

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

## DIVISION OF STATE FINANCIAL ASSISTANCE

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June 27, 2023

Amended March 15, 2024

Amended December 11, 2024

**MEMORANDUM FOR:** All Potential Tribal Applicants

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

**SUBJECT:** 2023 Homekey Tribal Notice of Funding Availability

The California Department of Housing and Community Development (Department) is pleased to announce the availability of approximately **\$81 million** of Homekey Program (Homekey) grant funding through this Round 3 Notice of Funding Availability (NOFA) for Tribal Entities (Homekey Tribal NOFA). Building on the success of both Project Roomkey and the first two rounds of Homekey, this significant investment in Tribal housing opportunities continues a statewide effort to sustain and rapidly expand housing for households 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. Rather than utilizing a set-aside within the standard Homekey Program, this NOFA operates independently and is tailored to meet the specific affordable housing needs of California Tribes.

Of the **\$81 million** in Homekey funding, \$55 million represents a roll-over of the unallocated Round 2 set-aside for Tribal Entities. **\$26 million** is derived from the State General Fund. Funds awarded under this NOFA must be disbursed to Grantees by June 30, 2025.

Funds offered under this NOFA and the criteria specified herein are available solely and exclusively to eligible Tribal Entities based on extensive programmatic feedback and engagement with Tribal Entities.

The Department will be accepting the applications on a continuous, over-the-counter basis beginning on August 1, 2023, through November 29, 2024, or until the available funds are exhausted, whichever occurs first. Applicants must submit a complete application, available at [Tribal Program](#).

**Due to the potential for Program oversubscription, and to meet the disbursement deadline of June 30, 2025, Eligible Applicants are encouraged to submit their completed application as early as possible.**

Throughout June-July 2023, the Department will hold a series of workshops and one webinar to review the Homekey Tribal NOFA and application process. All applicants are required to schedule one pre-application technical assistance meeting. To register, please go to the Department's [Tribal Program](#). 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/>. Questions may be directed to [HKTribal@hcd.ca.gov](mailto:HKTribal@hcd.ca.gov).

# 2023 Homekey Tribal

## Notice of Funding Availability



**Gavin Newsom, Governor  
State of California**

**Tomiquia Moss, 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  
Website: [Tribal Program](#)

Homekey Program Tribal Email: [HK Tribal@hcd.ca.gov](mailto:HK Tribal@hcd.ca.gov)

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**2023 HOMEKEY TRIBAL**  
**NOTICE OF FUNDING AVAILABILITY**

**Article I. Program Overview**

Section 100. Notice of Funding Availability (NOFA)

- A. The California Department of Housing and Community Development (Department) is pleased to announce the availability of approximately **\$81 million** in Homekey Tribal Program funding to sustain and rapidly expand the inventory of housing for people experiencing homelessness, At Risk of Homelessness, Homeless Youth, Youth At Risk of Homelessness, Transition-Aged Youth or seniors 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.
- B. This NOFA is offered exclusively to eligible Tribal Entities, as defined in Article VII of this NOFA, located within the State of California. Homekey recognizes that Tribal Entities have encountered significant barriers to access of funding sources; barriers which this NOFA is designed to substantially reduce or eliminate, where possible.
- C. Funding available under this NOFA provides an opportunity for Tribal Entities to develop multifamily Rental Housing Developments, including Rehabilitation of existing housing, new construction of apartments, townhomes, or single-family rental homes, including manufactured housing, or conversion of non-residential space to residential housing. Projects developed using Homekey Tribal funding shall provide Permanent Housing for the Target Population.
- D. Of the **\$81 million** in Homekey Tribal grant funds, approximately \$55 million is carry-over of unexpended Homekey Round 2 Tribal set-aside funding, and approximately **\$26 million** is derived from the state's General Fund allocation for Homekey Round 3 to achieve the goals of the Tribal NOFA.

Section 101. Authorizing Legislation and Applicable Law

- A. Assembly Bill No. 140 (2021-2022 Reg. Sess.) provided the statutory basis of the Homekey Program by adding section 50675.1.3 to the Health and Safety Code (HSC), and it exempted certain Homekey Projects from the California Environmental Quality Act (CEQA) by adding section 50675.1.4 to the HSC. 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."
- B. This NOFA serves as the Department's guidelines for the expenditure of Homekey Tribal funds and the administration of the Homekey Program for Tribal Entities. 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].)

- C. The Multifamily Housing Program (MHP) (Chapter 6.7 (commencing with section 50675) of Part 2 of Division 31 of the HSC), as 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.
- D. The MHP Final Guidelines (MHP Guidelines), effective June 19, 2019, as amended, are hereby incorporated by reference. In the event of a conflict between any requirements of this NOFA and the MHP Guidelines, the provisions of this NOFA are controlling.
- E. The Uniform Multifamily Regulations (UMR) (Cal. Code Regs., tit. 25, section 8300 et seq.), effective November 15, 2017, and as subsequently amended, are hereby incorporated by reference, except for UMR section 8304(c). In the event of a conflict between any of this NOFA and the UMR, the provisions of this NOFA are controlling.
- F. The criteria and matters set forth herein shall govern the Homekey Program Tribal NOFA application process and requirements. The requirements set forth in this NOFA are subject to AB 1010 (Chapter 660, Statutes of 2019), which is set forth in HSC section 50406, subdivision (p): (1) 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 (2) where the 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), 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, but are not limited to, threshold requirements set forth in the NOFA, which are not set forth in statute, and any other matters set forth in HSC section 50406, subdivision (p)(2).
- G. Generally, the Department is unable to waive requirements which are set forth in statute but may consider modification of non-statutory requirements set forth in this NOFA. Applicants are encouraged to discuss potential conflicts, as described above, and the process for requesting modification or waiver of requirements during the required pre-application meetings, as described in Article IV, section 401, of this NOFA.

#### Section 102. Program Timeline

Homekey Tribal funds will be available to Eligible Applicants on a continuous, over-the-counter basis. The following table summarizes the anticipated Homekey Tribal Program timeline. The Department reserves the right to modify the projected timeline at any time.

Table 1: Anticipated Timeline for Homekey Tribal Program Applications

NOFA release	June 2023
Application release	July 2023
NOFA & Application Workshops	June – July 2023
Mandatory Pre-Application Meetings Submit request and completed consult form to <a href="mailto:HK Tribal@hcd.ca.gov">HK Tribal@hcd.ca.gov</a>	Ongoing, beginning April 2023
Application period opens	August 1, 2023
Final Application due date	November 29, 2024 or until funds are exhausted, whichever occurs first
Award announcements	Continuous, beginning in August 2023
Standard Agreements issued	Continuous, after the Department's receipt of required information and documentation
Disbursement (liquidation) Deadline	June 30, 2025
Grantee Expenditure and Program Report, annually for five years after execution of Standard Agreement	Annually by January 31

Table 1- NOFA Timeline

## Article II. Program Requirements

### Section 200. Eligible Applicants

- A. Tribal Entities, as defined in Article VII of this NOFA, located in California, that demonstrate sufficient experience and capacity to develop, own and operate affordable housing.
- B. Eligible Applicants may apply individually or jointly with a city, county, Local Public Entity or a nonprofit or for-profit corporation, a limited liability company (LLC), and/or a limited partnership (LP) as a Co-Applicant.

### Section 201. Eligible Uses

- A. Awarded funds must be used to develop Permanent multifamily rental housing, which is affordable to the Target Population of individuals and families who are experiencing homelessness, At Risk of Homelessness, or for Senior Housing. The Department will consider proposals for other housing types on a case-by-case basis.
- B. Applicants are encouraged to discuss their specific housing needs and housing plans during mandatory pre-application meetings.

C. Eligible uses include:

1. Acquisition and/or Rehabilitation, of motels, hotels, or other sites and assets, including homes, apartments or vacant land, manufactured housing, commercial properties, and other buildings with existing uses that could be converted to permanent housing;
2. Conversion of units from nonresidential to residential purposes;
3. New construction of dwelling units;
4. Relocation costs for individuals who are being displaced because of the Homekey Project; and,
5. Capitalized operating subsidies for units purchased, converted, constructed, or altered with funds provided pursuant to HSC section 50675.1.3.

Section 202. Eligible Costs

A. Funds shall be used only for approved eligible costs incurred on the Project to carry out the uses described in section 201, including interim or bridge loans used to pay such costs. In addition, costs must be necessary and consistent with the lowest reasonable cost of the Project's scope and area, as determined by the Department.

B. Eligible costs include:

1. Predevelopment activities including architectural, appraisal, engineering, legal costs and attorney fees and other consulting costs and fees, which are necessary and directly related to the planning and execution of the Project, and which are incurred through third-party contracts;
2. Offsite improvements, such as sewers, utilities, and streets, directly related to, and required by the Rental Housing Development;
3. Onsite improvements related to the Rental Housing Development;
4. Developer fee limits as specified in UMR Section 8312 shall apply, except on a non-tax credit new construction project where the developer fee shall not exceed the following:
  - a. For projects with 49 or fewer restricted units (excluding units restricted at levels above 60 percent of AMI): the greater of \$40,000 per Restricted/Manager's Unit, not to exceed \$1,200,000;
  - b. For projects with between 50 and 100 Restricted Units (excluding units restricted at levels above 60 percent of AMI): the greater of \$40,000 per Restricted/Manager's Unit, not to exceed \$2,200,000.

Section 203. Eligible Projects

A. Eligible Projects include the new construction or Rehabilitation of a Rental Housing Development or conversion of a nonresidential structure to a Rental Housing Development.



- B. For purposes of calculating Program grant amounts and for the purpose of determining compliance with Program requirements that a Rental Housing Development contain four or more Units, a single-family house is one Unit, and an apartment Unit in an apartment building is one Unit regardless of the number of bedrooms within the apartment Unit.
- C. An Eligible Project must be located within the boundaries of the State of California.
- D. Substituting previously awarded Department funds is prohibited, except as provided below:**
  - 1. Applicants seeking to substitute previously awarded Homekey funds must request withdrawal of their prior award in writing and provide reasonable justification that the substitution is necessary to ensure project feasibility. Substitutions based solely upon Applicant preference or convenience will not be permitted. Applicants are encouraged to discuss available options during pre-application meetings.
  - 2. Where the Applicant seeks to substitute funds previously awarded under a Homekey Tribal set-aside, the previously awarded funds will be disencumbered from the prior NOFA and added to funds available under this NOFA to ensure that no Program funds are lost.

The provisions of this paragraph (D.) are only applicable to previous Homekey Program awards that have not been expended, or any portion thereof.

#### Section 204. Geographic Distribution and Priority Pools

- A. Funding under this NOFA is not subject to specific geographic allocations; however, to the extent possible, the Department will distribute funds equitably throughout the state. Applications will be placed within one of three priority pools based upon project readiness and percentage of non-Homekey funding. To the extent possible, the Department will distribute funds among the pools as follows:
  - 1. Pool number one: 30 percent of total funds available. This pool includes applications which demonstrate a high level of readiness to proceed, all threshold requirements specified in section 300 are met, or will be met prior to receiving an award of funds and at least 10 percent of funding is provided by non-Homekey sources.
  - 2. Pool number two: 30 percent of total funds available. This pool includes applications which demonstrate site control, lack sufficient resources to complete all threshold requirements prior to award, but can reasonably complete all threshold requirements within three months following execution of the Standard Agreement.
  - 3. Pool number three: 30 percent of total funds available. This pool includes applications from Eligible Applicants which are seeking funding for acquisition and may also lack sufficient resources to complete all threshold requirements prior to award but can reasonably complete all requirements, including acquisition, within six months following execution of the Standard Agreement.
  - 4. Ten percent of total funds available may be used solely at the Department's discretion to achieve an equitable distribution of funds or, if necessary, to supplement grants pursuant to section 206 of this NOFA.

5. If any pool is undersubscribed, the Department may allocate funds to other pools to the extent necessary to maintain an equitable distribution among Eligible Applicants.

Table 2: Homekey Priority Pool Funding Categories

Category	GF Allocation
<b>Total Tribal Homekey Allocation</b>	<b>\$81 million</b>
Estimated Pool #1	\$24.3 million
Estimated Pool #2	\$24.3 million
Estimated Pool #3	\$24.3 million
Estimated Discretionary Funds	\$8.1 million

#### Section 205. Program Deadlines

- A. Capital funds must be expended within eight months of the date of award. Applicants may request an extension of this deadline at time of application or at any time thereafter by providing a description of the circumstances, reason for extension and proposed length of extension requested. The Director shall have reasonable discretion to approve or deny such an extension upon conducting a full and good faith review of the Applicant's extension request.
- B. Additionally, Grantees shall complete all applicable construction and/or Rehabilitation within 24 months following the date of initial disbursement of funds. All Projects shall achieve a full occupancy (fully occupied with consideration for an average of 10 percent 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 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.
- C. All funds disbursed to the Grantee pursuant to section 602 of this NOFA, including capital funds and capitalized operating subsidies, must be expended by the Grantee for eligible costs and documentation submitted supporting all expenditures (e.g., paid invoices, verified settlement statements or annual reports) within five years following execution of the Standard Agreement, or as otherwise specified in the Standard Agreement.
- D. Pursuant to Title 31 Code of Federal Regulations (C.F.R.) Part 35.5, the Department may reimburse eligible costs incurred from January 1, 2022. Applicants are encouraged to discuss their options at the required pre-application meeting.
- E. Notwithstanding the above, all funds awarded pursuant to this NOFA must be fully liquidated (disbursed to the Grantees) no later than June 30, 2025. To meet this deadline, all final disbursement requests must be received no later than March 31, 2025.**

## Section 206. Maximum Capital Grant Amounts

- A. The capital funding grant amount shall be the **lesser of**:
1. A base amount of \$300,000 per Assisted Unit (as defined in Article VII of this NOFA), adjusted for bedroom size and deeper affordability; or,
  2. The amount necessary to enable the acquisition, development and construction or Rehabilitation of the Rental Housing Development; which shall not exceed the total eligible costs required, when considered with other available financing and assistance, including the full amount of any tax credit equity generated by the Project; or,
  3. \$10 million per Program application.
- B. An award may exceed the limits set forth in (1) and (3) above only where the Applicant demonstrates to the Department's satisfaction that extraordinary development costs are reasonable and necessary to complete the project and the Total Development Cost (TDC) does not exceed the NAHASDA TDC limits set forth in PIH Notice 2022-16. In no event shall the capital grant exceed \$12 million per Program application.
- C. Homekey Tribal may provide up to 100 percent of Project financing if 100 percent of the units will be restricted to occupancy by the Target Population and the Applicant demonstrates to the Department's satisfaction that no other financing is attainable.
- D. Up to 10 percent of the total capital grant may be requested to complete predevelopment activities including architectural, appraisal, engineering, legal costs and attorney fees, and other consulting costs and fees, which are directly related to the planning and execution of the Project, and which are incurred through third-party contracts. Funds requested for this purpose shall not exceed related costs specified in the proposed development budget, which are necessary to meet Program threshold criteria. Further, the Applicant must demonstrate lack of alternate funds, that the Project is infeasible without Homekey Tribal funds and that the threshold criteria can be met within three months following execution of the Standard Agreement.
- E. Acquisition funding is permitted for Eligible Applicants, which demonstrate a lack of alternate funding, that the Project is infeasible without Homekey Tribal funds and that a site can be acquired within six months following execution of the Standard Agreement. Funding shall be limited to the fair market value, and supported by an appraisal, as described in Article III, section 300 of this NOFA. At time of application, land cost shall be based on comparable land sales.

## Section 207. Operating Subsidies and Match

- A. Where an operating subsidy is requested, the total amount of operating subsidy per Assisted Unit is limited as follows:
1. The per month subsidy necessary to achieve break-even cash-flow;
  2. Assisted Units reserved for those experiencing homelessness, At Risk of Homelessness, for Homeless Youth, or for Youth At Risk of Homelessness shall not exceed \$1,400 per month;

3. Operating subsidies for Assisted Units restricted at or below 60 percent AMI shall not exceed \$1,000 per month; and
  4. Assisted Units restricted above 60 percent AMI shall not be eligible to receive operating subsidies.
- B. The total duration of the operating subsidy (as described in A. above) is tied to the amount of the Applicant's matching funds, and is limited as follows:
1. If Applicants 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.
  2. If Applicants 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. 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.
- D. If requesting an operating subsidy, the Eligible Applicant must submit a letter of support from the appropriate Tribal authority (i.e., the Tribe's Housing and Community Development Board, or similar) 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 [Tribal Program](#) website.
- E. The Homekey-funded portion of the operating subsidy must be expended by the Grantee within five years following the execution of the Standard Agreement unless otherwise stated in the Standard Agreement, with the Grantee establishing a capitalized operating subsidy reserve and disbursing the funds as outlined in this NOFA.
- F. The Department may waive these match requirements, in whole or in part, if the Applicant demonstrates that alternate funds are not available.
- G. The Department may extend the duration of the Homekey-funded portion of the operating subsidy to the extent necessary to ensure project feasibility.
- H. Applicants are encouraged to discuss the match requirements and potential match sources during the pre-application meetings.

#### Section 208. Affordability Term

- A. Except as required pursuant to HSC section 50675.1.4, which is subject to a 55-year Affordability Covenant, the Grantee shall duly encumber all Permanent Housing Projects with a 30-year Affordability Covenant that:

1. is recorded in first position against the Project real property for the benefit of the state, regional, local, or Tribal Grantee,
  2. restricts the use, operation, occupancy, and affordability of the Project and real property in accordance with the Homekey Program Requirements,
  3. duly names the Department as a third-party beneficiary with the right and privilege, but not the obligation, of enforcement thereof, and
  4. is otherwise in form and substance acceptable to the Department.
- B. Permanent Housing Projects located on Tribal trust land, which are subject to the terms of a long-term ground lease requiring the Bureau of Indian Affairs approval, shall have an initial term of 25 years, commencing with the date of recordation of the Department's Homekey Tribal Program Affordability Covenant.

### **Article III. Threshold and Other Requirements**

#### **Section 300. Threshold Requirements**

- A. To be eligible to receive funding, all proposed projects must meet the following requirements prior to an award of funds, except as specifically stated herein:
1. Eligible Applicant, as described in section 200 and defined in Article VII of this NOFA.
  2. Eligible Project, as described in section 203 of this NOFA. Projects must serve persons qualifying as members of the Target Population, as defined in Article VII of this NOFA.
  3. The Applicant demonstrates sufficient experience and capacity to develop, own and operate affordable housing and will control the Project during acquisition, development, and occupancy.
  4. Except as abrogated below in this subdivision, Applicant shall demonstrate that it has successfully developed, operated, or owned at least one affordable Rental Housing Development of equivalent size, scale, and occupancy.
    - a. Tribal Entities may satisfy this experience requirement by contracting or partnering with an entity that meets the requirements of this subdivision. Such contract or partnership agreement must be fully executed at the time of application submittal, and it must remain in effect until project completion or permanent loan closing and the issuance of any required tax forms, as applicable.
    - b. The property manager and supportive services 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. Tribal Entities may satisfy this experience requirement by contracting with an experienced property management company and service provider that meets the requirements of this subdivision. A letter of intent or Memoranda of Understanding,

signed by the proposed service provider(s), is required at time of application. Such contract(s) between the Tribal Entity and the service provider must be fully executed prior to occupancy of the completed Project. For purposes of this subdivision, an entity has “capacity” if it has adequate staff, capital, assets, and other resources to efficiently meet the operational needs, maintain the fiscal integrity; and the capability to satisfy all legal requirements and obligations in connection with the Rental Housing Development. Evidence of capacity must be reasonably acceptable to the Department in form and substance.

5. All proposed uses of Program funds are eligible pursuant to section 201 of this NOFA.
6. The application is complete at time of submittal, including all required documents and third-party reports, or where outstanding documents and reports can be obtained within a reasonable time, as specified by the Department. Third party reports may include, but are not limited to appraisals, market study or similar market analysis, environmental reports and relocation plans as specified in the application.
  - a. Projects requesting grant funds to pay for necessary third-party reports, architectural, appraisal, engineering, legal costs and attorney fees and other consulting costs and fees, which are directly related to the planning, development, and execution of the Project and which are incurred through third-party contracts, must submit a letter of intent to the Department, executed by an authorized signatory of the Applicant. The letter of intent must expressly state and represent to the Department, without condition or reservation, that, upon successful application, the Applicant shall purchase or otherwise acquire and submit all required documents and reports to accomplish the purpose of the award within a reasonable time period. The letter of intent shall include an itemized list of outstanding items and an estimate of costs consistent with the development budget. If this form of evidence is relied upon at the time of application, the Department shall impose additional milestones in the Standard Agreement, requiring submission of all required documents not more than three months following execution of the Standard Agreement.
  - b. At time of application “complete” means that sufficient information and documentation is provided for staff to review and assess the feasibility of the proposed project. Throughout pre-application technical assistance meetings and the application review process, Homekey staff will provide technical assistance to ensure that all necessary corrections are made prior to an award of funds.
7. A duly adopted Resolution or Ordinance of the governing board, Tribal council, Tribal leadership, or other Tribal governing body, in accordance with the governing laws, of the Applicant or Co-Applicant authorizing the application and execution of all Department and Program documents.
8. The Project, as proposed in the application, is financially feasible as evidenced by documentation such as, but not limited to, Enforceable Funding Commitments, market study/market information, project proforma, sources and uses statement, or other feasibility documentation that is standard industry practice for the type of proposed housing development.

9. The Project will maintain fiscal integrity consistent with proposed rents in the Assisted Units and is feasible pursuant to the underwriting standards in C.C.R. Title 25, section 8310;
10. If applicable, funding commitments or other reasonable assurance to cover operations and service costs with specific funding sources (government/philanthropic/private) for the proposed project and a budget which covers operations and services costs through year 15 from the recordation of the covenants.
11. If the Project will provide supportive services, 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, and supportive services which are not provided on-site.
12. A development plan that supports acquisition of a site and grant liquidation no later than June 30, 2025 and demonstrates evidence of strong organizational and financial capacity to develop the project. Eligible Applicants are encouraged to discuss the project timeline and related statutory authorities during the pre-application meetings.
13. For projects proposed outside of Indian country, for the benefit of the general community population (i.e., occupied by non-tribal members), 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 Program [webpage](#). For projects proposed by Eligible Applicants to be occupied solely by Tribal members, the Racial Demographic Data Worksheet and CoC reporting is not required.
14. Site control shall be required at time of application, or may be attained within a reasonable period, as determined by the Department.
15. 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 which, for Tribal trust land, may be evidenced by a title status report or an attorney's opinion regarding chain of title and current title status. Note: An uncertified title status report will satisfy application requirements. A certified title status report will be required prior to disbursement of awarded funds.
  - 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 Homekey Tribal 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 within a reasonable time period, as specified by the Department. The letter of intent may also be acknowledged by the party selling or otherwise conveying an interest in the subject property to the Applicant if the selling party has been identified at time of application. If this form of evidence is relied upon at the time of application, the Department shall impose additional milestones, in the Standard Agreement, regarding increased evidence of eventual site control not more than six months following execution of the Standard Agreement; 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 Homekey Tribal Program objectives and requirements.
16. 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 to not delay funds disbursement and occupancy requirements.
17. Projects located outside of Indian country must meet all state and/or local requirements applicable to rental housing, including but not limited to requirements for minimum square footage, building standards and requirements related to maintaining the project in a safe and sanitary condition.
18. 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.
19. Applicants shall submit a concise and sufficiently detailed relocation assistance narrative to demonstrate its consideration of, and early engagement with, applicable relocation assistance laws and requirements. The relocation assistance narrative



**does not** take the place of the relocation plan described in section 504 of this NOFA. At a minimum, the relocation assistance narrative shall include:

- a. A description of the proposed site including location, existing improvements (e.g., buildings, parking lots, billboards) or a statement that the land is vacant.
- b. A description of persons, businesses or farm operations that will or may be displaced.
- c. If any permanent or temporary relocation will be required, include an estimate of total relocation costs, and describe the methodology used to calculate these costs.
- d. An identification of the Applicant's relocation consultant and/or relocation services provider in connection with the project site. Applicant shall also submit copies of its services contract or letter of intent with or to the relocation consultant and/or relocation services provider.

## 20. Appraisal Requirements

- a. An appraisal is required when the land cost or value of a land donation is included in the development budget.
- b. If required, the appraisal may be submitted at time of application, prior to award, or prior to distribution of Homekey funds for acquisition or construction, as specified in the Standard Agreement. Applicant should discuss appraisal requirements and timing during pre-application meetings.
- c. If required, the appraisal must support the land cost or value stated in the development budget.
- d. Any appraisal required by the Department shall be prepared by an independent third-party individual or firm which has the appropriate license and the knowledge and experience necessary to competently appraise low-income residential rental property.
- e. If the proposed project will be on Fee land located within the boundaries of a reservation or rancheria and comparable land sales are not available, the Applicant should discuss the proposed method for valuation, which approval shall be at the sole and absolute discretion of the Department.

## 21. Market Study and Market Analysis Requirements

- a. For projects where occupancy is restricted solely to Tribal members, the Applicant shall provide a Tribe-specific market analysis prepared by an individual or firm which: (1) Has the knowledge and experience necessary to conduct a competent analysis of Tribal demographics (including employment, income, homeless population, family size and seniors) and housing needs for the proposed affordable rental project; (2) Is aware of, understands, and can competently describe the methodology used in performing the analysis; and (3) includes a description of the preparer's qualifications.
- b. For projects proposed outside the boundaries of Indian country which are not

restricted solely to Tribal members, the market study shall conform to the market study guidelines adopted by the California Tax Credit Allocation Committee (TCAC) and be prepared by an individual or firm which: (1) Has the knowledge and experience necessary to conduct a competent market study for low-income residential rental property; (2) Is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible market study; (3) In reporting the results of the market study, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true market needs for low-income residential property; (4) Is an independent third party having no identity of interest with the Sponsor, the partners of the Sponsor, the intended partners of the Sponsor, or with the general contractor; and (5) includes supplemental information related to Tribal demographics, housing needs and demand analysis.

#### Section 301. Other Requirements

- A. Units serving the Target Population and meeting the AMI are eligible for funding.
- B. Homekey may fund all units in a proposed project or a portion of the units. If seeking Homekey funding for only a portion of the units in a project, Applicants must identify committed sources for the non-Homekey units. The non-Homekey units are not required to serve the Homekey Target Population.
- C. If, at the time of acquisition, an existing tenant's household income is at or below the Extremely Low Income (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, during 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 the Target Population will be required of the Applicant.
- D. 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 5 percent increments of Assisted Units up to 60 percent AMI.
- E. 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.

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

### **Section 400. Application Process and Submission**

- A. Applications will be accepted on an over the counter (OTC) basis, and evaluated on a first come, first-reviewed basis, beginning August 1, 2023, through November 29, 2024, or until the available funds are exhausted, whichever occurs first. Funds will be awarded to those Applicants which demonstrate Project feasibility and the ability to meet all minimum threshold criteria and Program requirements described in this NOFA.
- B. Homekey Tribal application materials must be submitted electronically to the Department's [Tribal Program](#) website.
- C. Electronic Submission - Requirements for uploading the Homekey Tribal application and required supporting documentation, including naming conventions, are described in the Homekey Tribal application instructions and checklist tabs. Applicants must upload all application materials to the Department's website no later than 11:59 p.m. Pacific Daylight Time on Friday, November 29, 2024. Applications will be processed by the Department to the extent that funds remain available at that time.
- D. Applications must be made on the Department's forms which shall not be altered or modified by the Applicant. Excel forms must be submitted in Excel format, not as a PDF document.
- E. Within 30 days following receipt of the application, and continuing throughout the application review, the Department shall notify the Applicant/Co-Applicant of outstanding items and/or necessary corrections needed. Staff shall work closely with Applicants to ensure all outstanding requirements are met prior to an award of funds or will be met within a reasonable period as specified in the Standard Agreement.
- F. Applications shall state the total development funds requested and specify the amounts being requested for predevelopment and/or acquisition funding, which must be consistent with the proposed development budget.
  - 1. Predevelopment funding shall not exceed 10 percent of total development costs.
  - 2. Acquisition funding, including land cost and related acquisition costs, is available only for Eligible Applicants which demonstrate a lack of alternate funding and that the Project is infeasible without Homekey Tribal funds.
  - 3. Land cost shall be limited to the fair market value, and supported by an appraisal, as described in section 300 of this NOFA. At time of application, the land cost may be estimated based on recent comparable land sales.
- G. Each Applicant and Co-Applicant shall submit an authorizing resolution that, in the Department's reasonable determination, materially comports with the Homekey Tribal Program requirements and is legally sufficient. In addition, each Applicant and 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.

- H. Applicant shall provide documentation of its ability to obtain the insurance coverages outlined in Article VIII of this NOFA.
- I. 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.
- J. The Department reserves the right to request clarification of unclear or ambiguous statements made in an application or request additional clarifying documentation or information.

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

The Department requires all Applicants to engage in a pre-application meeting with the Department prior to applying. The meeting is offered as technical assistance and provides the prospective Applicant an opportunity to discuss their housing needs, the proposed project, along with other applicable programmatic considerations, including but not limited to those related to site acquisition, CEQA, Article XXXIV, land use and land entitlements, supportive services, contracting and partnerships, and long-term financing approaches. Pre-application meetings will be available upon release of this NOFA and may be requested by emailing [HK Tribal@hcd.ca.gov](mailto:HK Tribal@hcd.ca.gov).

#### Section 402. Award Process

- A. In the event of oversubscription, and where multiple applications are received from individual Applicants, the Department may allocate awards in rounds (i.e., one award per Applicant in round one, second award in round two, and so forth until funds are exhausted). In the case of multiple applications, the Department shall confirm application priorities with affected Applicants prior to sending award letters.
- B. The Department will send an award letter to successful Applicants. Funds will be disbursed in accordance with Article VI, section 602 of this NOFA, and after a Standard Agreement has been fully executed by the Department, unless the Standard Agreement specifies conditions precedent to disbursement.
- C. The Department is committed to disbursing Homekey funds in a timely manner. To avoid any expenditure delays, funds disbursed toward acquisition costs shall be issued directly to an escrow company that has been approved by the Department. 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

- A. Basis of Appeals.

1. In accordance with paragraph B. of this section, Eligible 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.

**B. 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 [HKTribal@hcd.ca.gov](mailto:HKTribal@hcd.ca.gov).
2. **Deadline:** Appeals must be received by the Department no later than five 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) or moneys appropriated and disbursed to fund the uses and accomplish the objectives specified in HSC section 50675.1.1 or 50675.1.3. As such, Article XXXIV is not applicable to Homekey-funded development.

### Section 501. Housing First

- A. To the extent possible, Applicant's shall 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.
- B. The foregoing notwithstanding, Federally Recognized Tribes are exempt from application of the Housing First Core Components where a Tribe has established written policies, consistent with NAHASDA/Indian Housing Block Grant (IHBG) federal laws, which have

been adopted in accordance with Tribal law regulating the tenant selection and operation of Tribal affordable rental housing, which may include the Tribal Admissions and Occupancy Standards (TAOS).

#### Section 502. Tenant Selection

- A. Referrals to Homekey Assisted Units shall be made through the local Coordinated Entry System (CES). Where a CES is not available, or the Grantee is a Federally Recognized Tribe, another comparable prioritization system, based on the greatest need, shall be used. If referrals will be made using a prioritization system other than CES, the Applicant must describe the plan for tenant selection, and it shall be reasonably detailed and comprehensive, as determined by the Department in its sole and absolute discretion.
- B. Federally Recognized Tribes may use their own TAOS that provides for Tribal preference, or other comparable priority system, which has been duly adopted and set forth in a Tribal Resolution or ordinance.

#### Section 503. Data Collection Systems

All Homekey Grantees shall support Continuum of Care (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).

The foregoing notwithstanding, Federally Recognized Tribe's use of another comparable data collection system is permissible. The Tribe may use its own data integration and management information systems, provided that such systems have been duly adopted in accordance with Tribal law and implemented by the Tribe prior to receiving an award of grant funds.

#### Section 504. Relocation

- A. Grantee must comply with all applicable federal, state, and local relocation law. Pursuant to relocation law, a Grantee must have a Department approved 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.
- B. Except for funds awarded for predevelopment costs, disbursement of Homekey funds shall be conditioned upon receipt of either:
  - 1. A Department-approved relocation plan; or
  - 2. For projects where relocation is not required, a Department issued Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement, which has been duly executed and approved by the Department.
- C. 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

- A. As applicable, all developments shall adhere to the accessibility requirements set forth in California Building Code Chapter 11A and 11B and the Americans with Disabilities Act (ADA), 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 C.F.R Part 8.26.
- B. As applicable, 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.
- C. As applicable, 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 C.F.R. Part 100, 24 C.F.R. Part 8, and 28 C.F.R. Part 35.

#### Section 506. Prevailing Wages

- A. There are two prevailing wage laws that govern minimum labor standards for public works, the Federal Davis Bacon Act (DBA) and the California Prevailing Wage Law (PWL). Where both DBA and PWL apply, the higher of the wage standards is generally required.
- B. NAHASDA applies DBA to public work projects including federally assisted projects (loans and grants) and requires that Federally Recognized Tribes that do not have their own Tribal Wage Determination (TDW) pay prevailing wage rates as determined by the Secretary of Labor through the DBA.
- C. NAHASDA exemption: Federally Recognized Tribes using any portion of their Indian Housing Block Grant allocation for an affordable housing project may apply the Tribe's duly adopted Tribally Determined Wage (TDW). The TDW is included in the Tribe's contracts and agreements for the development and operation of affordable housing in place of DBA. For a TDW to be applied to the Project instead of the DBA and HUD wage determination, a Tribe must submit the following information to the Department:

1. a duly adopted Tribal Resolution or Ordinance authorizing the use of the TDW; and,
2. the methodology used to calculate the TDW in compliance with 24 C.F.R. Part 1000.16, which demonstrates that the TDW requires the payment of not less than those wage rates the Tribe determines to be prevailing.

When submitted in accordance with this NOFA, the Tribe is exempt from compliance with DBA and HUD wage determined rate requirements in their contract or agreements.

- D. Where a project is solely funded with state funds, PWL applies.
- E. Applicant's contemplated use of Homekey funds is subject to PWL (Lab. Code, § 1720 et seq.). Applicant is urged to discuss prevailing wage requirements during pre-application meetings and 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 PWL, as well as all applicable DBA. 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

- A. Awarded projects, including phased projects, that satisfy the requirements HSC 50675.1.4, shall be exempt from the California Environmental Quality Act (CEQA), pursuant to Section 50675.1.3, as applicable.
- B. CEQA requirements do not apply to Indian country, or on Fee lands located within the boundaries of a rancharia or reservation that are owned by the Tribe, TDHE or Tribal member.
- C. Applicants should consult with their legal counsel regarding 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.
- D. National Environmental Policy Act (NEPA): For Projects receiving federal funds subject to review under the NEPA, a copy of the Project's Authority to Use Grant funds must be provided prior to the start of construction. It is not necessary to have the Authority to Use Grant Funds at time of application.

### **Article VI. Program Operations**

#### Section 600. Program Oversight

- A. 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.



- B. Grantees shall promptly notify the Department in writing of any changes in Grantee organization, authorization, or capacity, which includes an Eligible Applicant's governing body.

#### Section 601. Reporting

- A. Grantees shall submit an annual Homekey Program and Expenditure Report to the Department for five years **following full occupancy of the project**, except where a longer term is specified in the Standard Agreement. The report will be due no later than **January March** 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:
1. The amount of funds expended for the project.
  2. The location of any properties for which the funds are used.
  3. The number and size of habitable housing units produced, or planned to be produced, using the funds.
  4. The number and demographics of individuals housed, or likely to be housed, using the funds.
  5. The racial and ethnic composition of the tenants assisted.
  6. 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.
  7. Detail of supportive services offered to tenants.
  8. Any lessons learned from the use of the funds.
  9. The proposed development vision that identifies the financial and regulatory mechanisms to be used to maintain the long-term affordability of the project.
  10. The progress and status in securing any required entitlements, permits, and environmental clearances.
  11. The proposed timeline for the completion of the project.
- B. If a project received an award for an operating subsidy, Grantees shall also report their operating expenditures in the annual report.
- C. 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.
- D. 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.

- E. 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

- A. Pursuant to 31 C.F.R. Part 35.5, the Department may disburse funds to cover Homekey-critical expenditures that were incurred beginning January 1, 2022.
- B. 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. Upon meeting the requirements of this paragraph, the Grantee may request up to 100 percent of the awarded funds for disbursement, subject to conditions or limits specified in the Standard Agreement.
- C. 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. Except for acquisition funds, if 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. Acquisition funds shall be disbursed through escrow only.

#### Section 603. Legal Documents

- A. 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, Affordability Covenant, and a lease rider in the event of a leasehold interest, which shall encumber funds from the Homekey Program, subject to specified conditions. The agreement or agreements shall include, but not be limited to:
1. A description of the approved Project and the permitted uses of funds;
  2. The amount and terms of the Program grant;
  3. 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;
  4. 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;
  5. Provisions governing the manner, timing, and conditions of the disbursement of the Program grant;
  6. Special conditions imposed as part of the Department's approval of the project;
  7. Terms and conditions required by federal and state law;
  8. Requirements for reporting to the Department;

9. Remedies available to the Department in the event of a violation, breach, or default of the agreement; and
10. 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.
11. Limited waiver of sovereign immunity (see attached Appendix).
12. Jurisdiction and venue (see attached Appendix).
13. The Standard Agreement will also include such other provisions as are necessary to ensure adherence to the objectives and requirements of the Homekey 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 reasonable discretion.

#### **Section 605. Defaults and Grant Cancellations**

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

- A. 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.
- B. 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:
  1. 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
  2. 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 this Homekey Program Tribal NOFA:

- A. "Affordability Covenant" means the legally binding instrument which (a) is recorded in first position against Project real property and/or the leasehold, as may be applicable, in

consideration for the Homekey Program award to the Grantee; (b) imposes use, operation, occupancy, and affordability restrictions on the real property and improvements; and (c) incorporates the Homekey Program Requirements by reference. Upon its execution, the Affordability Covenant shall be binding, effective, and enforceable against all successors, transferees, and assignees, in accordance with Section 208 of this NOFA, after a certificate of occupancy or its equivalent has been issued for the Project, or if no such certificate is issued, from the date of initial occupancy of the Project.

- B. "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.
- C. "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; it also includes the greater of the median income for the United States or the median income of the counties or their equivalent in which the Indian country is located. Applicants may determine which AMI is most appropriate for the Project, subject to Program requirements.
- D. "Assisted Unit" means a residential housing unit which is restricted to occupancy by Target Population households with incomes at or below 60 percent of AMI or federal Median Income, as applicable. Assisted Units may be restricted at levels higher than 60 percent AMI, but not higher than 80 percent AMI, only where the average AMI for all Assisted Units does not exceed 60 percent AMI. For projects proposing 9 percent Low Income Housing Tax Credits (LIHTC), the average AMI in the project cannot exceed 50 percent AMI.
- E. "At Risk of Homelessness" has the same meaning as defined in Title 24 C.F.R. Part 578.3.
- F. "Co-Applicant" means another Tribal Entity, Urban Indian Organization, city, county, Local Public Entity or a nonprofit or for-profit corporation, a limited liability company (LLC), and/or a limited partnership (LP) that is jointly applying for Homekey funds with an Eligible Applicant.
- G. "Continuum of Care" or "CoC" means the same as defined by the U.S. Department of Housing and Urban Development at title 24 C.F.R. Part 578.3.
- H. "Department" means the California Department of Housing and Community Development.
- I. "Eligible Applicant" means a Tribal Entity(ies), as defined in subparagraph KK) of this section. 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" as defined in this section.
- J. "Extremely Low Income" or "ELI" has the same meaning as in title 24 C.F.R. Part 93.2.
- K. "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:

1. The name of the Applicant or Grantee;
2. The Project name;
3. The Project site address, assessor's parcel number, or legal description; and
4. 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.

- L. "Federally Recognized Tribe" has the same meaning as Indian Tribe.
- M. "Fee land" means land, originally Tribal reservation or rancheria land, which is owned by a Tribe, Indian or non-Indian and is not held in federal trust. The state and local governments have jurisdiction on Fee lands located outside of Indian country; however, an Indian Tribe has jurisdiction when Fee lands are located within Indian country; and are owned by the Indian Tribe/Tribal Entity or Tribal Member. It also includes lands located within a city/county jurisdiction.
- N. "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 defined in this section. All such entities shall, in their individual and collective capacity as the "Grantee," be bound by the Homekey Tribal Standard Agreement and the Homekey Tribal terms, conditions, and requirements.
- O. "HDIS" means the statewide Homeless Data Integration System.
- P. "HMIS" means the Homeless Management Information System.
- Q. "Homekey Tribal Program Requirements" means the following, all as amended and in effect from time to time:
1. the 2023 Homekey Tribal NOFA and Guidelines;
  2. Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the HSC;
  3. the Grantee's Application for 2023 Homekey Tribal funding;
  4. the project report prepared by the Department in reliance on the representations and descriptions included in the Grantee's Application for 2023 Homekey Tribal funding;
  5. the award letter issued by the Department to the Grantee;

- 6. the relevant STD 213, Standard Agreement for the 2023 Homekey Tribal funding; and,
  - 7. all other applicable law.
- R. “Homeless” has the same meaning as defined in title 24 C.F.R. part 578.3, or as defined in the Tribal Admissions and Occupancy Standards.
- S. “Homeless Youth” or “Youth At Risk of Homelessness” has the same meaning as defined in Title 24 C.F.R. Part 578.3, or as defined in the Tribal Admissions and Occupancy Standards.
- T. “Housing First” has the same meaning as in Welfare and Institutions Code section 8255, including all the core components listed therein.
- U. “HUD” means the U.S. Department of Housing and Urban Development.
- V. “Indian country” means (1) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same as provided at 18 U.S.C. 1151, (4) all lands within the limits of a Rancheria under the jurisdiction of the United States Government, (5) lands held in trust by the United States for an Indian Tribe or individual, and (6) land held by an Indian Tribe or individual subject to a restriction by the United States against alienation.
- W. “Indian Tribe” has the same meaning as defined pursuant to Title 25 U.S.C. section 4103(13)(B).
- X. “Limited waiver of sovereign immunity” means a limited waiver of an Indian Tribe’s sovereign immunity to unconsented suit to permit suit against the waiving Tribe in any forum of competent jurisdiction over the subject matter. Indian Tribes, as sovereign nations, possess the powers of self-government and self-determination to govern and make their own laws and be ruled by them. Tribes may waive their immunity on a case-by-case basis and negotiate limited waivers suitable to all contracting parties.
- Y. “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 U.S.C. 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.
- Z. “NAHASDA” means the “Native American Housing and Self Determination Act” set forth at 25 U.S.C. Section 4101 et seq., that provides for federal assistance to Federally Recognized Tribes and Tribally Designated Housing Entities (TDHE), as defined therein

and provided in a manner that recognizes the right of Indian self-determination and Tribal self-governance by making such assistance available directly to Indian Tribes or TDHE.

- AA. “NOFA” means a Notice of Funding Availability.
- BB. “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.
- CC. “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.
- DD. “Program” means the Homekey Program/Tribal Program.
- EE. “Project” means a structure or set of structures providing housing or shelter with common financing, ownership, and management.
- FF. “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.
- GG. “Rental Housing Development” means a structure or set of structures with common financing, ownership, and management, and which collectively contains four or more dwelling units, including efficiency units, as defined in HSC section 50675.2, subdivision (d). No more than one of the project units may be occupied as a primary residence by a person or household who is the owner of the structure or structures. For the purpose of these Program guidelines, “Rental Housing Development” does not include any “health facility” as defined by HSC section 1250 or any “alcoholism or drug abuse recovery or treatment facility” as defined in HSC section 11834.02. A Rental Housing Development includes, without limitation, the real property, the improvements located thereon, and all fixtures and appurtenances related thereto.
- HH. “Senior Housing” means units restricted to residents 62 years of age or older, or 55 years or older, pursuant to applicable provisions of the California Civil Code, section 51.3; and under the federal Fair Housing Act at 24 C.F.R. 100.300 et seq. (except for projects utilizing federal funds whose programs have differing definitions for senior projects). It also includes the Rehabilitation of occupied developments restricted to residents 55 or older, Supportive Housing or Special Needs projects with restricted occupancy to residents who are 55 years of age or older, and subject to state and federal fair housing laws with respect to Senior Housing.
- II. “Target Population” means individuals and families, including youth, Transition-Aged Youth, and residents eligible for Senior Housing, experiencing homelessness or At Risk of Homelessness, whose incomes are at or below the AMI level specified for Assisted Units and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases. Target Population also includes individuals and families who are experiencing homelessness or At Risk of Homelessness as determined by an Eligible Applicant when applying their formally and Tribal-adopted Tribal Admissions and Occupancy Standard.

- JJ. "Transition-Aged Youth" means current and former foster youth through the age of 25.
- KK. "Tribal Entity(ies)" means an Applicant that is any of the following:
1. Applicant meets the definition of Indian Tribe under U.S.C. section 4103(13)(B);
  2. Applicant meets the definition of Tribally Designated Housing Entity under Title 25 U.S.C. 4103(22);
  3. Applicant that is either of the following:
    - a. Applicant is listed in the Bureau of Indian Affairs Office of Federal Acknowledgement petitioner list pursuant to Title 25 C.F.R. Part 83 et seq.; or,
    - b. Applicant is an Indian Tribe located in California that is on the contact list maintained by the California Native American Heritage Commission for the purposes of consultation pursuant to section 65352.3 of the Government Code; and,
    - c. Has organized a separate legal entity, either a non-profit or for-profit entity, in compliance with CCR Title 25, Section 8301(s) and it has demonstrated to the satisfaction of the Department that the separate legal entity is controlled by the Tribal Applicant.
- LL. "Tribal Admissions and Occupancy Standards" or "TAOS" means those standards adopted by the Federally Recognized Tribe by resolution or ordinance in accordance with Tribal law.
- MM. "Unit" means a residential unit that is used as a primary residence by its occupants, including individual units within the project.
- NN. "Urban Indian Organization" means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. section 1653(a).

## **Article VIII. Insurance Requirements**

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

#### **A. Commercial General Liability**

1. 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 California 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.**



2. **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.
3. **If available in the open market at a reasonable cost, the policy shall also include an endorsement for assault and battery.**

B. Automobile Liability

1. 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 (California) 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.**
2. If the 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.

C. 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 California Department of Housing and Community Development must be attached to the certificate.**

D. 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, a 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.

E. 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.

#### F. 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 the terms and conditions of this section pertaining to insurance requirements. In its sole and absolute discretion, the Department may accept evidence of self-insurance from Eligible Applicants.

## Appendix

### Limited Waiver of Sovereign Immunity and Jurisdiction and Venue

As described in Section 603 of this NOFA, upon award of Homekey Tribal funds to a Project, the Department shall enter into one or more agreements with the Grantee(s), including but not limited to a Standard Agreement, which incorporates exhibits for a Limited Waiver of Sovereign Immunity and Jurisdiction and Venue. The exhibit language is included in this NOFA for informational purposes only, and is as follows:

#### Limited Waiver of Sovereign Immunity

“Except as otherwise expressly provided below, [INSERT NAME OF TRIBE] reserves all of its inherent sovereign rights, including sovereign immunity from unconsented suit or legal proceedings. However, [INSERT] irrevocably grants to the Department solely, and to no other party other than another California state agency responsible for the management and enforcement of the Department’s obligations and responsibilities pursuant to the [INSERT NAME OF PROGRAM] program requirements, and this Standard Agreement and exhibits hereto (collectively, this “Agreement”) governing the Project, a limited waiver of sovereign immunity (and any defense based thereon) from any suit, action, claim or proceeding or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, exercise of contempt powers, or otherwise) to seek the following rights and remedies: (i) the enforcement of any provision of this Agreement; (ii) any claim, action or legal proceeding arising under or related to this Agreement; (iii) any determination, judgment, order or award issued by a court of competent jurisdiction, including without limitation, an award of actual damages, an order requiring [INSERT NAME OF TRIBE] to pay direct and actual damages resulting from any breach of this Agreement, or an order from a court of competent jurisdiction for injunctive relief requiring or prohibiting [INSERT] to take certain action; (iv) claim or action to interpret and/or enforce the provisions of this Agreement and to resolve disputes, controversies, or claims arising or related to any of the foregoing; (v) any counterclaims against or relating to claim(s) brought in connection with this Agreement; and (vi) injunctive relief pursuant to this Agreement. [INSERT] expressly, unequivocally, and irrevocably waives its sovereign immunity from unconsented suit (and any defense based thereon) for the rights, remedies, and actions identified in this paragraph, but no others.

This limited waiver of sovereign immunity does not extend to tort claims or other types of damages, including indirect, special, incidental, non-compensatory, consequential, or punitive damages, whether by way of indemnification or otherwise. [INSERT TRIBE] does not waive sovereign immunity for lawsuits by third parties or disputes between the parties not arising from this Agreement. This waiver does not allow, and the Department separately agrees not to bring, any claims, actions, or lawsuits against any [INSERT TRIBE] individual, including [INSERT TRIBE] officials, employees, agents, and others acting on behalf of [INSERT]. The Department will sue only [INSERT TRIBE] as an entity. This limited waiver shall not, under any circumstances, allow the cumulative award against [INSERT TRIBE] to exceed the [INSERT PROGRAM FUNDING AMOUNT] and in no instance shall any enforcement of any kind whatsoever be allowed against any assets of [INSERT TRIBE] other than the [INSERT PROGRAM FUNDING AMOUNT], revenues from the Project, and the real property on which the Project is located.

[INSERT TRIBE] represents and warrants its limited waiver of sovereign immunity is valid and binding and is in compliance with all applicable law, including the laws of [INSERT TRIBE], and that all approvals, required under said laws, including procedural requirements, to effectuate said waiver have been duly issued and no other approvals or actions of [INSERT TRIBE] is required. [INSERT] further represents and warrants that the remedies set forth in this Agreement allowed by or pledged against its limited waiver of sovereign immunity are allowed by, and in compliance with, the laws of [INSERT TRIBE].

## Jurisdiction and Venue

Except as otherwise expressly provided in this Agreement, the parties intend that any cause of actions to enforce, construe, and determine any disputes or claims regarding this Agreement as well as any default, breach of contract, injunctive relief, or specific performance remedies, regarding the Property, to be brought and prosecuted to completion as described below:

[INSERT TRIBE] hereby consents to the jurisdiction of the [INSERT COURT: TRIBAL/FEDERAL/STATE] courts, to the extent they have jurisdiction, over all subject matters described herein, including but not limited to any breach of contract action brought by any of the parties to enforce the terms of this Agreement, or any other appropriate action brought by any of the parties to prosecute any other rights available to the parties hereto arising under or related to the Agreement. [INSERT] acknowledges that such consent is given without in any way limiting its other rights and remedies, and the Department shall be entitled in the [INSERT COURT] courts where appropriate, to pursue, among other things, specific performance, declaratory judgment, injunctive relief (mandatory or prohibitive), mandamus (or a remedy in the nature of mandamus) to prevent or stop violations of any covenants and other provisions hereof, actual and direct damages, receiverships, or to generally protect the Property and the rights and interests of any tenants or occupants thereof or the Department's interests therein. Any right, power, or principle requiring deferral to or exhaustion of remedies in [INSERT] courts to the extent they have jurisdiction or other governmental body of the [INSERT TRIBE] or federal government, is hereby waived and deemed satisfied by [INSERT TRIBE], and [INSERT TRIBE] and the Department shall not assert the same in [INSERT COURT] court to the extent they have jurisdiction, as a bar or abatement to the claims of the other.

[INSERT TRIBE] agrees that any judicial action, suit, or counterclaim initiated by [INSERT TRIBE] against the Department will be in either, [INSERT COURT] courts to the extent they have jurisdiction, over all subject matters described herein, unless otherwise required by federal Indian law. Such waiver is limited to the rights, remedies, default, and enforceability of the provisions of this Agreement, and transfer or assignment of [INSERT TRIBE] interest in the [INSERT DOCUMENT TITLE].”