

EXHIBIT D

TRIBAL HOMEKEY+ GENERAL TERMS AND CONDITIONS

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

- A. This Agreement, when fully executed by the Department and the Grantee, is effective upon the date of the Department representative's signature on the STD 213, Standard Agreement (such date, the "**Effective Date**").
- B. This Agreement shall terminate fifteen (15) years after the Effective Date, as stated in Section 2 of the STD 213, Standard Agreement (such date, the "**Expiration Date**").
- C. Grantee will receive the disbursement of Program funds after satisfying all conditions precedent to such disbursement, as set forth under section 2, Conditions of Disbursement, of Exhibit B and, as necessary and applicable, under section 1, paragraph (F), Additional Conditions Precedent to Disbursement, of Exhibit E.
- D. Any expenses incurred prior to January 1, 2024, after the Expenditure Deadline for Capital Funds, or after the Expenditure Deadline for Operating Funds, respectively and as applicable, are not eligible for payment under the Program, unless an alternate arrangement is legally permissible and has been approved by the Department in advance and in writing.
- E. Grant funds that have not been expended by the applicable Expenditure Deadlines shall revert to the Department in the absence of an alternate arrangement that has been approved by the Department in advance and in writing.

2. Termination for Cause

The Department may terminate this Agreement for cause at any time by giving at least fourteen (14) calendar days' advance written notice to the Grantee. Upon such termination, Grantee shall return any unexpended funds to the Department within thirty (30) calendar days of the date on the Department's written notice of termination, unless the Department has approved an alternate arrangement in advance and in writing, as provided below. Such termination will not limit any other remedies that may be available to the Department under this Agreement, at law, or in equity. Cause shall consist of Grantee's breach of, or failure to satisfy, any of the material terms or conditions of this

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Agreement. Cause includes but is not limited to the following:

- A. Grantee's failure to satisfy the conditions precedent to disbursement or to expend Program Grant funds, as specified, except if such failure is due to the acts or omissions of the Department.
- B. Grantee's failure to timely satisfy each or any of the conditions set forth in these Tribal Homekey+ General Terms and Conditions, the Project-Specific Provisions and Special Terms and Conditions set forth in Exhibit E of this Agreement (including any one of the Performance Milestones), or the award letter.
- C. Grantee's material violation of this Agreement and any of the Program Requirements, as defined in Exhibit A.
- D. The Department's determination of the following:
 - 1) Any material fact or representation, made or furnished to the Department by the Grantee in connection with the Application or the award letter, shall have been untrue or misleading at the time that such fact or representation was made known to the Department, or subsequently becomes untrue or misleading; or
 - 2) Grantee has concealed any material fact from the Department related to the Application or the Project.
- E. The Department's determination that the objectives and requirements of the Tribal Homekey+ Program cannot be met in accordance with applicable timeframes, as memorialized by this Agreement.

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

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3. **Eligible Activities**

Grant funds awarded to the Grantee shall be applied to the eligible uses set forth in

Exhibit A and described in greater detail in Exhibit E. Payment for any cost which is not authorized by this Agreement, or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee.

4. **Performance Milestones**

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

5. **Appraisals**

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

6. **Compliance with Prevailing Wage Law**

Grantee's Project is subject to applicable Tribal, federal and/or California prevailing wage law. Grantee is urged to consider all applicable prevailing wage law requirements and seek legal advice on compliance with said law. Prior to disbursing Tribal Homekey+ funds, the Department will require a certification of compliance with applicable Tribal, federal and/or California prevailing wage law. The certification must verify that prevailing wages have been or will be paid if such payment is required by law, 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.

7. **Environmental Conditions**

If Grantee's Project is located outside Indian Country, Grantee shall provide a Phase I Environmental Site Assessment ("**ESA**") for the Project, in conformance with ASTM Standard Practice E 1527, evaluating whether the Project is affected by any recognized environmental conditions. If the Phase I ESA discloses evidence of recognized environmental conditions and Grantee desires to proceed with the Project, the Grantee

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shall provide the Department with a Phase II report and any additional reports as required by the Department and in a form acceptable to the Department. Any remediation work shall be subject to Department approval. Grantee shall also provide an asbestos assessment and a lead-based paint report for the Department's approval if the Project involves rehabilitation or demolition of existing improvements.

If Grantee's Project is located within Indian Country, Grantee shall not be subject to California Environmental Quality Act (CEQA) and the Environmental Conditions of this section.

For projects receiving federal funds subject to review under the National Environmental Policy Act, a copy of the Project's Authority to Use Grant funds must be provided prior to the start of construction.

8. Insurance

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

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

9. Operating Funds

For projects receiving Tribal Homekey+ funds to capitalize an operating subsidy reserve, those funds shall be expended within ten (10) years following the execution of the Standard Agreement, unless otherwise stated in Exhibit E of this Agreement. The

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Department in its sole discretion may extend the expenditure deadline up to 15 years.

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, required reserve account deposits, developer fees or distributions. Operating Expenses should be included in the Project's submitted budget.

10. Relocation

If Grantee's Project is located outside Indian Country, Grantee must comply with all applicable federal, state, and local relocation law. Pursuant to relocation law, a Grantee must have a relocation plan prior to proceeding with any phase of a Project or other activity that will result in the displacement of persons, businesses, or farm operations. To ensure that displaced persons and entities do not suffer a disproportionate impact as a result of Projects which benefit the public, all notices to vacate and relocation services must be provided to them in accordance with applicable law. In addition, before the Tribal Homekey+ award will be disbursed, Grantee must have either:

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

If Grantee's Project is located within Indian Country, Grantee shall comply with federal relocation law, as applicable, including any relocation requirements under 24 C.F.R. § 1000.14.

11. Site Control

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

- A. For land held in trust by the BIA, or subject to a restriction against alienation, Grantee may provide an initial uncertified title status report issued by the BIA.

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- B. Fee title.
- C. A leasehold interest on the property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with, and satisfaction of, all Program objectives and requirements, including, without limitation, those set forth in this Agreement. If the Grantee's interest in the property is a leasehold, and the lessee and the lessor are affiliated or related parties, then the Department may require both the lessee and the lessor to execute this Agreement.
- 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. If this form of evidence was relied upon at the time of Application, the Department may impose additional Performance Milestones (e.g., presentation of additional or supplemental evidence of eventual site control closer to any projected close of escrow).
- F. A letter of intent, executed by a sufficiently authorized signatory of the Grantee, that expressly represents to the Department, without condition or reservation, that, upon successful application, the Grantee shall purchase or otherwise acquire a sufficient legal interest in the property to accomplish the purpose of the award. The letter of intent must also be duly acknowledged by the party selling or otherwise conveying an interest in the subject property to the Grantee. If this form of evidence was relied upon at the time of Application, the Department may impose additional Performance Milestones (e.g., presentation of additional or supplemental evidence of eventual site control closer to any projected close of escrow).
- G. Other evidence of site control that gives the Department assurance (equivalent to A-F above) that the Grantee will be able to complete the Project in a timely manner and in accordance with the Program's objectives and requirements, including, without limitation, those set forth or referenced in this Agreement.

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12. **Adaptability and Accessibility**

If Grantee's Project is located outside Indian Country, that Project shall comply with all applicable federal, state and local laws regarding adaptability and accessibility, including, without limitation, the requirements set forth in the NOFA.

If Grantee's Project is located within Indian Country, the Project shall comply with building standards set forth in the Tribal building standards applicable to the Project or, if such Tribal standards do not exist, then with the building standards set out in the International Building Code or California Building Code. Said Tribal building standards shall meet or exceed the standards set forth in the International Building Code or California Building Code.

13. **Title Status and Reports**

Grantee shall provide a current title report for the real property on which the Project is located. If Grantee's interest in the property is leasehold, then Grantee shall provide a current title report for the leasehold interest and the fee interest.

For land held in trust by the BIA, or subject to a restriction against alienation, Grantee shall provide an initial uncertified TSR issued by the BIA in accordance with Exhibit D, Section 11(A).

14. **Title Insurance**

Grantee shall provide evidence of title insurance and an American Land Title Association (ALTA) As-Built Survey that are acceptable to the Department. The condition of title, the insurer, the liability amount, the form of policy, and the endorsements shall be subject to Department approval. The policy shall ensure that Grantee holds good and marketable title (fee simple or leasehold).

15. **Property Management Plan**

Grantee shall submit a property management plan to the Department for its review and approval. The property management plan shall be consistent with any representations made in the Application, and it shall meet the Program Requirements (e.g., include the management, maintenance, and repair information required by the MHP Guidelines). In lieu of a property management plan, the Department may accept a duly adopted TAOS ordinance that meets Program Requirements.

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16. Supportive Services Plan

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

17. Compliance with Title VI of the Civil Rights Act of 1964

For Projects located outside Indian Country, Grantee and any of its contractors, subcontractors, successors, transferees, and assignees shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the U.S. Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the U.S. Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.

For Projects located within Indian Country, Grantee and any of its contractors, subcontractors, successors, transferees, and assignees may implement a Tribal preference for tenant selection and occupancy in accordance with the Grantee's TAOS, if any, notwithstanding Title VI of the Civil Rights Act of 1964. Grantee and any of its contractors, subcontractors, successors, transferees, and assignees shall comply with the Indian Civil Rights Act, 25 U.S.C. §§ 1301 et seq., and all implementing regulations as applicable. Where applicable, Grantee may apply the Tribal employment and contract preference laws (including regulations and Tribal ordinances) adopted by the Indian Tribe exercising jurisdiction over the project.

18. Nondiscrimination

For Projects located outside Indian Country, Grantee's Project is subject to the following nondiscrimination laws, TAOS and/or Tribal employment relations ordinance (TERO) requirements as applicable. Grantee is urged to consider all applicable nondiscrimination, TAOS and TERO requirements and seek legal advice on compliance

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with said law. Prior to disbursing Tribal Homekey+ funds and in addition to the requirements under Sections 502(B) and 505(B) of the NOFA, the Department will require certifications of compliance with applicable nondiscrimination, TAOS and TERO requirements under applicable law for (i) tenant selection and occupancy, and (ii) procurement and contracting. The certifications must provide that any records satisfying said requirements will be maintained and made available to any enforcement agency upon request. The certification for tenant selection and occupancy must be signed by the Grantee. The certification for contracting and procurement must be signed by the Grantee and general contractor(s).

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and the U.S. Department of the Treasury's implementing regulations at 31 CFR Part 22;
- B. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.);
- C. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
- D. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.);
- E. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.); and
- F. The State of California nondiscrimination statutes, regulations, and standards set forth and identified in the NOFA and at [Exhibit C](#) of this Agreement.

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

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For Projects located within Indian Country, the following statutes and regulations prohibiting discrimination are applicable to this Agreement:

- A. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
- B. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.); and
- C. The Indian Civil Rights Act (Title II of the Civil Rights Act of 1968; 25 U.S.C. 1301–1303).

Grantee may implement a Tribal preference for tenant selection and occupancy for Projects located within Indian Country.

19. Affirmative Fair Housing Marketing Plan and Fair Housing Compliance

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

For Projects located within Indian Country, Grantee may implement a Tribal preference for tenant selection and occupancy in accordance with the Grantee’s TAOS, if any, notwithstanding the Fair Housing Act (24 U.S.C. 3601 et seq.) and is not required to develop an affirmative fair housing marketing plan.

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

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

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For Projects located within Indian Country, Grantee is not required to comply with the Pet Friendly Housing Act of 2017.

21. **Final Certificate of Occupancy**

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

22. **Occupancy**

The Assisted Units shall be occupied by the eligible Tribal Homekey+ Population, and such units shall be in decent, safe, and sanitary condition at the time of their occupancy.

For Projects located outside Indian Country, the Grantee shall certify, upon occupancy, that it will employ the core components of Housing First (as set forth at Welfare and Institutions Code section 8255) as part of its property management plan and Supportive Services plan.

For Projects located within Indian Country, Grantee is not required to comply with the core components of Housing First (as set forth at Welfare and Institutions Code section 8255) as part of its property management plan and Supportive Services plan.

23. **Tenant Selection**

Federally Recognized Tribes may use their own Tribal Admissions and Occupancy Standards that provides for Tribal preference, or other comparable priority system, for Projects located in Indian Country which has been duly adopted and set forth in a Tribal Resolution or ordinance.

For projects located outside of Indian Country, referrals to Assisted Units shall be made through the local Coordinated Entry System (“**CES**”) or another comparable prioritization system based on greatest need. All referral protocols for Assisted Units shall be developed in collaboration with the local Continuum of Care and implemented consistently with the Program Requirements.

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EXHIBIT D**24. Participation in Statewide HDIS/HMIS**

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

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 completion of construction of the Project.

25. Affordability Covenant

A. Permanent Supportive Housing Projects located outside Indian Country. Grantees shall duly encumber 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 Tribal 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 Supportive Housing Projects located within the boundaries of Indian Country, shall be duly encumbered with a 25-year Affordability Covenant with the aforementioned terms and conditions and as further detailed in Exhibit E, shall be:

- 1) With respect to trust or restricted land:

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- a) approved by and recorded with BIA with respect to trust or restricted land, and any residential leases of Tribal trust or restricted land shall be approved by the BIA in accordance with 25 C.F.R. Part 162; and
 - b) recorded with the County for notice purposes; or
- 2) recorded with the county recorder with respect to fee land located within Indian Country.
- 3) Proof of recordation shall be provided:
 - a) within 30 days of execution of this Agreement if the Tribal Grantee is the fee owner, or the legal beneficiary of trust or restricted land; or
 - b) within six months of execution of this Agreement if Tribal Grantee is acquiring the land. Proof of recordation with the BIA may be demonstrated by a Certified TSR reflecting the recording of the Affordability Covenant, correspondence from the BIA that the Affordability Covenant has been recorded, or other documentation acceptable to the Department. If proof of recordation from the BIA cannot be provided in accordance with the prescribed time period, Tribal Grantee may request an extension of time that shall not be unreasonably denied by the Department.
- C. The Affordability Covenant shall require integration of the Tribal Homekey+ Population within all entrances, common areas, and buildings that comprise the Project.
- D. The Affordability Covenant shall include occupancy and rent restrictions that maintain the Project's accessibility to the Tribal Homekey+ Population over the full term of the Affordability Covenant.
- E. All Affordability Covenants are subject to the advance written approval of the Department, and shall be acceptable to the Department in form, substance, and priority. Project-specific provisions and deadlines are set forth in Exhibit E of this Agreement.

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26. **Restrictions on Sales, Transfers, and Encumbrances**

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

27. **Retention, Inspection, and Audit of Records**

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

HCD or its designee shall have the right, upon reasonable notice, to remotely obtain, review and copy all records and supporting documentation pertaining to performance under this Agreement. The Grantee agrees to provide HCD, or its designee, with any relevant information requested. The Grantee agrees to give HCD or its designee access to its premises, upon reasonable notice and during normal business hours, and under tribal supervision, for the purpose of verifying compliance and progress of the Tribal Homekey+ Program commitments under this Agreement, such as inspection of buildings, project sites, and other real property funded under the Program. HCD retains the right to impose a corrective action plan on the Grantee, should HCD identify noncompliance with grant requirements.

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

If there are audit findings, the Grantee shall submit a detailed response to the Department for each audit finding. The Department will review the response. If the Department determines, in its sole and absolute discretion, that the response is satisfactory, the Department will conclude the audit process and notify the Grantee in

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writing. If the Department determines, in its sole and absolute discretion, that the response is not satisfactory, the Department will contact the Grantee, in writing, and explain the action required to cure any audit deficiencies. Such action could include the repayment of ineligible costs or other remediation.

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

28. **Site Inspection**

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

29. **Compliance with State and Federal Laws, Rules, Guidelines, and Regulations**

Grantee agrees to comply with all state and federal laws, rules, guidelines, and regulations that are applicable to the Project, including those that pertain to construction, health and safety, labor, fair employment practices, and equal opportunity.

30. **Updated Information**

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

31. **Survival of Obligations**

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

32. **Litigation**

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

33. **Entire Agreement; Severability**

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

34. **Modification or Waiver under AB 1010**

The Department reserves the right to waive or modify any requirement under this Agreement, or any Program Requirement, as authorized by and in accordance with Assembly Bill No. 1010 (Chapter 660, Statutes of 2019), as amended by Assembly Bill No. 1878 (Chapter 266, Statutes of 2024),, which is codified at Health and Safety Code section 50406, subdivision (p)(“**AB 1010**”). Any special conditions that result from an AB 1010 waiver or modification will be further described in Exhibit E of this Agreement.

35. **Waivers**

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

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36. **Single Audit Requirements**

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

37. **Disputes**

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

38. **Consent**

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

39. **Grantee Liability**

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

40. **Defense and Indemnification**

Grantee agrees to defend, indemnify, and hold harmless the Department, and its appointees, agents, employees, and officers, from any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), which may arise in connection with Grantee's use of the Grant funds and

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performance under this Agreement. If any attorney, including the California Attorney General, is engaged by the Department to enforce, construe, or defend any provision of this Sect, with or without the filing of any legal action or proceeding, Grantee shall, individually or jointly, pay to the Department, immediately upon demand, the amount of all attorneys' fees and costs incurred by the Department in connection therewith.

41. **Time Is of the Essence**

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

42. **Limited Waiver of Sovereign Immunity**

Except as otherwise expressly provided below, Grantee reserve[s] all of [its/their] inherent sovereign rights, including sovereign immunity from unconsented suit or legal proceedings. However, [Grantee] expressly, unequivocally and irrevocably grants to the Department, its successors and assigns (including any third party purchasers under any foreclosure or other enforcement proceedings), and another California state agency responsible for the management, preservation and enforcement of the Department's rights, remedies, security interests, benefits, obligations and responsibilities pursuant to the Tribal Homekey+ Program Requirements, and under this Agreement (collectively, the "Tribal Homekey+ Grant Documents") governing the Project (such persons being collectively, the "Department"), and to no other party, a limited waiver of sovereign immunity (and any defense based thereon) with respect to the Tribal Homekey+ Grant Documents 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 and enforce the following rights and remedies granted to the Department pursuant to the Tribal Homekey+ Grant Documents, including: (i) the enforcement of any provision of the Tribal Homekey+ Grant Documents, or of any of the rights, remedies and security interest granted to the Department therein; (ii) any claim, action or legal proceeding (including the appointment of a receiver and any foreclosure and/or other enforcement proceeding) arising under or related to the Tribal Homekey+ Grant Documents; (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 [Grantee] or [Grantee to pay direct and actual damages resulting from any breach of the Tribal Homekey+ Grant Documents, or an order from a court of competent jurisdiction for injunctive relief requiring or prohibiting [Grantee] to take certain action; (iv) claim or

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action to interpret and/or enforce the provisions of the Tribal Homekey+ Grant Documents 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 the Tribal Homekey+ Grant Documents; and (vi) the right to seek injunctive relief, indemnification, attorneys' fees and specific performance pursuant to the Tribal Homekey+ Grant Documents. [Grantee] 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. Grantee does not waive sovereign immunity for lawsuits by third parties or disputes between the parties not arising from the Tribal Homekey+ Grant Documents. This waiver does not allow, and the Department separately agrees not to bring, any claims, actions, or lawsuits against any Grantee individual, including Grantee officials, employees, agents, and others acting on behalf of Grantee or an official capacity. The Department will sue or otherwise enforce its rights, remedies, and security interests against only Grantee as an entity. This limited waiver shall not, under any circumstances, allow the cumulative award against [Grantee] to exceed the Grant with attorney's fees and costs, and in no instance shall any enforcement of any kind whatsoever be allowed against any assets of Grantee other than the Grant funding, revenues from the Project, and the real property on which the Project is located and any other collateral encumbered by the Tribal Homekey+ Grant Documents.

Grantee 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. Grantee 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].

43. Jurisdiction and Venue

Except as otherwise expressly provided in this Agreement, the parties intend that any causes of action and/or proceedings to enforce, construe, and determine any

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disputes or claims regarding the Tribal Homekey+ Grant Documents as well as any default, breach of contract, injunctive relief, or specific performance remedies, regarding the same, and any actions to foreclose or otherwise realize upon any collateral or security interests securing the obligations evidenced by the Tribal Homekey+ Grant Documents be brought and prosecuted to completion as described below:

Grantee hereby consents to any court of competent 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 the Tribal Homekey+ Grant Documents, 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 Tribal Homekey+ Grant Documents. Grantee acknowledges that such consent is given without in any way limiting its other rights and remedies, and the Department shall be entitled in said court 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 real property where the Project is located thereon 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 said court or other governmental body of the [INSERT TRIBE] or federal government, is hereby waived and deemed satisfied by Grantee, and Grantee and the Department shall not assert the same in said court, as a bar or abatement to the claims of the other.

Grantee agrees that any judicial action, suit, or counterclaim initiated by Grantee against the Department will be in a court of competent jurisdiction. Such waiver is limited to the rights, remedies, default, and enforceability of the provisions of the Tribal Homekey+ Grant Documents, and transfer or assignment of Grantee interest in the Project or Tribal Homekey+ Grant Documents.

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