

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

SCO ID:

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

21-CALHOME-17112

PURCHASING AUTHORITY NUMBER (if applicable)

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

CONTRACTING AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME

City of Merced

2. The term of this Agreement is:

START DATE

Upon HCD Approval

THROUGH END DATE

36 Months from Date of Execution

3. The maximum amount of this Agreement is:

\$2,500,000.00

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

EXHIBITS	TITLE	PAGES
Exhibit A	Authority, Purpose and Scope of Work	5
Exhibit B	Budget Detail and Payment Provisions	3
Exhibit C*	State of California General Terms and Conditions	GTC - 04/2017
Exhibit D	CalHome Program Terms and Conditions	13
Exhibit E	Special Conditions	3
TOTAL NUMBER OF PAGES ATTACHED		24

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.)

City of Merced

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

PRINTED NAME OF PERSON SIGNING	TITLE
See Attached	See Attached

CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED
See Attached	See Attached

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
2020 W. El Camino Ave., Suite 130	Sacramento	CA	95833

PRINTED NAME OF PERSON SIGNING	TITLE
Michael White	Manager, Contract Services

CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
Michael White	10/4/2022

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

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

ATTACHMENT 2

**CONTRACTOR**

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**City of Merced**

A California Charter Municipal Corporation

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

*Stephanie Dietz*

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

*10/3/22*

Stephanie Dietz  
City Manager

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Address:

678 West 18th Street  
Merced, CA 95340

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**APPROVED AS TO FORM:**

*[Signature]*

*9/28/22*

Date

Deputy City Attorney

## EXHIBIT A

### AUTHORITY, PURPOSE AND SCOPE OF WORK

#### 1. Authority

- A. This Standard Agreement along with all its exhibits (the “**Agreement**”) is being entered into pursuant to the CalHome Program (the “**Program**”) (Chapter 6 of Part 2 of Division 31 of the Health and Safety Code, commencing with section 50650 (the “**Statute**”), and the CalHome Program Final Guidelines, dated November 27, 2019, as amended and in effect from time to time, (the “**CalHome Guidelines**” or “**Guidelines**”).

Chapter 365, Statutes 2017 (SB 3), adopted by voters on November 6, 2018, as Proposition 1, provides additional funding and authority for CalHome. Health & Safety Code, section 54014, subdivision (b) gives HCD authority to implement Proposition 1 funds by utilizing guidelines. Pursuant to subdivision (b), such guidelines are exempted from the requirements of the California Administrative Procedures Act (Chapter 3.5 of Part 1 of Division 3 of Title 2, commencing with § 11340 of the Government Code) and pursuant thereto, the CalHome Guidelines were adopted. In addition, Chapter 159, Statutes of 2019, Section 34 (Assembly Bill [AB] 101), effective June 27, 2019, allows CalHome funds to serve households that are victims of a disaster up to 120 percent of Area Median Income (AMI). AB 101 also allows the CalHome Program to fund the construction, repair, reconstruction, or rehabilitation of Accessory Dwelling Units (ADUs) or Junior Accessory Dwelling Units (JADUs).

- B. This Standard Agreement is entered under the authority of, and in furtherance of the purpose of, the Program. The California Department of Housing and Community Development (the “**Department**”) has issued that certain Notice of Funding Availability, dated September 21, 2021 (the “**NOFA**”) to govern administration of the funds and carry out the Program.
- C. In accepting this conditional reservation of funds, the Recipient agrees to comply with the terms and conditions of this Agreement, the NOFA under which the Recipient applied, the representations contained in the Recipient’s application for this funding allocation (the “**Application**”), and the requirements of the authorities cited above.

#### 2. Purpose

The purpose of the CalHome Program is to support existing homeownership programs aimed at low and very low-income households, and thereby increase homeownership, encourage neighborhood revitalization and sustainable development, and maximize use of existing homes.

## EXHIBIT A

Where a state of emergency is declared in the county under Gov. Code section 8625 resulting from a disaster, as defined in Gov. Code section 8680.3, or where there has been a special appropriation of federal emergency supplemental assistance for the county or a presidential declaration of disaster for the county, households at or below 120 percent of AMI which have suffered destruction or loss as a result of the disaster may be assisted with CalHome funds by nonprofit corporations and local governments.

The Statute, Guidelines, Agreement, NOFA, and Application, in effect and as amended from time to time, shall collectively be referred to as the “**Program Requirements**.” The Work (as hereinafter defined) authorized by this Agreement shall be performed according to the Program Requirements.

### 3. **Definitions**

Any terms in this Agreement which are not otherwise defined shall have the meaning set forth in Guidelines section 7716.

### 4. **Scope of Work**

- A. The Recipient shall perform the Scope of Work (“**Work**”) as described in the Application, which is on file at the Department of Housing and Community Development, Division of Financial Assistance, 2020 West El Camino Avenue, Sacramento, California 95833, and which is incorporated herein by reference. All written materials or alterations submitted as addenda to the original Application and which are approved in writing by the CalHome Program Manager or higher Departmental official, as appropriate, are hereby incorporated as part of the Application.

In the event of a conflict between the description of the Work in the Application and as described in this Exhibit, the description in this Exhibit shall prevail. The Department reserves the right to require the Recipient to modify any or all parts of the Application to comply with the Statute and Guidelines. The Department reserves the right to review and approve all Work to be performed by the Recipient in relation to this Agreement. Any proposed amendment to the Work must be submitted in writing for review and approval by the Department. Any approval shall not be presumed unless such approval is made by the Department in writing.

**EXHIBIT A**

B. The Work for this Agreement shall consist of one or more of the following activities, undertaken by or on behalf of the Recipient, within the Program Project Area:

1) Mortgage Assistance:

First Time Homebuyer Mortgage Assistance Program (MA) shall consist of providing Mortgage Assistance loans to households at or below 80 percent of AMI or to households at or below 120 percent of AMI who were victims of a disaster (in compliance with Health & Safety Code, section 50650, subdivision a(3)). CalHome funds, for the purpose of this activity, can only be used as gap financing as defined in Guidelines section 7725.

2) Owner-Occupied Rehabilitation:

Owner-Occupied Rehabilitation Assistance (OOR) shall consist of loans to households at or below 80 percent of AMI or at or below 120 percent of AMI for households who were victims of disaster. Manufactured Housing is eligible, including replacement of a manufactured home pursuant to Guidelines section 7733, subdivision (e), whether located in Mobilehome Park or elsewhere. The repair, full reconstruction, or the addition of an Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) is also eligible. CalHome funds, for the purpose of this activity, can only be used as gap financing as defined in Guidelines section 7725.

3) Technical Assistance for Self-Help Housing Projects:

Technical Assistance for Self-Help Housing Projects (SHTA), which will aid eligible households in carrying out owner-builder housing efforts, including construction training and supervision.

4) Technical Assistance for Shared Housing Programs:

Technical Assistance for Shared Housing Programs (SHP) funds the provision of services required to match a homeowner provider with a seeker.

5) Accessory Dwelling Units and Junior Accessory Dwelling Units Programs:

ADU/JADU Programs (commencing with CalHome Program Guidelines section 7742) for gap loans for ADU/JADU construction, reconstruction, repair, or rehabilitation to households at or below 80 percent of AMI or at or below 120 percent of AMI for households who were victims of disaster.

## EXHIBIT A

6) Homeownership Project Development Loans:

Homeownership Project Development Loans ("Project Loans") (commencing with Guidelines § 7746) for conditional awards of development loans to the Recipient to be used for land acquisition, predevelopment costs, and on-site improvements. Project Loans shall convert to grants once the homes are built and mortgage assistance is provided to each household. Any remaining Project Loan amount not used for mortgage assistance is repayable to the Department.

7) 120 Percent of AMI Activities:

Any of the foregoing activities may be operated and provided to households up to moderate incomes where the conditions of Health & Safety Code, section 50650.3, subdivision (g) are met. To qualify, a Household must be a victim of a disaster and must be located in a county where one of the following has occurred:

- (a) The Governor has proclaimed a state of emergency, pursuant to Section 8625 of the Government Code, resulting from a disaster, as defined in Section 8680.3 of the Government Code.
- (b) A special appropriation of federal emergency supplemental as instance or a presidential declaration of disaster has occurred.

### 5. **Activity Delivery Fees**

The maximum amount of Activity Delivery Fees (**ADF**) that may be drawn for each specific activity shall be set by the Department.

- A. Mortgage Assistance Loans: The Department may provide funding to cover Activity Delivery Fees (ADFs) of up to 10 percent of the total award allocatable to the mortgage assistance activity. Up to 5 percent of the total award may be provided within 90 days after the execution of the Standard Agreement for program development expenses, and up to 5 percent of the total award may be reimbursed on a per-Loan basis. The per-Loan reimbursement maximum will be 5 percent of the total award divided by the estimated number of Loans to be made under the contract.

## EXHIBIT A

- B. Owner-Occupied Rehabilitation Loans: The Department may provide funding to cover ADFs of up to 20 percent of the total award. Up to 10 percent of the total award allocatable to the owner-occupied rehabilitation activity may be provided within 90 days after the execution of the Standard Agreement for program development expenses, and up to 10 percent of the total award may be reimbursed on a per-Loan basis. The per-Loan reimbursement maximum will be 10 percent of the total award divided by the estimated number of Loans to be made under the contract.
- C. ADU/JADU Loans: The Department may provide funding to cover ADFs of up to 20 percent of the total award. Up to 10 percent of the total award allocatable to the ADU/JADU loan may be provided within 90 days after the execution of the Standard Agreement for program development expenses, and up to 10 percent of the total award may be reimbursed on a per-Loan basis. The per-Loan reimbursement maximum will be 10 percent of the total award divided by the estimated number of Loans to be made under the contract.

### 6. Department Contract Coordinator

The coordinator of this Agreement for the Department is the CalHome State Grant Management Manager, or their designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be emailed to [CalHomeReports@hcd.ca.gov](mailto:CalHomeReports@hcd.ca.gov) or mailed by first class mail to the following address:

Department of Housing and Community Development  
Division of Financial Assistance  
CalHome State Grant Management Manager  
2020 West El Camino Avenue, Suite 400  
Sacramento, California 95833

## **EXHIBIT B**

### **BUDGET DETAIL AND PAYMENT PROVISIONS**

#### **1. Budget Detail**

- A. Recipient has received an awarded for the grant or loan activities described in Exhibit E, Paragraph 1, of this Agreement. Recipient agrees and acknowledges that the Development Budget and Project Sources more particularly described in Exhibit E are true and correct to its actual or constructive knowledge.
- B. For the purposes of performing the Work described in this Agreement, the Department agrees to provide the aggregate amount identified on page 1, number 3 of this Agreement (STD 213) in the form of a grant ("**Grant**") or, in the case of a Homeownership Development Loan, a Project Loan, for the uses identified in the Sources and Uses. In no instance shall the Department be liable for any costs for Work in excess of this Agreement amount, or for any unauthorized or ineligible costs as set forth in the Program Requirements.

#### **2. Conditions of Disbursement**

- A. Funds are not obligated to a Borrower prior to the date this Standard Agreement is fully executed by both the Recipient and the Department. Funds will be released only after the Standard Agreement is fully executed by both the Recipient and the Department, and after the Department has reviewed and approved in writing the following Recipient submissions:
  - 1) Loan servicing plan in compliance with Guidelines section 7723.
  - 2) The Recipient shall submit its Program guidelines for review and approval by the Department for each funded activity identified in Exhibit E and in compliance with Guidelines section 7721. These Program guidelines, at a minimum, shall include:
    - a) Participant eligibility requirements;
    - b) Property eligibility requirements;
    - c) Underwriting requirements including maximum Loan-to-Value limits and debt to income ratio's;
    - d) Loan terms for assistance loans to participants;
    - e) Occupancy requirements;
    - f) Eligible and ineligible costs for payment with CalHome funds;



**EXHIBIT B**

- g) Homebuyer education requirements for Mortgage Assistance Activities pursuant to Guidelines section 7722; and,
  - h) Program marketing plan.
- 3) Loan document templates.
  - 4) Reuse Agreement acceptable to the Department in compliance with Guidelines section 7724, which includes verification of established separately maintained Reuse Account.
  - 5) Fully executed 20-year Monitoring Agreement between the Recipient and the Department.
  - 6) Third party contracts for the administration of any of the above functions shall require the Recipient to submit copies of the proposed contract prior to execution (including future amendments) to be reviewed and accepted by the Department.

**3. Payment Provisions**

- A. Prior to requesting any funds, the Recipient shall submit the following:
  - 1) Payee Data Record STD 204 or TIN Form (as applicable).
- B. Funds may be requested as either a reimbursement or as an advance pursuant to Guidelines section 7757 and as described in the NOFA under which these funds were awarded. Advances may include, but are not limited to, any of the following:
  - 1) Homeownership Project Development Loan disbursements;
  - 2) Advances of up to 25 percent of the award for either Self-Help or Shared Housing Technical Assistance;
  - 3) Advances for Owner-Occupied Rehabilitation or ADU/JADU Programs up to the Recipient's anticipated volume of closed Loans for the following 60-day period; and,
  - 4) Advances to escrow for Mortgage Assistance Loan's.

**EXHIBIT B**

- C. All Recipients shall reconcile any and all advances within 90 days. Documentation showing at least two-thirds of the funds previously released for the Work were expended shall be submitted to the Department before another advance request is processed.
- D. Recipients shall also consistently complete quarterly and annual performance reports and up to date submissions as required before another advance request is processed.
- E. The Department shall not authorize payments unless it determines, in its sole discretion, that the Program funds shall be expended and disbursed in compliance with the terms and conditions of the Program Requirements, and, if applicable, a Development Agreement.
- F. The Department reserves the right to request copies of any documentation at any time prior to, or after the processing of any draw request.
- G. All funds requests whether advance or reimbursement must be requested on a form provided by the Department and accompanied by the required supporting documentation.

**4. Performance Deadlines**

- A. In addition to any other deadlines contained herein, Recipient shall fully and timely observe and satisfy all deadlines and time requirements set forth in Exhibit E, Paragraph 2 of this Agreement. Time is of the essence in this agreement and Recipient agrees to use the utmost diligence to have all the Work specified in this Agreement entirely completed on or before the dates set forth in this Agreement.

EXHIBIT D

**CALHOME PROGRAM TERMS AND CONDITIONS**

**1. Effective Date and Commencement of Work**

- A. This Agreement is effective upon approval by the Department representative's signature on page one of the fully executed Standard Agreement, STD 213, (the "**Effective Date**").
- B. The Recipient agrees that Work shall not commence, nor any costs to be paid with CalHome funds be incurred or obligated by any party prior to execution of this Agreement by the Department, completion of all required environmental clearances, and compliance with the applicable conditions of this Agreement.
- C. The Recipient agrees that the Work shall be completed in accordance with the dates specified in Exhibit E, Paragraph 2.

**2. Sufficiency Funding**

- A. This Agreement is valid and enforceable only if sufficient funds are made available to the Department in the Department's sole discretion. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the State Legislature, promulgated in state regulations, guidelines, or any state statute which may affect the provisions, terms, or funding of this Agreement in any manner.
- B. The parties to this Agreement mutually agree that if there are insufficient funds for the CalHome Program to fully fund the amount set forth in this Agreement, the Department, at its sole discretion, may either amend the Agreement to reflect any reduction in funds, or it may unilaterally cancel the Agreement with fourteen (14) days written notice to the Recipient.
- C. Unless otherwise approved by the Department, upon termination or cancellation of this Agreement, the Recipient shall complete all Work in progress and terminate any other activities that were to be paid for with CalHome funds. Any unexpended funds received by the Recipient shall be returned to the Department within fourteen (14) days of the Notice of Termination or Notice of Cancellation.

EXHIBIT D

3. **Recipient's Application for Funds**

- A. The Recipient has submitted to the Department an Application for funding under the CalHome Program. The Department is entering into this Agreement based on, and in substantial reliance upon, Recipient's facts, information, assertions, and representations contained in that Application, and in any subsequent modifications or additions thereto approved by the Department in writing. The Application and any approved modifications and additions thereto are hereby incorporated into this Agreement.
- B. The Recipient hereby represents and warrants to the Department as follows:
  - 1) That all information, facts, assertions, representations and warranties contained in the Application (collectively the "**Representations**") and approved modifications and additions thereto are true, correct, and complete to the best of Recipient's actual and constructive knowledge, both as of the date of the Application and as of the date hereof. In the event that any part of the Application, including but not limited to, the Representations and any approved modification and addition thereto is, at any time during the term of this Agreement, untrue, incorrect, incomplete, or misleading in such a manner that could reasonably affect the Department's approval, disbursement, or monitoring of the funding and the Project Loans or Grant activities governed by this Agreement, then the Department may declare a breach hereof and take such action or pursue such remedies as are provided for breach hereof. All Representations Recipient shall indefinitely survive the expiration or earlier termination of this Agreement.
- C. The Department shall not be obligated to fund a CalHome loan or a grant activity unless the Recipient has complied with and satisfied all the applicable terms and conditions of the following, all in a manner satisfactory to the Department in its sole discretion, on or before the earlier of the CalHome loan closing or the execution of this Agreement:
  - 1) The Program Requirements, as defined in Exhibit A;
  - 2) All program legal documents including, but not limited to, this Agreement and the monitoring agreement; and,
  - 3) The Representations made in the Application and associated materials.

EXHIBIT D

**4. Project /Program Requirements**

The Recipient shall comply with the Statute, Guidelines, and other Program Requirements in accordance with the type of assistance provided.

**A. Maximum Per Unit Assistance Amount**

Activities assisted under this Agreement are subject to underwriting and subsidy layering requirements established by the CalHome Program for each activity. The maximum per unit assistance amount is established in the NOFA under which the application for funding was submitted.

**B. Maximum Purchase Price/After Rehabilitation Value Limits**

Maximum Purchase Price and After Rehabilitation Value limits shall be determined through the method described in the Guidelines based on the program or activity and not exceed the limit established in Guidelines section 7716, subdivision (hh).

**C. Maximum Loan-to-Value Limits**

Maximum Purchase Price and After Rehabilitation Value limits shall be determined through the method described in the Guidelines based on the program or activity and not exceed the limit established in the Guideline by activity.

**D. Income Determination**

Households assisted under this Agreement must have incomes determined to be at or below the federal Section 8 income limits adjusted by household size and area in which they reside as updated annually. Income must be determined utilizing the gross income determination requirements defined in California Code of Regulations, title 25, section 6914.

**5. Activity Delivery Fees, as applicable**

Activity Delivery Fees (ADF) must not to exceed the applicable limits specified in Exhibit A, paragraph 5.

EXHIBIT D

**6. Written Agreements**

- A. The Recipient shall enter into a written agreement with any other entity or individual to which it disburses CalHome funds. This agreement must be executed prior to providing the CalHome funds.
- B. All agreements, instruments and documents executed by or entered into by the Recipient or the borrower if the Recipient is not the borrower, which materially affect, as applicable, the construction, refinancing, acquisition, operation, ownership or maintenance of the project or program and shall be subject to the written approval of the Department.

**7. Security Documents and Lien Agreements**

Prior to the initial disbursement of any CalHome funds encumbered by this Agreement, the documents described in this paragraph shall be entered into, executed and, where appropriate, acknowledged and recorded. The documents described in subsections "A" through "D" shall be provided by the Department.

- A. For CalHome mortgage assistance, funds shall be disbursed to borrowers in the form of deferred payment low-interest or no interest loans. The Recipient shall ensure that all loans made by the Recipient are evidenced by a promissory note, the repayment of which is secured by a deed of trust to be recorded on the property being assisted, or by other security approved by the Department in writing. The Recipient agrees that, prior to the disbursement of funds, all said documents shall be executed and where appropriate recorded. The documents shall include provisions necessary to ensure either that the property being assisted with CalHome funds remains affordable, or that CalHome funds are recaptured upon sale of the property or in the event the unit is no longer owner-occupied.
- B. For project development loans to assist a housing project with predevelopment costs, funds are to be disbursed prior to acquisition of lots or homes by individual homeowners. The promissory note shall be executed by the Recipient in favor of the Department and secured by a blanket deed of trust executed by the fee owner(s) of all lots upon which the development will take place. Said deed shall be recorded in the office of the county recorder for the county in which the project will be located and shall have priority over other liens, encumbrances and other matters of record except as may be approved by the Department in writing.

EXHIBIT D

- At the time individual lots or units are sold to individual buyers, each individual owner-occupant borrower shall enter into a deferred payment loan setting forth the terms and conditions under which the loan of CalHome funds is being made, including those provisions necessary to ensure either that the property being assisted with CalHome funds remains affordable, or that CalHome funds are recaptured upon sale of the property or in the event the unit is no longer owner-occupied.
- C. For CalHome owner-occupied rehabilitation, funds shall be disbursed to borrowers in the form of deferred payment loans. The Recipient shall ensure that all loans made by the Recipient are evidenced by a promissory note, the repayment of which is secured by a deed of trust to be recorded on the property being assisted, or by other security approved by the Department in writing. The Recipient agrees that, prior to the disbursement of funds, all said documents shall be executed and, where appropriate, recorded. The documents shall include provisions necessary to ensure either that the property being assisted with CalHome funds remains affordable, or that CalHome funds are recaptured upon sale of the property or in the event the unit is no longer owner-occupied.
  - D. For CalHome Shared Housing Technical Assistance and Self-Help Technical Assistance funds will be provided to the Recipient in the form of a grant.
  - E. The Recipient shall comply with, and fulfill its obligations under, all the applicable documents called for in this Agreement. Any breach or violation by the Recipient or Recipients' successor in interest of any provision of any of the required documents shall constitute a breach or violation of this Agreement and shall be subject to the rights and remedies provided herein and otherwise available at law or in equity.

**8. Insurance**

- A. Prior to the disbursement of funds under this Agreement and thereafter during the term hereof, the Recipient shall obtain, carry, and maintain in force, comprehensive general liability insurance in the amount not less than one million dollars (\$1,000,000) for injury to or death of one person, one million dollars (\$1,000,000) for injury to or death of more than one person in one accident, and adequate property damage insurance. All insurance carriers must meet the requirements of the State of California Department of Insurance.
- B. Upon demonstration of cause satisfactory to the Department, the requirements in Paragraph 7.A above may be satisfied by the Recipient providing evidence of an alternative to conventional insurance sufficient to provide equivalent protection.

EXHIBIT D

**9. Inspections**

- A. The Recipient shall inspect any Work performed hereunder to ensure the Work is being and has been performed in accordance with the applicable federal, state and/or local requirements, any applicable construction contract, and this Agreement. The Recipient agrees to require that all Work found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to the construction Recipient or sub-Recipient until it is so corrected.
- B. The Department reserves the right to inspect any site upon which the Work is being performed. The Recipient shall include a provision permitting the Department or its agents for the right to inspect.

**10. Signs**

- A. The Recipient may place a sign on the Property during construction that shall include the Department as one of the entities providing financing to the development.
- B. During the construction period the Department may place one or more signs on the Property stating that it is providing financing for the development.

**11. Reporting Requirements**

- A. During the term of this Agreement, and no later than 30 days after the end of each calendar quarter, the Recipient shall submit to the Department a performance report on a form provided by the Department.
- B. During the term of this Agreement, and no later than thirty (30) days after June 30<sup>th</sup> of each year, the Recipient shall submit an annual performance report on a form provided by the Department.
- C. During the term of this Agreement, the Department reserves the right to request any other information, records, forms, or reports as is necessary for the Department to measure progress, provide technical assistance, monitor reuse accounts, make adjustments to program operations, and to respond to inquiries from the California State Legislature.



EXHIBIT D

- D. During the term hereof Recipient will timely comply with any other auditing and reporting requirements not specifically referenced above. Failure to timely submit any of the reports required by this paragraph eleven, or any reports required pursuant to the Guidelines, shall constitute a breach of this Agreement. In addition to the remedies provided under the Guidelines and program legal documents, including, but not limited to, this Agreement, the Department may withhold disbursements of CalHome funds for failure to timely submit reports.

**12. Audit/Retention and Inspection of Records**

- A. Recipient shall retain any and all records, accounts, documentation, and all other relevant materials pertaining to performance of this Agreement for a minimum of five (5) years after the expiration of this Agreement and any and all amendments hereto, unless a longer period of record retention is stipulated. Recipient shall retain any and all records, accounts, documentation, and all other relevant materials pertaining to performance of the Agreement for a minimum of five (5) years after the conclusion or resolution of any and all audits or litigation relevant to this Agreement, unless a longer period of record retention is stipulated.
- B. At any time during the term of this Agreement, the Department may perform or cause to be performed, an independent financial audit of any and all phases of the Work. At the Department's request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.
- C. The audit shall be performed by a qualified State, Department, local or independent auditor. The Agreement for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
- D. Recipient shall adequately document each transaction to permit the determination, through an audit if requested by the Department, of the accuracy of the records and the allowability of the expenditures paid in whole or in part, with CalHome funds. If the allowability of an expenditure cannot be determined because records or documentation are inadequate, the questionable expenditure shall be disallowed. The Recipient shall reimburse the Department for the amount of any disallowed expenditures of the Recipient or its agents or subcontractors. Determination by the Department of allowability of any expenditure shall be final.

EXHIBIT D

- E. Recipient agrees that the Department or its delegatee shall have the right to review, obtain, and copy all records pertaining to performance of this Agreement. Recipient agrees to provide the Department or its delegatee with any relevant records, accounts, documentation, and all other relevant materials requested and shall permit the Department or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such records, accounts, documentation, and all other materials relevant to a matter under investigation for the purpose of determining compliance with Government Code, section 8546.7, or pursuant to a financial audit under subsection B above. Recipient further agrees to maintain such records for a period of five (5) years after final payment under this Agreement.

**13. Monitoring Agreement**

Upon the Department's approval of Recipient's Loan Servicing Plan and CalHome Program Reuse Account Plan, the Recipient shall enter into the 20-year Monitoring Agreement. The 20-year Monitoring Agreement allows the Department to obtain necessary reporting information; review and approve changes to Loan Servicing Procedures or CalHome Program Reuse Account Plans; and, to perform monitoring of CalHome Program operations and accounts.

**14. Compliance with State and Federal Laws, Rules, and Guidelines**

Recipient agrees at all times to act with respect to the CalHome Program, CalHome activities, and to use the funds committed herein in conformity with all laws applicable to the CalHome Program including those of the State of California, all federal laws, all local rules or ordinances, all Program Requirements, including the CalHome Statutes and Guidelines. Recipient also agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Work.

**15. Disencumbrance of Funds**

- A. The Recipient shall repay all CalHome funding where:
- 1) the Recipient does not complete its project by the expenditure deadline in Exhibit E paragraph 2; or,

EXHIBIT D

- 2) before that date fails to expend any funds, the Department disburses to it pursuant the requirements applicable to the award of CalHome funds granted herein, then the Recipient shall:
  - (a) repay all such disbursed CalHome funds to the Department; and,
  - (b) forfeit and have no further rights or claim to any other remaining herein-granted CalHome award funds.
- B. Funds authorized by this Agreement shall be disencumbered in whole or in part if funds are not expended within the time frames specified in Exhibit E, Paragraph 2.
- C. The Department may exercise its reasonable discretion to disencumber funds or to grant an extension of time for completion (Guidelines Section 7759, subdivision (d)). Any extensions are subject to any and all applicable encumbrances, deadlines, and limitations, including, but not limited to, Health & Safety Code section 54006, subdivision (g). Documentation to support the Recipient's expenditure of funds shall be received and approved prior to the contract expiration date.

**16. Change of Conditions**

Notwithstanding the Department's obligations to provide payments pursuant to Exhibit B and Exhibit E hereof, the Department reserves the right to evaluate the Recipients' need for Program funds based on new information or funding sources associated with the Work. If the Department determines that the Program funds, or a portion thereof, are no longer necessary to complete the Work, the Department may reduce the amount of the grant or loan accordingly. In the event the Department determines, in its sole discretion, that the Work is no longer financially feasible, any commitment issued by the Department and this Agreement may be terminated.

**17. Obligations of Recipient with Respect to Certain Third-Party Relationships**

The Recipient shall remain fully obligated under the provisions of this Agreement, notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Work with respect to which assistance is being provided under this Agreement. The Recipient shall comply with all requirements of the Department necessary to ensure the completion, occupancy and use of the Work in accordance with this Agreement.

EXHIBIT D

**18. The Civil Rights and Age Discrimination Acts Assurances**

During the performance of this Agreement, the Recipient assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, familial status, religion, or belief, under any program or activity funded by this contract, as required by the California Fair Employment and Housing Act (Government Code, section 12990, et. seq.), the Holden Act (Health & Safety Code, section 35800, et. seq.), Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 USC 360120) and all implementing regulations, and the Age Discrimination Act of 1975 and all implementing regulations.

**19. Displacement, Relocation, and Acquisition**

The Recipient shall comply with the state displacement, relocation, and real property acquisition rules governing the CalHome Program, which are contained in, and applicable to the Guidelines.

**20. Special Conditions**

The Recipient agrees to comply with all conditions of this Agreement including any Special Conditions set forth in Exhibit E. These conditions shall be met to the satisfaction of the Department. The Recipient shall ensure that all Recipients and/or subcontractors are made aware of and agree to comply with all of the conditions of this Agreement and the applicable federal and state requirements governing the use of CalHome funds. Failure to comply with these conditions may result in cancellation of this Agreement.

**21. Eligible Uses of Reuse Funds**

- A. Reuse funds may be retained by the Recipient. The Recipient shall be in full compliance with their approved Reuse Agreement and must be placed in an interest-bearing account.
- B. Reuse funds must be used for eligible activities for which funds were awarded as specified in the Guidelines and any program legal documents including, but not limited to, this Agreement. The Recipient must report on the use of Reuse funds annually for a period of 20 years beginning from the Agreement expiration date as established in Exhibit E Paragraph 2 of this Agreement.

EXHIBIT D

**22. CalHome Predevelopment Loan Funds**

- A. If CalHome funds are provided to the Recipient to finance the costs of obtaining construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies, and legal fees, the Recipient shall demonstrate, to the satisfaction of the Department, that it has, with regard to the project concerned, site control (evidenced by one of the documents listed in Guidelines section 7748), a preliminary financial commitment, and a capable development team or a plan to hire a capable development team.
- B. Repayment of the Recipient predevelopment loan will be made to the Department, or a Recipient as approved by the Department, from construction loan proceeds or another project income in the event the CalHome funds are not provided to low-income buyers of the units developed. The Recipient may be required to enter into a predevelopment loan agreement prior to the disbursement of funds. This agreement will detail the use and repayment of funds, and other terms and conditions of the loan.

**23. Prevailing Wage**

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, Recipient shall ensure that the requirements of Chapter 1 (commencing with section 1720) of part 7 of the Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- B. For the purposes of this requirement, “**Construction Work**” includes, but is not limited to, the rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. (Note: For the purposes of this requirement “**In Support of Construction Work**” includes, but is not limited to, the work performed during the design and preconstruction phases of construction (i.e., development,) including, but not limited to, inspection and land surveying work under contract and paid for, in whole or in part, through this Agreement. Development related work “in support of construction work” such as involving the employment of trades/crafts like a field soil tester, laborer, electrical utility lineman, tree trimmer, driver (on/off-hauling to/from construction site shall be paid prevailing wages pursuant to California Labor Code, part 7, Chapter 1.) All construction work shall be done through the use of a written contract with a properly licensed building Recipient incorporating these requirements (the “**Construction Contract**”).

EXHIBIT D

Where the construction contract will be between the Recipient and a licensed building Recipient, Recipient shall serve as the “**Awarding Body**.” Prior to any disbursement of funds, including but not limited to the release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

**24. Assignment of Agreement, Assignment of Loan Commitment**

This Agreement represents a conditional commitment of funds for accomplishment of the Work. This conditional commitment of funds shall not be assigned, transferred, or otherwise alienated, in whole or in part, by the Recipient to any other person or entity which, pursuant to the Application or the description of the Work, anticipates receiving any funds encumbered by this Agreement without the prior express written consent of the Department, in its sole discretion. Any such assignment is invalid and may result in the termination of this Agreement.

**25. Litigation**

- A. If any provision of this Agreement, or underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain, at the Department's election, in full force and effect to the maximum extent allowed by law. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Recipient shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

**26. Waiver**

Any waiver must be express and in writing and signed by the party to be charged thereunder in order to be effective. No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. All rights and remedies afforded to the Department under this Agreement shall be construed as cumulative and non-exclusive to the maximum extent permitted by law and shall be in addition to any other rights or remedies provided therein, by law, or otherwise. The failure of the Department to enforce, at any time, any rights, or remedies, under this Agreement, or otherwise, or to require, at any time, performance by the Recipient of such provisions shall in no way be construed to be a waiver of such rights, or remedies, nor to affect the validity of this Agreement or the right of the Department to enforce the same.

EXHIBIT D

**27. Termination and Breach**

- A. The Department may terminate this Agreement at any time for cause by giving fourteen (14) days written notice to the Recipient. Cause shall consist of any violation of the CalHome Guidelines, Statute, or other Program Requirement; any terms and/or special conditions of this Agreement or legal documents referenced in Guidelines section 7756; an unreasonably low rate of expenditure or, upon a reduction in, limitation on, or elimination of the Department's expenditure authority.
- B. The Recipient shall be in default and breach hereunder in the event the Recipient fails to satisfy or comply with any term or condition in this Agreement or with respect to the 20-year Monitoring Agreement as specified in Exhibit B, Paragraph 2.A., 5. In the event of such default and breach, the Department shall issue a written notice to the Recipient specifying:
  - 1) the breach;
  - 2) the action required to cure such breach; and,
  - 3) a date, not less than fifteen (15) days from the date of receipt of such notice by the Recipient, by which such breach must be cured.
- C. In the event of such breach the Department may also take such action or seek such remedies as provided in the 20-year Monitoring Agreement. The Department may also seek such other remedies as may be available under this Agreement or any law.

EXHIBIT E

**PROGRAM-SPECIFIC PROVISIONS AND SPECIAL CONDITIONS**

**1. Budget Detail**

A. Recipient has been awarded the following grant or loan activity amounts:

ACTIVITY	AMOUNT:
FTHB Mortgage Assistance Program	\$1,125,000.00
Owner Occupied Rehabilitation Program With or without ADU/JDU's	\$1,375,000.00
Self-Help Technical Assistance Grants	\$ .00
Shared Housing Technical Assistance Grants	\$ .00
Project Development Loans	\$ .00
ADU/JDU Program	\$ .00
<b>TOTAL:</b>	<b>\$2,500,000.00</b>

B. The approved Development budget and Project Sources and uses are:

1) Development Budget (applies only to PDL projects):

Not applicable.

2) Project Sources and Uses (applies only to PDL projects):

Not applicable.



EXHIBIT E

**2. Term of Agreement and Deadlines**

- A. Program funds shall be expended no later than enter date 36 months from executed Standard Agreement.
- B. All un-expended funds remaining as of 36 months from executed Standard Agreement may be disencumbered by the Department.
- C. All invoices for payment must be submitted to the Department no later than 38 months from executed Standard Agreement.
- D. Homeownership Development Projects:
  - 1) The Recipient shall draw down CalHome program funds or begin onsite construction within 22 months of this executed Standard Agreement date. If this goal is not met the Department may, in its sole discretion, disencumber all funds and cancel the Department commitment to the project.
  - 2) Unit construction must be completed, and MA loans closed within 36 months of the Standard Agreement execution date. If the projected number of assisted units has not been achieved by the end of the 36<sup>th</sup> month, the Recipient's next application for funding under the CalHome Program may receive a penalty deduction in the total points awarded under a future NOFA.
- E. Homeownership Development Projects with Self-Help Technical Assistance Grants:
  - 1) The Recipient shall begin onsite construction within 12 months of the executed Standard Agreement date. If this goal is not met the Department may, in its sole discretion, disencumber all funds and cancel the Department commitment to the project.
  - 2) Unit construction shall be completed within 36 months of the executed Standard Agreement date by the Department. If this goal is not met, then:

EXHIBIT E

- 3) The Department may, in its sole discretion, disencumber remaining unused funds. If the projected number of Assisted Units has not been completed by the end of the 36th month from the executed Standard Agreement date, the Recipient's next application for funding under the CalHome program may receive a penalty deduction in the total points awarded.

**3. Special Conditions**

The following Special Conditions are applicable to this Standard Agreement:

- A. As a condition precedent to this Agreement and not less than 30 days prior to execution of this Agreement, Recipient shall provide to the Department an executed agreement by and between Recipient and any administrative subcontractors (as hereinafter defined), which shall be acceptable to the Department, in its sole discretion. The term administrative subcontractor shall have the meaning defined in Guidelines section 7716(c).
- B. The authorized Payee(s) is/are as specified below:
- |                              |                             |
|------------------------------|-----------------------------|
| <u>Name</u> : City of Merced | <u>Amount</u> : \$2,500,000 |
|------------------------------|-----------------------------|
- C. For those awards made under a special set aside within this NOFA, the Recipient shall provide to the Department evidence in the annual progress report of the use of those funds as intended pursuant to the NOFA and Guidelines.
- 1) Mobilehome set aside
- Not applicable.
- D. Neither the Sponsor/Applicant or the Borrower, or any constituent member thereof, may be listed on any HUD debarment or suspension list, including the list contained in the Excluded Parties Listing System (<https://sam.gov/SAM/>).
- E. The Department reserves the right, in its sole and absolute discretion, to impose additional special conditions or to modify any existing special conditions for this project.