Department is committed to disbursing Homekey funds in a timely manner. To avoid any expenditure delays, funds may be issued directly to an escrow company that has been approved by the Department if the full award is toward acquisition. The Applicant shall identify the name and address of the escrow company, the name of the escrow officer, the escrow number, and any other information requested by the Department.

#### Section 403. Appeals

Basis of Appeals.

1. Applicants may appeal the Department's written determination that an application is incomplete, has failed threshold review, or has otherwise been determined to provide an insufficient basis for an award.
2. No Applicant shall have the right to appeal a decision of the Department relating to another Applicant's application (e.g., eligibility, point score, award, denial of award).



3. The appeal process provided herein applies solely to decisions of the Department made pursuant to this NOFA.

#### Appeal Process and Deadlines.

1. **Process.** To file an appeal, Applicants must submit to the Department a written appeal, which sets forth all relevant facts, arguments, and evidence in support of the appeal. In addition, the Applicant must specify the area(s) of the application that are relevant to or provide context for the appeal. New or supplemental information must be limited and necessary to provide clarification or to address the insufficiencies identified in the subject application. No new or supplemental information will be considered if it would result in an unfair competitive advantage to the Applicant. Appeals are to be submitted to the Department at [Homekey@hcd.ca.gov](mailto:Homekey@hcd.ca.gov).
2. **Filing Deadline.** Appeals must be received by the Department no later than five (5) business days from the date of the Department's written determination regarding the subject application.
3. **Decision.** The requirements of this NOFA and all other applicable law will govern the Department's determination. All decisions rendered shall be final, binding, and conclusive, and shall constitute the final action of the Department.

### **Article V – Other Program Requirements**

#### Section 500. Article XXXIV

Per HSC section 37001, subdivision (h)(2), article XXXIV, section 1 of the California Constitution (Article XXXIV) is not applicable to development that consists of the acquisition, Rehabilitation, reconstruction, alterations work, new construction, or any combination thereof, of lodging facilities or dwelling units using moneys received from the CSFRF established by the federal American Rescue Plan Act of 2021 (ARPA) (Public Law 117-2). As such, Article XXXIV is not applicable to Homekey-funded development.

#### Section 501. Housing First

The Eligible Applicant shall certify to employ the core components of Housing First, as set forth at Welfare and Institutions Code section 8255, in its property management and tenant selection practices. Projects shall accept tenants regardless of sobriety, participation in services or treatment, history of incarceration, credit history, or history of eviction in accordance with practices permitted pursuant to Housing First practices, including local Coordinated Entry System prioritization protocols, or other federal or state Project funding sources.

#### Section 502. Tenant Selection

Referrals to Homekey Assisted Units shall be made through the local Coordinated Entry System (CES) for persons who are experiencing Homelessness. For persons At Risk of Homelessness, CES or another comparable prioritization system based on greatest need shall be used. All referral protocols for Homekey Assisted Units must be developed in collaboration with the local CoC and implemented consistent with the requirements set forth

in this NOFA. CoC collaboration in Project and supportive service design is also strongly encouraged to help target and serve greatest need populations.

#### Section 503. Participation in Statewide HDIS/HMIS

All Homekey Grantees shall support CoC participation in the statewide Homeless Data Integration System (HDIS), and, in accordance with state and federal law (including all applicable privacy law), disclose relevant data to the local Homeless Management Information System (HMIS).

#### Section 504. Relocation

1. Grantee must comply with all applicable federal, state, and local relocation law. Pursuant to relocation law, a 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 either:
  - a. A Department-approved relocation plan; or
  - b. A Department-issued Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement, which has been duly executed and approved by the Department.

The Department will identify its form, substance, and submittal requirements for these relocation documents in the Homekey application materials. Where the Grantee's activities will or may result in displacement, the Grantee's development budget shall include enough funds to pay all costs of relocation benefits and assistance. Any modifications to the foregoing process requirements must be approved in advance by the Department in writing.

#### Section 505. Accessibility and Non-Discrimination

All developments shall adhere to the accessibility requirements set forth in California Building Code Chapter 11A and 11B and the Americans with Disabilities Act, Title II. In addition, developments shall adhere to either the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 8, or HUD's modified version of the 2010 ADA Standards for Accessible Design (Alternative 2010 ADAS), HUD-2014-0042-0001, 79 F.R. 29671 (5/27/14) (commonly referred to as "the Alternative Standards" or "HUD Deeming Memo"). Accessible units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the Project and be available in a sufficient range of sizes and amenities consistent with 24 CFR part 8.26.

Grantees shall adopt a written non-discrimination 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 fair 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 program funds made available pursuant to this NOFA.

Grantees shall comply with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act, the California Fair Employment and Housing Act, the Unruh Civil Rights Act, Government Code section 11135, Section 504 of the Rehabilitation Act of 1973, and all regulations promulgated pursuant to those statutes, including 24 CFR Part 100, 24 CFR Part 8, and 28 CFR Part 35.

#### Section 506. Prevailing Wages

Applicant's contemplated use of Homekey funds is subject to California's prevailing wage law (Lab. Code, § 1720 et seq.). Applicant is urged to seek professional legal advice about the law's requirements. Prior to disbursing the Homekey funds, the Department will require a certification of compliance with California's prevailing wage law, as well as all applicable federal prevailing wage law. The certification must verify that prevailing wages have been or will be paid, and that labor records will be maintained and made available to any enforcement agency upon request. The certification must be signed by the general contractor(s) and the Grantee.

#### Section 507. Environmental Clearances

The Department encourages Eligible Applicants to fully engage with the Department's technical assistance and to consider the CEQA exemption set forth at HSC section 50675.1.4 and the provision for land use consistency and conformity set forth at HSC section 50675.1.3, subdivision (i).

Applicants should consult with their counsel for legal advice in construing application of the foregoing exemptions to their Project. It is entirely within an Applicant's discretion to determine whether to use the statutory CEQA exemption, whether the exemption applies to the Applicant's proposed activity, or whether some other mechanism applies and could be used to satisfy obligations under CEQA.

### **Article VI – Program Operations**

#### Section 600. Program Oversight

As specified by the Department and upon request, Grantees 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.

Grantees shall promptly notify the Department upon any changes in Grantee organization, authorization, or capacity.

#### Section 601. Reporting

Grantees shall submit an annual Homekey Program and Expenditure Report to the Department for five years following Standard Agreement execution. The report will be due no

later than January 31 for the prior calendar year of January 1 to December 31. The report shall be in such form and contain such information as required by the Department in its sole and absolute discretion. At minimum, the report shall include the following data:

- i. The amount of funds expended for the project.
- ii. The location of any properties for which the funds are used.
- iii. The number and size of habitable housing units produced, or planned to be produced, using the funds.
- iv. The number and demographics of individuals housed, or likely to be housed, using the funds.
- v. The racial and ethnic composition of the tenants assisted.
- vi. The number of units, and the location of those units, for which operating subsidies have been, or are planned to be, capitalized using the funds.
- vii. Detail of supportive services offered to tenants.
- viii. Any lessons learned from the use of the funds.
- ix. The proposed development vision that identifies the financial and regulatory mechanisms to be used to maintain the long-term affordability of the project.
- x. The progress and status in securing any required entitlements, permits, environmental clearances.
- xi. The proposed timeline for the completion of the project.

If a project received an award for an operating subsidy, Grantees shall also report their operating expenditures in the annual report.

In addition to the foregoing, the Grantee shall submit to the Department such periodic reports, updates, and information as deem 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.

The Grantee shall ensure that the expenditure of Homekey funds is consistent with the requirements of the Program. The Department shall monitor the expenditures to ensure that those expenditures comply with this NOFA.

The Department may request the repayment of funds or pursue any other remedies available, at law or in equity, for failure to comply with Program requirements.

#### Section 602. Disbursement of Grant Funds

Pursuant to 31 CFR part 35.5, the Department may disburse funds to cover Homekey-critical expenditures that were incurred beginning March 3, 2021. Homekey Program funds will be disbursed to the Grantee after the Department has received a request for funds from the Grantee and a Standard Agreement between the Grantee and the Department is fully

executed. The Standard Agreement will set forth the general conditions of disbursement, any conditions precedent to disbursements (e.g., documentation requirements for pre-Standard Agreement expenditures or conditional performance measures), and the Department's remedies upon an event of default. The Standard Agreement will also identify the payee. Where Co-Grantees wish to receive the grant award outside of escrow, they must identify, and memorialize in the Standard Agreement, which Grantee will serve as the designated payee for all award amounts.

### Section 603. Legal Documents

Upon the award of Homekey funds to a Project, the Department shall enter into one or more agreements with the Grantee(s), including a Standard Agreement, which shall encumber funds from the Homekey Program, subject to specified conditions. The agreement or agreements shall include, but not be limited to:

- i. A description of the approved project and the permitted uses of funds;
- ii. The amount and terms of the program grant;
- iii. The use, income, occupancy, and rent restrictions, to be imposed on the project through a use restriction (e.g., covenant, regulatory agreement) recorded against the property of the project;
- iv. Performance milestones, and other progress metrics, governing the completion of the project, along with the remedies available to the Department in the event of a failure to meet such milestones or metrics;
- v. Provisions governing the manner, timing, and conditions of the disbursement of the program grant;
- vi. Special conditions imposed as part of the Department's approval of the project;
- vii. Terms and conditions required by federal and state law;
- viii. Requirements for reporting to the Department;
- ix. Remedies available to the Department in the event of a violation, breach, or default of the agreement; and
- x. Provisions regarding Grantee liability. Specifically, the Grantee will remain liable to the Department for compliance with and the performance of all Program requirements regardless of any Department-approved transfer or assignment of interest. Likewise, each co-Grantee will remain jointly and severally liable to the Department for compliance with and the performance of all Program requirements regardless of any Department-approved transfer or assignment of interest, and notwithstanding the co-Grantees' identification of a designated payee.

The agreement will also include such other provisions as are necessary to ensure adherence to the objectives and requirements of the program.

#### Section 604. Sales, Transfers, and Encumbrances

An Applicant(s) shall not sell, assign, transfer, or convey the awarded Project, or any interest therein or portion thereof, without the express prior written approval of the Department, which may be granted, delayed, or withheld in the Department's sole and absolute discretion.

#### Section 605. Defaults and Grant Cancellations

Funding commitments may be canceled by the Department under any of the following conditions:

- i. The objectives and requirements of the Homekey Program cannot be met and the implementation of the Project cannot proceed in a timely fashion in accordance with the timeframes established in the Standard Agreement or the regulatory agreement.
- ii. In the event of a breach or violation by the Grantee, the Department may give written notice to the Grantee to cure the breach or violation. If the breach or violation is not cured to the satisfaction of the Department within a reasonable time period, the Department, at its option, may declare a default under the relevant document and may seek legal remedies for the default including the following:
  - a. The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the Project in accordance with Homekey Program requirements; and
  - b. The Department may seek such other remedies as may be available under the relevant agreement or at law, or in equity.

#### **Article VII – Definitions**

Below are the definitions for purposes of the Homekey Program:

- i. "Applicant" means the "Eligible Applicant," as that term is defined in this NOFA, as well as the Eligible Applicant's nonprofit or for-profit corporation Co-Applicant(s), if applicable. As allowed or required by context, the term "Applicant" shall refer to all such entities in their individual and/or collective capacity.
- ii. "Area Median Income" or "AMI" means the most recent applicable county median family income published by the California Tax Credit Allocation Committee (TCAC) or the Department.
- iii. "Assisted Unit" means a residential housing unit that is subject to rent, income, occupancy, or other restrictions associated with a Homekey site.
- iv. "At Risk of Homelessness" has the same meaning as defined in Title 24 CFR Part 578.3.
- v. "Co-Applicant" means the nonprofit or for-profit corporation that is jointly applying for Homekey funds with a state, regional, or local public entity, or with a Tribal Entity.

- vi. "City" means a city or city and county that is legally incorporated to provide local government services to its population. A city can be organized either under the general laws of this state or under a charter adopted by the local voters.
- vii. "Chronic Homelessness" means a person who is chronically homeless, as defined in Title 24 CFR Part 578.3.
- viii. "Continuum of Care" means the same as defined by the United States Department of Housing and Urban Development at Title 24 CFR Part 578.3.
- ix. "Department" means the Department of Housing and Community Development.
- x. "Eligible Applicant" means a city; county; a city and county; any other state, regional, and local public entity, including a council of government, metropolitan planning organization, and regional transportation planning agency designated in Section 29532.1 of the Government Code; or a Tribal Entity(ies) as defined in this NOFA. For purposes of this definition, a "local public entity" is further defined in accordance with HSC section 50079. As allowed or required by context, "Applicant" shall be interpreted to include any of the foregoing entities, as well as that entity's nonprofit or for-profit corporation Co-Applicant. Upon receiving an award of Homekey funds, the Eligible Applicant and any Co-Applicant(s) will, both individually and collectively, be referred to as the "Grantee" for purposes of this NOFA.
- xi. "Extremely Low Income" or "ELI" has the same meaning as in Title 24 CFR Part 93.2.
- xii. "Enforceable Funding Commitment" means a letter or other document, in form and substance satisfactory to the Department, which evidences an enforceable commitment of funds or a reservation of funds by a Project funding source, and which contains the following:
  - a. The name of the Applicant or Grantee;
  - b. The Project name;
  - c. The Project site address, assessor's parcel number, or legal description; and
  - d. The amount, interest rate (if any), and terms of the funding source.

The Enforceable Funding Commitment may be conditioned on certain standard underwriting criteria, such as appraisals, but may not be generally conditional. Examples of unacceptable general conditions include phrases such as "subject to senior management approval," or a statement that omits the word "commitment," but instead indicates the lender's "willingness to process an application" or indicates that financing is subject to loan committee approval of the Project. Contingencies in commitment documents based upon the receipt of tax-exempt bonds or low-income housing tax credits will not disqualify a source from being counted as committed.

- xiii. "Grantee" 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 Homekey Program requirements. The Grantee may comprise one or more entities, so long as the Grantee structure includes an "Eligible Applicant," as that term is defined in this NOFA. All such entities shall, in their

individual and collective capacity as the "Grantee," be bound by the Homekey Standard Agreement and each and every one of the Homekey Program terms, conditions, and requirements.

- xiv. "HDIS" means the statewide Homeless Data Integration System.
- xv. "Homeless" has the same meaning as defined in Title 24 CFR Part 578.3.
- xvi. "Homeless Youth" or "Youth at Risk of Homelessness" has the same meaning as defined in Title 24 CFR Part 578.3.
- xvii. "Housing First" has the same meaning as in Welfare and Institutions Code section 8255, including all of the core components listed therein.
- xviii. "HUD" means the U.S. Department of Housing and Urban Development.
- xix. "Interim Housing", "Transitional Housing" or "Congregate Shelter" means any facility whose primary purpose is to provide a temporary shelter for the Homeless in general or for specific populations of the Homeless, and which does not require occupants to sign leases or occupancy agreements.
- xx. "Local Public Entity" is defined in accordance with HSC 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. "Local public entity" also includes two or more local public entities acting jointly.
- xxi. "NOFA" means a Notice of Funding Availability.
- xxii. "Operating Expenses" means the amount approved by the Department that is necessary to pay for the recurring expenses of the Project, such as utilities, maintenance, management fees, taxes, licenses, and supportive services costs, but not including debt service or required reserve account deposits.
- xxiii. "Permanent Supportive Housing" has the same meaning as "supportive housing," as defined at HSC section 50675.14, subdivision (b)(2), except that "Permanent Supportive Housing" shall include associated facilities if used to provide services to housing residents.
- xxiv. "Permanent Housing" means a housing unit where the landlord does not limit length of stay in the housing unit, the landlord does not restrict the movements of the tenant, and the tenant has a lease and is subject to the rights and responsibilities of tenancy.
- xxv. "Positive Youth Development (PYD)" is an intentional, prosocial approach that engages youth within their communities, schools, organizations, peer groups, and families in a manner that is productive and constructive; recognizes, utilizes, and enhances young



people's strengths; and promotes positive outcomes for young people by providing opportunities, fostering positive relationships, and furnishing the support needed to build on their leadership strengths.

- xxvi. "Project" means a structure or set of structures providing housing or shelter with common financing, ownership, and management.
- xxvii. "Program Award" means the portion of program funds available for a Grantee to expend toward eligible program uses.
- xxviii. "Point-in-Time Count" or "PIT" means a count of sheltered and unsheltered Homeless persons on a single night conducted by Continuums of Care as prescribed by HUD.
- xxix. "Rehabilitation" means the term as defined at HSC section 50096, but includes improvements and repairs made to a residential structure acquired for the purpose of preserving its affordability and use by the Target Population.
- xxx. "Rural Area" is defined in accordance with HSC section 50199.21.
- xxxi. "Target Population" means individuals and families who are experiencing homelessness or who are at risk of homelessness, as defined at HSC section 50675.1.3, subdivision (l), 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.
- xxxii. "Tribal Entity(ies)" means an Applicant that is any of the following:
  - a. Applicant meets the definition of Indian tribe under Section 4103(13)(B) of Title 25 of the United State Code;
  - b. Applicant meets the definition of Tribally Designated Housing Entity under 25 USC 4103(22);
  - c. If not a federally recognized tribe, either:
    - i. Applicant is listed in the Bureau of Indian Affairs Office of Federal Acknowledgement petitioner list pursuant to Section 82.1 of Title 25 of the Federal Code of Regulations.
    - ii. Applicant is an Indian tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to Section 65352.3 of the Government Code.
- xxxiii. "Unit" means a residential unit that is used as a primary residence by its occupants, including individual units within the project.
- xxxiv. "Youth Assisted Unit" means an Assisted Unit serving Homeless Youth, or Youth at Risk of Homelessness, as defined in Title 24 CFR Part 578.3. Pursuant to Section 203, Youth Assisted Units may also serve current and former foster youth through the age of 25.

## **Article VIII – Insurance Requirements**

### **Section 800. Insurance Requirements**

i. Commercial General Liability

Applicants shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. This insurance shall apply separately to each insured against which claim is made, or suit is brought subject to the Applicant's limit of liability. **The policy must name the State of California and the Department of Housing and Community Development, as well as the respective appointees, officers, agents, and employees of each, as additional insureds, but only with respect to work performed under the contract.**

**If available in the open market at a reasonable cost, the policy shall also include an endorsement for physical abuse and child/sexual molestation coverage.**

Coverage shall include actual or threatened physical abuse, mental injury, sexual molestation, negligent hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Applicant is responsible. This insurance shall apply separately to each insured against which claim is made, or suit is brought subject to the Applicant's limit of liability. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.

**If available in the open market at a reasonable cost, the policy shall also include an endorsement for assault and battery.**

ii. Automobile Liability

Applicant shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles. **The policy must name the "State of California and the Department of Housing and Community Development", as well as the respective appointees, officers, agents, and employees of each, as additional insureds, but only with respect to work performed under the contract.**

If Applicant will not have or use any commercially owned vehicles during the term of the Standard Agreement, by signing the Standard Agreement, the Applicant certifies that the Applicant and any appointees, employees, subcontractors, or servants possess valid automobile coverage in accordance with California Vehicle Code sections 16450 to 16457, inclusive. The Department reserves the right to request proof at any time.

iii. Workers' Compensation and Employer's Liability

Applicant shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the contract. In addition, employer's liability limits of \$1,000,000 are required. By signing the Standard Agreement, Applicant acknowledges compliance with these regulations. **A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California and the Department of Housing and Community Development must be attached to the certificate.**

iv. **Builder's Risk/Installation Floater**

If there is installation or construction of property/materials on or within the facility at any time during the term of the Standard Agreement, the Applicant shall maintain in force, at its own expense, Builders Risk/Installation Floater covering the labor, materials, and equipment to be used for completion of the Work performed under this contract against all risks of direct physical loss, excluding earthquake and flood, for an amount not less than the full amount of the property and/or materials being installed and/or constructed on or within the facility. The Applicant agrees as a provision of the contract to waive all rights of recovery against the state.

v. **Property Insurance**

The Applicant shall maintain fire, lightning and extended coverage insurance on the facility which shall be in a form of a commercial property policy, in an amount equal to one hundred percent (100%) of the then current replacement cost of the facility, excluding the replacement cost of the unimproved real property constituting the site. The extended coverage endorsement shall, as nearly as practicable, include but not be limited to loss or damage by an explosion, windstorm, riot, aircraft, vehicle damage, smoke, vandalism, and malicious mischief and such other hazards as are normally covered by such endorsement.

vi. **Self-Insured**

If a state, regional, or local public entity is the sole Applicant, and if that entity is self-insured in whole or in part as to any of the above-described types and levels of coverage, then that entity shall provide the Department with a written acknowledgment of this fact before execution of the Standard Agreement. If, at any time after the execution of the Standard Agreement, the state, regional, or local public entity abandons its self-insured status, that entity shall immediately notify the Department of this fact and shall comply with all of the terms and conditions of this Section pertaining to insurance requirements. The Department may accept evidence of self-insurance from other Eligible Applicants in its sole and absolute discretion.

**APPENDIX A: Capital Contributions to Projects\***

Assisted Unit, 1:1 Match	Homekey Capital Contributions		
	Total Cost Per Door *	Maximum Homekey Contribution	Applicant Contribution
Up to 1 Bedroom	\$140,000	\$140,000	\$0
	\$150,000	\$150,000	\$0
	\$160,000	\$155,000	\$5,000
	\$180,000	\$165,000	\$15,000
	\$200,000	\$175,000	\$25,000
	\$220,000	\$185,000	\$35,000
	\$240,000	\$195,000	\$45,000
	\$260,000	\$205,000	\$55,000
	\$280,000	\$215,000	\$65,000
	\$300,000	\$225,000	\$75,000
	\$320,000	\$235,000	\$85,000
	\$340,000	\$245,000	\$95,000
	\$350,000+	\$250,000	\$100,000+
Two Bedrooms	\$155,000	\$155,000	\$0
	\$175,000	\$175,000	\$0
	\$195,000	\$185,000	\$10,000
	\$215,000	\$195,000	\$20,000
	\$235,000	\$205,000	\$30,000
	\$255,000	\$215,000	\$40,000
	\$275,000	\$225,000	\$50,000
	\$295,000	\$235,000	\$60,000
	\$315,000	\$245,000	\$70,000
	\$335,000	\$255,000	\$80,000
	\$355,000	\$265,000	\$90,000
\$375,000+	\$275,000	\$100,000+	
Three or More Bedrooms	\$180,000	\$180,000	\$0
	\$190,000	\$190,000	\$0
	\$200,000	\$200,000	\$0
	\$220,000	\$210,000	\$10,000
	\$240,000	\$220,000	\$20,000
	\$260,000	\$230,000	\$30,000
	\$280,000	\$240,000	\$40,000
	\$300,000	\$250,000	\$50,000
	\$320,000	\$260,000	\$60,000
	\$340,000	\$270,000	\$70,000
	\$360,000	\$280,000	\$80,000
	\$380,000	\$290,000	\$90,000
\$400,000+	\$300,000	\$100,000+	
Experiencing Chronic Homelessness	\$180,000	\$180,000	\$0
	\$190,000	\$190,000	\$0
	\$200,000	\$200,000	\$0

Assisted Unit, 1:1 Match	Homekey Capital Contributions		
	Total Cost Per Door *	Maximum Homekey Contribution	Applicant Contribution
	\$220,000	\$210,000	\$10,000
	\$240,000	\$220,000	\$20,000
	\$260,000	\$230,000	\$30,000
	\$280,000	\$240,000	\$40,000
	\$300,000	\$250,000	\$50,000
	\$320,000	\$260,000	\$60,000
	\$340,000	\$270,000	\$70,000
	\$360,000	\$280,000	\$80,000
	\$380,000	\$290,000	\$90,000
	\$400,000+	\$300,000	\$100,000+
Homeless Youth or Youth At Risk of Homelessness	\$155,000	\$155,000	\$0
	\$175,000	\$175,000	\$0
	\$195,000	\$185,000	\$10,000
	\$215,000	\$195,000	\$20,000
	\$235,000	\$205,000	\$30,000
	\$255,000	\$215,000	\$40,000
	\$275,000	\$225,000	\$50,000
	\$295,000	\$235,000	\$60,000
	\$315,000	\$245,000	\$70,000
	\$335,000	\$255,000	\$80,000
	\$355,000	\$265,000	\$90,000
	\$375,000+	\$275,000	\$100,000+

\* The total cost per door referenced in the table above includes all eligible capital expenses, including acquisition, Rehabilitation, and new construction costs.

**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (If Applicable) <b>HCD-2240</b>
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1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME \_\_\_\_\_

CONTRACTOR NAME \_\_\_\_\_

2. The term of this Agreement is:

START DATE \_\_\_\_\_

THROUGH END DATE \_\_\_\_\_

3. The maximum amount of this Agreement is: \_\_\_\_\_

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	Scope of Work	
Exhibit B	Budget Detail and Payment Provisions	
Exhibit C *	General Terms and Conditions	
+		
-		

*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.) \_\_\_\_\_

CONTRACTOR BUSINESS ADDRESS	CITY Riverside	STATE CA	ZIP 92501
PRINTED NAME OF PERSON SIGNING	TITLE		
CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED		

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME  
Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS 2020 West El Camino Avenue, Suite 130	CITY Sacramento	STATE CA	ZIP 95833
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PRINTED NAME OF PERSON SIGNING \_\_\_\_\_ TITLE \_\_\_\_\_

CONTRACTING AGENCY AUTHORIZED SIGNATURE \_\_\_\_\_ DATE SIGNED \_\_\_\_\_

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)
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JAN 25 2022 3.43

**EXHIBIT A**

**SCOPE OF WORK**

1. **Authority**

This SOW reflects the allocation of designated funding to the County of Riverside for relocation of residents of the Oasis Mobile Home Park pursuant to the 2021 Budget Act Section 2.0, as amended by Budget Bill Jr (SB 129) Chapter 69, Section 57, Item 2240-106-0001, Provision 3.

2. **Purpose**

3. **Scope of Work**

4. **Monitoring**

The County of Riverside will maintain books, records, documents, and other evidence that demonstrates the funding was used to provide emergency housing, develop quality affordable housing, and construct necessary infrastructure to relocate residents of Oasis Mobile Home Park in Riverside County. These books, records, documents, and other evidence shall be made available for audit and inspection by the Department for a period of three years.

5. **Effective Date, Term of Agreement, and Deadlines**

- A. This Agreement is effective upon approval by the Department, which is the date executed by all parties (such date, the "Effective Date").
- B. This Agreement shall terminate on June 30, 2030.

**EXHIBIT B**

BUDGET DETAIL AND PAYMENT PROVISIONS (Rev. 06/21)

The Budget Act of 2021

**Conditions of Disbursement**



EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)