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CITY of Fresno  
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Fresno, CA 93721-3603

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This Encampment Resolution Funding (ERF) Agreement is recorded at the request and for the benefit of the CITY of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

CITY OF FRESNO

By: \_\_\_\_\_  
Georgeanne A. White  
CITY Manager

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

CITY OF FRESNO  
ENCAMPMENT RESOLUTION FUNDING (ERF)  
ADMINISTERED BY THE CALIFORNIA INTERAGENCY COUNCIL ON HOMELESSNESS  
(CAL ICH) PROGRAM  
AGREEMENT

by and between

CITY OF FRESNO,  
a municipal corporation

and

DIVISADERO PRIME LLC,  
A limited liability company

regarding

Divisadero Commons  
510 E Divisadero Street Fresno Ca 93721

## TABLE OF CONTENTS

	<b><u>Page</u></b>
RECITALS	1
ARTICLE 1. DEFINITIONS	2
ARTICLE 2. TERMS OF THE RELEASE OF FUNDS	4
ARTICLE 3. REPRESENTATION AND WARRANTIES OF DEVELOPER.	5
ARTICLE 4. WARRANTIES AND COVENANTS BY DEVELOPER.	6
ARTICLE 5. PROPERTY MAINTENANCE	10
ARTICLE 6. CONSTRUCTION OF THE PROJECT	13
ARTICLE 7. OPERATIONS OF THE PROJECT	18
ARTICLE 8. INSURANCE AND INDEMNITY AND BONDS	20
ARTICLE 9. DEFAULT AND REMEDIES.	24
ARTICLE 10. GENERAL PROVISIONS.	26

**CITY OF FRESNO  
ENCAMPMENT RESOLUTION FUNDING (ERF)  
GRANT AGREEMENT  
WITH DIVISADERO PRIME, LLC, A LIMITED LIABILITY COMPANY**

This ERF Program Agreement (Agreement) is entered into on \_\_\_\_\_, 2024, by and between the CITY of Fresno, a municipal corporation, acting through its Planning and Development Department - Community Development Division (CITY), and Divisadero Prime LLC, a limited liability company (DEVELOPER).

A. WHEREAS, the CITY has received an Encampment Resolution Funding (ERF) grant from the California Interagency Council on Homelessness. (CAL ICH), pursuant to Chapter 7 (commencing with Section 50250) of Part 1 of division 31 of the Health and Safety Code. Amended by SB 197 (statutes of 2022, Chapter 70, Sec 3-8, effective June 30, 2022).

B. WHEREAS, the CITY on February 26, 2024, issued a Notice of Funding Availability (NOFA) 12402087 for an affordable housing project to be constructed to advance the supply of affordable rental housing for encampment populations, as defined by CAL ICH in Notice C23-ERF-2-R-10016, attached as EXHIBIT "A", within the CITY of Fresno geographic area.

C. WHEREAS, the CITY received a proposal from the DEVELOPER and desires to move forward with the proposed project.

D. WHEREAS the DEVELOPER proposes to develop a minimum of 20 units of new affordable rental housing restricted to households with average incomes of no more than 60% of Area Median Income (AMI) with a minimum of 30% of units supporting households with an average income of no more than 30% of AMI.

E. WHEREAS DEVELOPER desires to act as the owner/DEVELOPER exercising effective project control, as to the construction and development of affordable housing on land owned by DEVELOPER located at 510 E Divisadero Fresno Ca 93721 (APN 465-020-02) (PROPERTY), as more particularly described in EXHIBIT "B" Legal Description.

F. WHEREAS DEVELOPER desires to construct a minimum of 20 factory-built studio homes, each being a minimum of 288 square feet with a kitchen, bathroom, and living/sleeping area and related on/off site improvements (Project) as more particularly described in EXHIBIT "C" – Project Description and Schedule, incorporated herein.

G. WHEREAS, the Project will follow objectives of the ERF Program as defined; Program's objective is to fund actionable, person-centered local proposals that resolve the experience of unsheltered homelessness for people residing in encampments. Resolving these experiences of homelessness will necessarily address the safety and wellness of people within encampments, resolve critical encampment concerns, and transitional individuals into interim

shelter with clear pathways to permanent housing or directly into permanent housing, using data informed, non-punitive, low barrier, person-centered, Housing First, and coordinated approaches. These projects must comply with the principles as defined in Welfare and Institutions Code Section 8255. Proposals may bolster existing, successful models and/or support new approaches that provide safe, stable, and ultimately permanent housing for people experiencing homelessness in encampments. Expenditures shall be consistent with the legislative intent of the authorizing statute to ensure the safety and wellness of people experiencing homelessness in encampments.

H. WHEREAS, to further its goal to increase the supply of housing for Qualifying Populations within the CITY of Fresno, the CITY desires to assist the DEVELOPER by providing One Million Dollars (\$1,000,000) from the ERF 2 grant program, upon the terms and conditions in this Agreement to be secured by the Affordable Housing covenants attached as EXHIBIT “D” – Declaration of Restrictions

I. WHEREAS, the CITY has determined that it has ministerial authority to approve this Project, which is statutorily exempt from CEQA pursuant to Article 19, Statutory Exemptions, Section 15332/Class 32 of the CEQA Guidelines.

J. WHEREAS, the CITY has determined that this Agreement is in the best interest of, and will materially contribute to, the Housing Element of the General Plan. Further, the CITY has found that the Project: (i) will have a positive influence in the neighborhood and surrounding environs, (ii) is in the vital and best interest of the CITY, and the health, safety, and welfare of CITY residents, (iii) complies with applicable federal, State, and local laws and requirements, (iv) will increase, improve, and preserve the community’s supply of Extremely Low Income Housing available at an affordable cost to Extremely Low Income households, as defined hereunder, (v) planning and administrative expenses incurred in pursuit hereof are necessary for the production, improvement, or preservation of Extremely Low Income Housing, and (vi) will comply with any and all owner participation rules and criteria applicable thereto.

K. WHEREAS, DEVELOPER has reviewed the requirements for development of the Project and ERF requirements, as well as affordability requirements for funding.

NOW, THEREFORE, IN CONSIDERATION of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledge, the parties agree as follows:

### **ARTICLE 1. DEFINITIONS**

The following terms have the meaning and content set forth in this Article wherever used in this Agreement, attached exhibits or attachments that are incorporated into this Agreement by reference.

1.1 Affirmative Marketing means a good faith effort to attract eligible persons of all racial, ethnic, and gender groups, in the housing market area, to rent the proposed Project

Units developed on the eligible Property, as hereinafter defined.

1.2 Affordability Period means the minimum period of 30 years commencing from the date the City records a Certification of Completion.

1.3 Affordable Housing means 20 units in the Project consisting of rental housing restricted to households with average incomes of no more than 60% of AMI with a minimum of 30% of units supporting households with an average income of no more than 30% of AMI.

1.4 Certificate of Completion means that certificate issued, in the form attached as EXHIBIT "E" to the DEVELOPER by the CITY evidencing completion of the Project and a release of construction related covenants for the purposes of the Agreement.

1.5 Commencement of Construction means the time the DEVELOPER or the DEVELOPER'S construction contractor begins substantial physical work on the Property, including, without limitation, delivery of materials and any work, beyond maintenance of the Property in its status quo condition, which shall take place in accordance with the Project Schedule.

1.6 Completion Date means the date the CITY issues a recorded Certificate of Completion for the Project.

1.7 Declaration of Restrictions means the Declaration of Restrictions in the form attached hereto as EXHIBIT "D", which contains the affordability covenants and requirements of this Agreement which shall run with the land and which the DEVELOPER shall record or cause to be recorded against the Property no later than Commencement of Construction.

1.8 Event of Default shall have the meaning assigned to such term under Section 9.1 hereunder.

1.9 Extremely Low Income means 30% of AMI.

1.10 Hazardous Materials means any hazardous or toxic substances, materials, wastes, pollutants or contaminants which are defined, regulated or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants" or "toxic substances" under federal or State environmental and health safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating or occupying a housing project, to the extent and degree that such substances are stored, used and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.11 Household means persons occupying the rental units within the Project.

1.12 Notice of Cancellation means the formal written cancellation by the CITY upon the written request of the DEVELOPER where the parties terminate their contractual relationship in whole or in part as provided hereunder, without default.

1.13 Notice of Completion means a notice filed by the owner of a construction project, in the county records office, stating that construction has been completed.

1.14 Operating Expenses means actual, reasonable and customary (for comparable quality, construction of rental housing in Fresno County) costs, fees and expenses directly incurred, paid and attributable to the operation, maintenance and management of the completed Project in a calendar year, including, without limitation; painting, cleaning, repairs, alterations, landscaping, utilities, refuse removal, certifications, permits and licenses, sewer charges, real and personal property taxes, assessments, insurance, security, advertising and promotion, janitorial services, cleaning and building supplies, purchasing, repair, servicing and installation of appliances, equipment, fixtures and furnishings which are not paid from the capital replacement reserve, fees and expenses of property management and common area expenses, fees and expenses of accountants, attorneys, and other professionals, the cost of social services, repayment of any completion of operating loans including any and all deferred contractor's fees per the Budget, made to the DEVELOPER, its successors or assigns, and other actual operating costs and capital costs which are incurred and paid by the DEVELOPER, but which are not paid from reserve accounts.

1.15 Performance Milestones means the indicators and metrics of progress and performance that are identified as such in Exhibit F, attached hereto. DEVELOPER'S failure to satisfy any one of the Performance Milestones will constitute a breach of this Agreement and will entitle the CITY to exercise any and all available remedies, including the cancellation of this Agreement and reimbursement of ERF funds paid to DEVELOPER pursuant to this Agreement.

1.16 Project means the development of the Property for the placement of 20 factory built affordable housing rental units to be preserved for Affordable Housing.

1.17 Project Schedule means the schedule for commencement and completion of the Project included in EXHIBIT "G", attached hereto.

1.18 Project Units means the affordable units provided developed with the ERF Grant funds by DEVELOPER and preserved as Affordable Housing Units for the duration of the Affordability Period.

1.19 Project Unit Household means the tenant(s) occupying the ERF-assisted Units within the Project.

1.20 Property means the site located at 510 E. Divisadero and approved to develop and place the Project Units.

1.21 Rent means the total monthly payment a tenant pays for an Affordable Unit including the following: use and occupancy of the Unit and land and associated facilities, including parking, provided by the DEVELOPER (other than parking services acquired by tenants on an optional basis), any separately charged fees or service charges assessed by the DEVELOPER which are required of all tenants (other than security deposits), the cost of an adequate level of service for utilities paid by the tenants (including garbage collection, sewer, water, common area electricity, but not telephone or internet service), any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the DEVELOPER, and paid by the tenant. Rent does not include payments for any optional services provided by the DEVELOPER.

## **ARTICLE 2. TERMS OF THE RELEASE OF THE ERF FUNDS TO DEVELOPER**

2.1 The CITY agrees to provide a grant of \$1,000,000 of ERF funds, pursuant to the terms and conditions of this Agreement.

2.2 Conditions of the ERF Funding. Upon execution of this Agreement by DEVELOPER, the CITY agrees to provide \$1,000,000 of ERF funding to the DEVELOPER for the development of 20 affordable factory-built homes and site development of the Property located at 510 E Divisadero in Fresno California.

2.3 Performance Milestones. Failure to satisfy any of the performance milestones will constitute a breach of this Agreement and entitles the CITY to reimbursement by DEVELOPER to CITY of all ERF funding paid by CITY pursuant to this Agreement. In such instance, the CITY may also cancel this Agreement without incurring any damages or other payments to the DEVELOPER.

2.4 Term of Agreement. This Agreement is effective upon the date of full execution and shall remain in force with respect to the Project for the duration of the Affordability Period unless earlier terminated as provided herein. Upon expiration of the 30-year Affordability Period, this Agreement will terminate. It is understood and agreed upon, however, if for any reason other than a material breach by DEVELOPER this Agreement should be terminated, the CITY agrees to record a Notice of Cancellation regarding this Agreement upon the written request of the DEVELOPER.

2.5 Incorporation of Documents. If applicable, the Notice of Funding Availability, the CITY Council approved minutes, approving this Agreement, the ERF regulations and all exhibits, attachments, documents, and instruments referenced herein, as now in effect and as may be amended from time to time, constitute part of this Agreement and are incorporated herein by reference. All such documents have been provided to the parties herewith or have been otherwise provided to or procured by the parties and reviewed by each of them prior to execution.

2.6 Covenants of DEVELOPER. The DEVELOPER for itself and its agents/assigns covenants and agrees to comply with all the terms and conditions of this Agreement and the requirements of the ERF funding, as such may be amended from time to time.

## **ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

3.1 Existence and Qualification. The DEVELOPER, represents and warrants to the CITY as of the date hereof, that the DEVELOPER is a duly organized California limited liability company in good standing with the State of California; the DEVELOPER has the requisite power, right, and legal authority to execute, deliver, and perform its obligations under the this Agreement and has taken all actions necessary to authorize the execution, delivery, performance, and observance of its obligations under this Agreement. This Agreement, when executed and delivered by the DEVELOPER, is enforceable against the DEVELOPER in accordance with its respective terms, except as such enforceability may be limited by: (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws of general applicability affecting the enforcement of creditors' rights generally, and (b) the application of general principles of equity without the joinder of any other party.

3.2 No Litigation Material to Financial Condition. The DEVELOPER represents

and warrants to the CITY as of the date hereof that, except as disclosed to the CITY in writing, no litigation or administrative proceeding before any court or governmental body or agency is now pending, nor, to the best of the DEVELOPER's knowledge, is any such litigation or proceeding now threatened, or anticipated against the DEVELOPER that, if adversely determined, would have a material adverse effect on the financial condition, business, or assets of the DEVELOPER or on the operation of the Project.

3.3 No Conflict of Interest. The DEVELOPER represents and warrants to the CITY as of the date hereof that no officer, agent, or employee of the CITY directly or indirectly owns or controls any interest in the DEVELOPER, and no person, directly or indirectly owning or controlling any interest in the DEVELOPER, is an official, officer, agent, or employee of the CITY.

3.4 No Legal Bar. The DEVELOPER represents and warrants to the CITY, as of the date hereof that the execution, delivery, performance, or observance by the DEVELOPER of this Agreement will not, to the best of the DEVELOPER's knowledge, materially violate or contravene any provisions of: (a) any existing law or regulation, or any order of decree of any court, governmental authority, bureau, or agency; (b) governing documents and instruments of the DEVELOPER; or (c) any mortgage, indenture, security agreement, contract, undertaking, or other agreement or instrument to which the DEVELOPER is a party or that is binding on any of its properties or assets, the result of which would materially or substantially impair the DEVELOPER's ability to perform and discharge its obligations or its ability to complete the Project under this Agreement.

3.5 No Violation of Law. The DEVELOPER represents and warrants to the CITY as of the date hereof that, to the best of the DEVELOPER's knowledge, this Agreement and the operation of the Project as contemplated by the DEVELOPER, do not violate any existing federal, state, or local laws or regulations.

3.6 No Litigation Material to Project. The DEVELOPER represents and warrants to the CITY as of the date hereof, except as disclosed to, and approved by the CITY in writing, there is no action, proceeding, or investigation now pending, or any basis therefor known or believed to exist by the DEVELOPER that questions the validity of this Agreement, or of any action to be taken under this Agreement, that would, if adversely determined, materially or substantially impair the DEVELOPER's ability to perform and observe its obligations under this Agreement, or that would either directly or indirectly have an adverse effect or impair the completion of the Project.

3.7 Assurance of Governmental Approvals and Licenses. The DEVELOPER represents and warrants to the CITY, as of the date hereof, that the DEVELOPER has obtained and, to the best of the DEVELOPER's knowledge, is in compliance with all federal, state, and local governmental reviews, consents, authorizations, approvals, and licenses presently required by law to be obtained by the DEVELOPER for the Project as of the date hereof.

#### **ARTICLE 4. WARRANTIES AND COVENANTS OF THE DEVELOPER**

The DEVELOPER, for itself and its development team covenants and warrants that:

4.1 Compliance with Agreement. The DEVELOPER warrants, covenants and agrees that, in accordance with the requirements of this Agreement, upon any uncured default by the DEVELOPER within the meaning of Article 9 of this Agreement, the CITY may



suspend or terminate this Agreement and all other agreements with the DEVELOPER without waiver or limitation of rights/remedies otherwise available to the CITY.

4.2 Conflict of Interest. The DEVELOPER warrants, covenants and agrees that it shall comply with the Conflict-of-Interest requirements including, without limitation, that no agent affiliate or immediate family member of the DEVELOPER may occupy a Project Unit. The DEVELOPER understands and acknowledges that no employee, agent, officer or elected official or appointed official of the CITY, who exercises any functions or responsibilities with respect to the Project, or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for anyone with which that person has family or business ties, during his or her tenure or for one year thereafter.

4.3 Construction Standards. The DEVELOPER shall cause placement of the proposed Project Units assisted under this Agreement in compliance with all applicable local codes, ordinances, and zoning requirements in effect at the time of issuance of CITY building permits.

4.4 Covenants and Restrictions to Run with the Land. The CITY and the DEVELOPER expressly warrant, covenant and agree to ensure that the covenants and restrictions set forth in this Agreement are recorded and will run with the land, provided, however, that, on expiration of this Agreement such covenants and restrictions shall expire.

A. The CITY and the DEVELOPER hereby declare their understanding and intent that the covenants and restrictions set forth herein directly benefit the land by: (a) enhancing and increasing the enjoyment and ownership of the proposed Project by a certain Extremely Low-Income Households, and (b) making possible the obtaining of advantageous financing for construction.

B. The DEVELOPER covenants and agrees with the CITY that after issuance of a recorded Certification of Completion for the Project until the expiration of the Affordability Period, DEVELOPER shall cause all Project Units to be rented as Affordable Housing for households with average incomes of no more than 60% AMI with a minimum of 30% of the units supporting Extremely Low-Income households, at or below 30% of AMI.

C. Without waiver or limitation, the CITY shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any covenants and restrictions, and shall, in addition, be entitled to damages available under law or contract for any injuries or losses resulting from any violations thereof.

D. All present and future owners of the Property and other persons claiming by, through or under them shall be subject to and shall comply with the covenants and restrictions. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the covenants and restrictions, as may be amended or supplemented from time to time, are accepted and ratified by such future owners, tenant or occupant, and all such covenants and restrictions shall be covenants running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such covenants and restrictions were recited and stipulated

at length in each and every deed, conveyance, mortgage or lease thereof.

E. The failure or delay at any time of the CITY or any other person entitled to enforce any such covenants or restrictions shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

4.5 Other Laws and Regulations. The DEVELOPER covenants and agrees with the CITY that, in addition to complying with the federal laws and regulations already cited in this Agreement, the DEVELOPER has reviewed, and shall comply with and require all its contractors and subcontractors on the Project to comply with, all other state laws and regulations that apply to the ERF, including, without limitation the following:

A. The Project is not located in a tract identified by the Federal Emergency Management Agency as having special flood requirements.

B. The DEVELOPER and its contractors, subcontractors and service providers for the Project, shall comply with all applicable local, State and federal requirements concerning equal employment opportunity, including compliance with Executive Order (E.O.) 11246, "Equal Employment Opportunity", as amended by E.O. 11375, (amending E.O. 11246 Relating to Equal Employment Opportunity), and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor".

C. The provisions of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), in accordance with the Act and with 'UD's rules at 24 CFR part 24, subpart F.

D. Title 8 of the Civil Rights Act of 1968 PL. 90-284.

E. The Housing and Community Development Act of 1974.

F. Clean Water Requirements 33 U.S.C. 1251.

G. Civil Rights Requirements, 29 U.S.C. 623, 42 U.S.C. 2000, 42 U.S.C. 6102, 42 U.S.C 12112, 42 U.S.C. 12132, 49 U.S.C 5332, 29 C.F.R. Part 1630, 41 C.F.R. and Part 60 et seq.

H. Violence Against Women Act (VAWA), 24 CFR 92.359 and 24 CFR 92.504(c)(3)(v)(F), including but not limited to notice requirements, obligations under emergency transfer plan, bifurcation of lease requirements, imposition of requirements for the duration of the period of affordability, and inclusion of VAWA lease addendum requirements.

4.6 Reporting Requirements. The DEVELOPER warrants, covenants and agrees with the CITY that it shall submit annual income reports to the CITY.

4.7 Housing Affordability. The DEVELOPER covenants and agrees with the CITY that the Project Units will be affordable to households with average incomes of no more than 60% AMI with a minimum of 30% of the units supporting Extremely Low-Income households and other requirements during the Affordability Period. The Project Units, at a minimum, shall be rented to and occupied by, or, if vacant, available for rental and occupancy by (a)

person(s) whose annual household income at the time of initial occupancy is not greater than 60% of AMI for the Affordability Period except upon foreclosure or other transfer in lieu of foreclosure following default. However, if at any time following a transfer by foreclosure or transfer in lieu of foreclosure, but still during the Affordability Period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes such owner of record those whom such owner of record has or had business ties, obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms. In the event the DEVELOPER fails to comply with this Section, or the Affordability Period is not revived following transfer by foreclosure or transfer in lieu of foreclosure, the DEVELOPER shall return to the CITY all tiny homes disbursed to the DEVELOPER by the CITY.

4.8 Terminated Projects. The DEVELOPER understands and agrees that, if the Project is terminated before completion, either voluntarily or otherwise, such constitutes an ineligible activity, and the CITY will be entitled to reimbursement of any and all ERF funds awarded to DEVELOPER for Project.

## **ARTICLE 5. PROPERTY MAINTENANCE**

The DEVELOPER covenants and agrees to the following, for the entire term of the Agreement.

5.1 Adequate Repair and Maintenance. The DEVELOPER during its time on title shall cause the maintenance of the Project and Property to be in compliance with all applicable codes, laws, and ordinances. The CITY reserves the right to require the DEVELOPER to change the property management company for the Property if it is determined through annual property monitoring that the property management company is not performing satisfactorily.

5.2 Affordable Rental Housing. The DEVELOPER covenants and agrees that the Project shall constitute Project Units for rent to households with average incomes of no more than 60% AMI with a minimum of 30% of the units supporting Extremely Low-Income Rental Households during the entire Affordability Period. This covenant shall remain in effect and run with and restrict the land during the entirety of the Affordability Period. In the event the DEVELOPER fails to comply with the time period in which the Project Units constitute Affordable Housing, the CITY shall without waiver or limitation, be entitled to injunctive relief, as the DEVELOPER acknowledges that damages are not adequate remedy at law for such breach.

5.3 Compliance with Environmental Laws. The DEVELOPER shall cause the Project Units to be in compliance with, and not to cause or permit the Project to be in violation of, any Hazardous Materials law, rule, regulation, ordinance, or statute. Although the CITY will utilize its employees and agents for regular inspection and testing of the eligible Property, the DEVELOPER agrees that, if the CITY has reasonable grounds to suspect any such violation, the DEVELOPER shall be entitled to thirty (30) days' notice and opportunity to cure such violation. If the suspected violation is not cured, the CITY shall have the right to retain an independent consultant to inspect and test the eligible Property for such violation. If a violation is discovered, the DEVELOPER shall pay for the reasonable cost of the independent consultant.

Additionally, the DEVELOPER agrees:

A. That the CITY shall not be directly or indirectly responsible, obligated or liable with the inspection, testing, removal or abatement of asbestos or other hazardous or toxic chemicals, materials, substances, or wastes and that all cost, expense and liability for such work shall be and remain solely with the DEVELOPER;

B. Not to transport to, or from, the proposed Property, or use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the Property, or surrounding real estate, or transport to or from the Project site, or surrounding real estate, any hazardous or toxic chemicals, materials, substance, or wastes or allow any person or entity to do so except in such amounts and under such terms and conditions permitted by applicable laws, rules, regulations, ordinances, and statutes;

C. To give prompt written notice to the CITY of the following:

(i) Any proceeding or inquiry by any governmental authority with respect to the presence of any hazardous or toxic chemicals, materials, substance, or waste in or on the eligible Property or the surrounding real estate or the migration thereof from or to other property;

(ii) All claims made or threatened by any third party against the DEVELOPER, or such properties relating to any loss or injury resulting from any hazardous or toxic chemicals, materials, substance, or waste; and

(iii) The DEVELOPER's discovery of any occurrence or condition on any real property adjoining or in the vicinity of such properties that would cause such properties or underlying or surrounding real estate or part thereof to be subject to any restrictions on the ownership, occupancy, transferability, or use of the property under any environmental law, rule, regulation, ordinance or statute; and

D. To indemnify, defend, and hold the CITY harmless from any and all claims, actions, causes of action, demand, judgments, damages, injuries, administrative orders, consent agreements, orders, liabilities, penalties, costs, expenses (including attorney's fees and expenses), and disputes of any kind whatsoever arising out of or relating to the DEVELOPER or DEVELOPER's employees', contractors' or agents' use or release of any hazardous or toxic chemicals, materials, substance, or waste on the Property regardless of cause or origin, including any and all liability arising out of or relating to any investigation, site monitoring, containment, cleanup, removal, restoration, or related remedial work of any kind or nature

5.4 Compliance with Laws. The DEVELOPER shall promptly and faithfully comply with, conform to and obey all present and future federal, State and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of this Agreement or otherwise to the Project including without limitation prevailing wage requirements.

5.5 Inspection and Audit of Books, Records and Documents. The DEVELOPER shall account for all expenditures disbursed for the Project pursuant to this Agreement. Any duly authorized representative of the CITY shall, at all reasonable times, have access to and the right to inspect, copy, make excerpts or transcripts, audit, and examine all books of accounts, records, files and other papers or property, and other documents of the

DEVELOPER pertaining to the Project or all matters covered in this Agreement and for up to six years after the expiration or termination of this Agreement.

A. The DEVELOPER will maintain books and records for the Project using generally accepted accounting principles. The DEVELOPER agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures expended or financed for the Project and to keep all invoices, receipts and other documents related to expenditures expended or financed for the completion of the Project, for not less than six years after the expiration or termination of the Agreement. Books and records must be kept accurate and current. For purposes of this section, "books, records and documents" include, without limitation; plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, funding applications, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda, and electronically stored versions of the foregoing. This section shall survive the termination of this Agreement. The CITY may audit any conditions relating to this Agreement at the CITY's expense, unless such audit shows a significant discrepancy in information reported by the DEVELOPER in which case the DEVELOPER shall bear the cost of such audit. This section shall survive the termination of this Agreement.

B. The DEVELOPER will cooperate fully with the CITY in connection with any interim or final audit relating to the Project that may be performed relative to the performance of this Agreement.

5.6 Inspection of Property. Any duly authorized representative of the CITY shall, at all reasonable times and with 72 hours' written notice, have access and the right to inspect the Property until completion of the Project and expiration of the applicable Affordability Period, subject to the rights of the tenants.

5.7 No Other Liens. The DEVELOPER shall not create or incur, or suffer to be created or incurred, or to exist, any additional mortgage, pledge, lien, charge, or other security interest of any kind on the eligible Property, other than those related to the Project's rehabilitation and construction loans in relation to the Project, consistent with the attached Budget, without the prior written consent of the CITY.

5.8 Nondiscrimination. The DEVELOPER shall comply with and cause any and all contractors and subcontractors to comply with any and all federal, State, and local laws with regard to illegal discrimination, and the DEVELOPER shall not illegally discriminate against any persons on account of race, religion, sex, family status, age, handicap, or place of national origin in its performance of this Agreement and the completion of the Project.

5.9 Ownership. Except as required in pursuit hereof, the DEVELOPER shall not sell, lease, transfer, assign or otherwise dispose (Transfer) all or any material part of any interest it might hold in the Property or the Project without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. "Transfer" shall exclude the leasing of any single Unit in the Project. The DEVELOPER shall request CITY's written approval of the granting of the security interests in the Property described in Section 5.8 above.

5.10 Payment of Liabilities. The DEVELOPER shall pay and discharge in the

ordinary course of its business all material obligations and liabilities, the nonpayment of which could have a material or adverse impact on its financial condition, business, or assets or on the operation of the Project, except such obligations and liabilities that have been disclosed to the CITY in writing and are being contested in good faith.

5.11 Report of Events of Default. The DEVELOPER shall promptly give written notice to the CITY upon becoming aware of any Event of Default under this Agreement.

## **ARTICLE 6. CONSTRUCTION OF THE PROJECT**

Without waiver of limitation, the parties agree as follows:

6.1 Pre-Construction Meeting Regarding Processes and Procedures. The CITY may schedule, and the DEVELOPER shall attend, or the DEVELOPER may schedule, and the CITY shall attend a meeting prior to construction for the purpose of outlining the Project processes and procedures.

6.2 Commencement and Completion of Project. The DEVELOPER shall commence construction of the Project, and when completed, record a Notice of Completion of construction of the Project in accordance with the Project Schedule, as identified in EXHIBIT "C", and provide the CITY with a copy of the recordation.

6.3 Contracts and Subcontracts. Consistent with Section 5.3, all hazardous waste abatement, construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise legally authorized to perform the applicable work or service in the State of California and the CITY of Fresno. The DEVELOPER shall provide the CITY with copies of all agreements it has entered into with any and all general contractors or subcontractors for this Project. The DEVELOPER shall require that each such general contractor agreement contain a provision whereby the party(ies) to the agreement, other than the DEVELOPER, agree to: (i) notify the CITY immediately of any event of default by the DEVELOPER thereunder, (ii) notify the CITY immediately of the filing of a mechanic's lien, (iii) notify the CITY immediately of termination or cancellation of the construction agreement on the Project, and (iv) provide the CITY, upon the CITY's request, an Estoppel Certificate certifying that the agreement is in full force and effect and the DEVELOPER is not in default thereunder. The DEVELOPER agrees to notify the CITY immediately of termination or cancellation of any such agreement(s), notice of filing of a mechanic's lien, or breach or default by other party(ies) thereto.

6.4 Damage to Property. To the extent consistent with the requirements of any permitted encumbrance, or as otherwise approved by the CITY, and subject to Article 8 of this Agreement, if any building or improvement constructed on the Property is damaged or destroyed by an insurable cause, the DEVELOPER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications of the Project. Such work or repair shall begin within ninety (90) days after the insurance proceeds are made available to the DEVELOPER and shall be completed within two (2) years thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, the DEVELOPER shall use its best efforts to make up the deficiency.

6.5 Fees, Taxes and Other Levies. The DEVELOPER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority

or utility company with respect to the Property or the Project and shall pay such charges prior to delinquency. However, the DEVELOPER shall not be required to pay and discharge any such charge so long as: (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the CITY, the DEVELOPER deposits with the CITY any funds or other forms of assurances that the CITY, in good faith, may determine from time to time are appropriate to protect the CITY from the consequences of the contest being unsuccessful. The DEVELOPER shall have the right to apply for and obtain an abatement and/or exemption of the Project from real property taxes in accordance with all applicable rules and regulations, including Section 214(g) of the California Revenue and Taxation Code.

6.6 Financing. The DEVELOPER shall promptly inform the CITY of any new financing or funding not included in the budget for Project, and the DEVELOPER shall provide the CITY with copies of all agreements with any and all funding sources for the Project. The DEVELOPER shall require each agreement with any and all funding sources not included in the Budget to contain a provision whereby the party(ies) to the agreement other than the DEVELOPER, if permitted by the party(ies) applicable rules and regulations, agree to notify the CITY immediately of any event of default by the DEVELOPER thereunder. Should the DEVELOPER not comply with all the obligations of this section, the DEVELOPER shall return to the CITY all tiny homes disbursed to the DEVELOPER by the CITY; and the CITY will not be required to provide any further tiny homes to the project. This Section shall survive expiration or termination of this Agreement.

6.7 Inspections. The DEVELOPER shall permit, facilitate, and require its contractors and consultants to permit and facilitate observation and inspection at the Project site by the CITY and other public authorities during reasonable business hours, for the purpose of determining compliance with this Agreement.

6.8 Utilities. The DEVELOPER shall be responsible, at its sole cost and expense, to determine the location of any utilities on the Property(ies) and to negotiate with the utility companies for, and to relocate the utilities, if any, as necessary to complete the Project.

6.9 Insurance and Bonds. The DEVELOPER shall submit for CITY approval bonds, certificates and applicable endorsements for all insurance and bonds required by this Agreement in accordance with Article 8.

6.10 Mechanic's Liens and Stop Notices. If any claim of lien is filed against the Property or a stop notice affecting any financing, the Project Units or funding sources for the Project is served on the CITY or any other third party in connection with the Project, the DEVELOPER shall, within 20 days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the CITY a surety bond in sufficient form and amount, or provide the CITY with other assurance satisfactory to the CITY that the claim of lien or stop notice will be paid or discharged.

If the DEVELOPER fails to discharge, bond or otherwise satisfy the CITY with respect to any lien, encumbrance, charge or claim referred to in Section 6. above, then, in addition to any other right or remedy, the CITY may, but shall not be obligated to, discharge such lien, encumbrance, charge, or claim at the DEVELOPER's expense. Alternatively, the CITY may require the DEVELOPER to immediately deposit with the CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The CITY may use such deposit to satisfy any claim or lien that is adversely determined against the DEVELOPER.

The DEVELOPER hereby agrees to indemnify and hold the CITY harmless from liability for such liens, encumbrances, charges or claims together with all related costs and expenses.

6.11 Permits and Licenses. The DEVELOPER shall submit, for CITY approval, all the necessary permits and licenses required for Commencement of Construction. As the CITY may reasonably request, the DEVELOPER, at its sole cost and expense, shall provide to the CITY copies of any and all permit approvals and authorizations including plot plan, plat, zoning variances, sewer, building, and other permits required by governmental authorities other than the CITY in pursuit of the Project, and for its stated purposes in accordance with all applicable building, environmental, ecological, landmark, subdivision, zoning codes, laws, and regulations. The DEVELOPER is responsible at its sole cost and expense to determine the location of any utilities on the Property and to negotiate with the utility companies to relocate the utilities, if any, as necessary to complete the Project.

6.12 Plans and Specifications. The DEVELOPER will construct the Project in full conformance with the CITY-approved Development Permit and plans and specifications and modifications thereto approved by the CITY. The DEVELOPER shall obtain the CITY's prior written approval for any modifications to the plans and specifications.

6.13 Project Responsibilities/Public Work-Prevailing Wage Requirements. The DEVELOPER shall be solely responsible for all aspects of the DEVELOPER's conduct in connection with the Project, including but not limited to, compliance with all local, state and federal laws including without limitation, as to prevailing wage and public bidding requirements. The City Council of the CITY of Fresno has adopted Resolution No. 82-297 ascertaining the general prevailing rate of per diem wages and per diem wages for holidays and overtime in the Fresno area for each craft, classification or type of workman needed in the execution of contracts for the CITY. A copy of the resolution is on file at the Office of the CITY Clerk. Actual wage schedules are available upon request at the CITY's Construction Management Office. Without limiting the foregoing, the DEVELOPER shall be solely responsible for the quality and suitability of the work completed and the supervision of all contracted work, qualifications, and financial conditions of and performance of all contracts, subcontractors, consultants, and suppliers. Any review or inspection undertaken by the CITY with reference to the Project and/or payroll monitoring/auditing is solely for the purpose of determining whether the DEVELOPER is properly discharging its obligation to the CITY and shall not be relied upon by the DEVELOPER or by any third parties as a warranty or representation by the CITY as to governmental compliance and/or the quality of work completed for the Project.

6.14 Property Condition. The DEVELOPER shall maintain the Project and all improvements on site in a reasonably good condition and repair (and, as to landscaping, in a healthy condition), all according to the basic design and related plans, as amended from time to time. The DEVELOPER and those taking direction under the DEVELOPER shall: (i) maintain all on-site improvements according to all other applicable law, rules, governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the improvements free from graffiti; (iii) keep the Project Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to on-site improvements; (iv) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials, and (v) enforce tenant lease terms.



6.15 Quality of Work. The DEVELOPER shall ensure that the site development of the Project employs building materials of a quality suitable for the requirements of the Project. The DEVELOPER shall cause completion of the construction of the Project on the Property in full conformance with applicable local, State, and federal laws, statutes, regulations, and building and housing codes.

6.16 Reporting Requirements. The DEVELOPER shall submit to the CITY the following Project reports:

A. Annually, by February 15<sup>th</sup> of each year, and continuing until the termination of this Agreement, the DEVELOPER shall submit an Annual Rent Roll Report to the CITY, Exhibit H Self-Certification of Annual Income. The Annual Report shall include, at a minimum, the following information: occupancy of each Project Unit including the annual income and the household size, the date occupancy commenced, certification from an officer of the DEVELOPER that the Project is in compliance with the Affordability requirements, and such other information the CITY may be required by law to obtain. The DEVELOPER shall provide any additional information reasonably requested by the CITY upon request and at the annual monitoring of the Property by February 15<sup>th</sup> of each year, evidencing the completion of the Project, and continuing until the expiration of this Agreement, the DEVELOPER shall submit proof of property and liability insurance, as required in Article 8, listing the CITY as loss payee.

B. Annually, by February 15<sup>th</sup> of each year, report to the CITY the number of leases that were not renewed or terminated and the reason for such non-renewal or termination.

6.17 Scheduling and Extension of Time; Unavoidable Delay in Performance. It shall be the responsibility of the DEVELOPER to coordinate and schedule the work to be performed so that the Commencement of the Construction and issuance of the Notice of Completion will take place in accordance with the provisions of this Agreement and Project Schedule. The time for performance contained in the Project Schedule shall be automatically extended upon the following:

A. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by: war, insurrection, strike or other labor disputes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by third parties concerning or arising out of this Agreement, or unseasonable weather conditions (force majeure). An extension of time for any of the above specified causes will be granted only if written notice by the party claiming such extension is sent to the other party within 10 calendar days from the date the affected party learns of the commencement of the cause and the resulting delay, and such extension of time is accepted by the other party in writing. In any event, the Project must be completed no later than 180 calendar days after the scheduled completion date specified in this Agreement, notwithstanding any delay caused by that included in this Section.

B. Any and all extensions hereunder shall be by mutual agreement between the CITY and DEVELOPER. The CITY's Planning Director may

administratively extend deadline for up to 180 days cumulatively. Any extension beyond the Director's 180-day cumulative extension shall require CITY Council approval.

6.18 Certificate of Completion. Upon completion of the construction of the Project, the DEVELOPER shall submit to the CITY: 1) certification in writing that the Project has been substantially completed in accordance with the plans and specifications, approved by the CITY; 2) a recorded Notice of Completion; and 3) a request for a recorded Certification of Completion. Upon a determination by the CITY that the DEVELOPER is in compliance with all of the DEVELOPER's construction obligations, as specified in this Agreement, the CITY shall furnish and record, within 30 calendar days of a written request by the DEVELOPER, a recordable Certificate of Completion for the Project in the form attached hereto as EXHIBIT "E". The CITY will not unreasonably withhold or delay furnishing the Certificate of Completion. If the CITY fails to provide the Certificate of Completion within the specified time, it shall provide the DEVELOPER a written statement indicating in what respects the DEVELOPER has failed to complete the Project in conformance with this Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures the DEVELOPER will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon the DEVELOPER taking the specified measures and meeting the specified standards, the DEVELOPER will certify to the CITY in writing of such compliance and the CITY shall deliver and record the Certificate of Completion to the DEVELOPER in accordance with the provisions of this Section.

## **ARTICLE 7. OPERATIONS OF THE PROJECT**

7.1 Operation of the Project. The DEVELOPER shall sell, lease, operate, and manage the Project in full conformity with the terms of this Agreement.

7.2 Occupancy Requirements. The Project Units shall be rented or sold and occupied by, or if vacant, available for rental occupancy by households with average incomes of no more than 60% AMI with a minimum of 30% of the units supporting Extremely Low-Income households, at or below 30% of AMI.

7.3 Leasing the ERF-Assisted Project Units. Before leasing or selling any ERF-Assisted Project Units, the DEVELOPER shall submit its proposed form of lease or purchase and sale agreement for the CITY's review and approval. The DEVELOPER covenants and agrees to utilize only lease or sale agreements that have been approved in advance by the CITY. The CITY shall respond to the DEVELOPER's submission of a sample lease or purchase and sale agreement within 30 days. Should the CITY not respond within 30 days of the lease or purchase and sale agreement submittal, the DEVELOPER shall be authorized to use the submitted sample lease or purchase and sale agreement. Additionally, the DEVELOPER agrees not to terminate the tenancy or to refuse to sell, renew or lease with a tenant of the Units assisted with ERF Funds except for serious or repeated violations of the terms and conditions of the lease agreement, for violation of applicable federal, State, or local law, or for other good cause. Any such termination or refusal to renew must be preceded by not less than 30 days' written notice served by the DEVELOPER or its authorized management entity upon the tenant specifying the grounds for such action. The DEVELOPER agrees it shall annually report to the CITY the number of leases that were not renewed or terminated and the reason for such non-renewal or termination.

7.4 Lease of ERF-Assisted Project Units Provisions. In addition to the ERF requirements and the VAWA lease addendum required in accordance with 24 CFR 92.359(e), the leases are subject to the following:

Each such lease agreement shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for no more than 60% AMI Income household, such Household's rent may be subject to increase to the lesser of: 1) the amount payable by tenant under State or local law; or 2) 30% of the Household's actual adjusted monthly income.

7.5 Property Management. The DEVELOPER shall comply with the following:

A. Management Responsibilities. If the units are owned by The DEVELOPER, they will be directly and/or through its designated management entity, is specifically responsible for all management functions with respect to the Project including, without limitation, the selection of tenants, certification and recertification of Household size and income, evictions, collection of Rents and deposits, construction management, affirmative marketing, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. The CITY shall have no responsibility for such management of the Project.

B. If the unit is sold to a homeowner or to a resident of the unit, Management can be provided by the owner of the unit. The owner will be responsible to provide the DEVELOPER income verification on an annual basis to Divisadero Prime LLC.

7.6 Maintenance and Security. The DEVELOPER shall (i) at its own expense maintain the Project in good condition, in good repair and in decent, safe, sanitary, habitable, and tenantable living conditions for the benefit of the Project Unit occupants. The DEVELOPER shall not commit or permit any waste on or to the Project and shall prevent and/or rectify any physical deterioration of the Project. The DEVELOPER shall maintain the Units in conformance with all applicable federal, State, and local laws, ordinances, codes and regulations, the Final Management Plan, and this Agreement.

7.7 Nondiscrimination. The DEVELOPER shall not illegally discriminate or segregate in the constructed complex, the use, enjoyment, occupancy, or conveyance of any part of the Project or Property on the basis of race, color, ancestry, national origin, religion, sex, marital status, family status, source of income/rental assistance subsidy, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), sexual orientation, or any other arbitrary basis. The DEVELOPER shall otherwise comply with all applicable local, State, and federal laws concerning nondiscrimination in housing. Neither the DEVELOPER nor any person claiming under or through the DEVELOPER, shall establish or permit any such practice or practices of illegal discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants or vendees of any Project Unit or in connection with employment of persons for the construction of any Project Unit. All deeds or contracts made or entered into by the DEVELOPER as to the Project Units or the Project or portion thereof, shall contain covenants concerning nondiscrimination consistent with this section. The DEVELOPER shall include a

statement in all advertisements, notices, and signs for availability of Project Units for rent to the effect that the Development is an Equal Housing Opportunity Provider.

Nothing in this section is intended to require the DEVELOPER to change the character, design, use or operation of the Project; or to require the DEVELOPER to obtain licenses or permits other than those required for the Project.

## **ARTICLE 8. INSURANCE AND INDEMNITY AND BONDS**

Without waiver of limitation, the parties agree as follows regarding the DEVELOPER'S Insurance and Indemnity Obligations:

8.1 Insurance Requirements. (a) Throughout the life of this Agreement, DEVELOPER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, DEVELOPER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve DEVELOPER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by DEVELOPER shall not be deemed to release or diminish the liability of DEVELOPER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DEVELOPER, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability

Coverage Form CG 00 01 and include insurance for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than the following:

- \$2,000,000 per occurrence for bodily injury and property damage
- \$2,000,000 per occurrence for personal and advertising injury
- \$4,000,000 aggregate for products and completed operations
- \$4,000,000 general aggregate applying separately to work performed under the Agreement

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS’ COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYEE LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 diseased each employee.

(v) BUILDERS RISK (Course of Construction) insurance, obtained by the DEVELOPER or subcontractor in an amount equal to the completion value of the Project with no coinsurance penalty provisions. (Only required if the project includes new construction of a building; or renovation of, or addition to, an existing building.)

(vi) CONTRACTOR POLLUTION with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- \$1,000,000 per occurrence
- \$2,000,000 general aggregate per annual policy period

In the event the work involves any lead-based, mold or asbestos environmental hazard, either the Automobile Liability insurance policy or the Pollution Liability insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by the DEVELOPER pursuant to the SLFRF Agreement.

In the event the work involves any lead-based environmental hazard (e.g., lead-based paint), the DEVELOPER’s Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event the DEVELOPER involves any asbestos environmental hazard (e.g., asbestos remediation), the DEVELOPER’s Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event the SLFRF Agreement involves any mold environmental hazard (e.g., mold remediation), the Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and “microbial matter including mold” within the definition of “Pollution” under the policy.

## **UMBRELLA OR EXCESS INSURANCE**

In the event DEVELOPER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

## **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

DEVELOPER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and DEVELOPER shall also be responsible for payment of any self-insured retentions.

## **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice has been given to the CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the DEVELOPER shall furnish the CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the CITY, the DEVELOPER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

The General Liability, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.

The General Liability, Automobile Liability and Pollution Liability insurance policies shall name the CITY, its officers, officials, agents, employees, and volunteers as an additional insured for ongoing and completed operations. All such policies of insurance shall be endorsed so the DEVELOPER's insurance shall be primary, and no contribution shall be required of the CITY.

The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents, and volunteers.

If the DEVELOPER maintains higher limits of liability than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits of liability maintained by the DEVELOPER.

The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the CITY as loss payee.

All insurance policies required including the Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City, its officers, officials, agents, employees, and volunteers.

The DEVELOPER shall furnish the CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the CITY's Risk Manager or his/her designee before work commences. Upon request of the CITY, the DEVELOPER shall immediately furnish the CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Agreement and the final acceptance by the CITY of the work or materials to be performed or supplied thereunder, the DEVELOPER shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the DEVELOPER or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of this Agreement.

## **SUBCONTRACTORS**

If DEVELOPER subcontracts any or all of the services to be performed under this Agreement, DEVELOPER shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the CITY to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, DEVELOPER will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

8.2 Indemnification. To the furthest extent allowed by law, including California Civil Code section 2782, DEVELOPER shall indemnify, defend and hold harmless CITY and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract. DEVELOPER'S obligations as set forth in this section shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, DEVELOPER, whenever there is any causal connection between the DEVELOPER's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, DEVELOPER expressly agrees to undertake a duty to defend CITY and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by DEVELOPER expressly includes all costs of litigation, attorney's fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to DEVELOPER as reasonably determined by CITY.

Upon the tender by CITY to DEVELOPER, DEVELOPER shall be bound and obligated to assume the defense of CITY and any of its officers, officials, employees, agents, or volunteers, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from CITY or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by DEVELOPER that if CITY tenders a defense of a claim on behalf of CITY or any of its officers, officials, employees, agents, or volunteers and DEVELOPER fails, refuses or neglects to assume the defense thereof, CITY and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and DEVELOPER shall be bound and obligated to reimburse CITY and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether CITY provided approval for, or did not review or object to, any insurance DEVELOPER may have procured in accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by CITY, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If DEVELOPER should subcontract all or any portion of the work to be performed under this Contract, DEVELOPER shall require each subcontractor to Indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.

8.3 Property Insurance. The DEVELOPER shall maintain in full force and effect, throughout the remaining life of this Agreement, a policy or policies of property insurance acceptable to the CITY, covering the Project premises, with limits reflective of the value of the Project premises upon issuance of the Certificate of Completion or substantial completion of the project referenced in this Agreement, including fire and Extended Comprehensive Exposure (ECE) coverage in an amount, form, substance, and quality as acceptable to the CITY's Risk Manager. The CITY shall be added by endorsement as a loss payee thereon.



## ARTICLE 9. DEFAULT AND REMEDIES

9.1 Events of Default. The parties agree that each of the following shall constitute an "Event of Default" by the DEVELOPER for purposes of this Agreement after the cure period in Section 9.2 has expired without a cure:

A. The DEVELOPER's failure to obtain and maintain the insurance coverage required under this Agreement;

B. Except as otherwise provided in this Agreement, the failure of the DEVELOPER to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following: (1) the DEVELOPER's material deviation in the Project work specified in the Project Description as identified in this Agreement, without the CITY's prior written consent; (2) the DEVELOPER's use of defective or unauthorized materials or defective workmanship in pursuit of the Project; (3) the DEVELOPER's failure to commence or complete the Project, as specified in this Agreement, unless delay is permitted under Section 6.19 of this Agreement; (4) cessation of the Project for a period of more than fifteen (15) consecutive days (other than as provided at Section 6.19 of this Agreement) prior to submitting to the CITY certification that the Project is complete; (5) any material adverse change in the condition of the DEVELOPER or its development team, or the Project that gives the CITY reasonable cause to believe that the Project cannot be completed by the scheduled completion date according to the terms of this Agreement; (6) the DEVELOPER's failure to remedy any deficiencies in record keeping or failure to provide records to the CITY upon the CITY's request; or (7) the DEVELOPER's failure to comply with any federal, State or local laws or applicable CITY restrictions governing the Project, including but not limited to provisions of this Agreement pertaining to equal employment opportunity, nondiscrimination and lead-based paint;

C. Any representation, warranty, or certificate given or furnished by or on behalf of the DEVELOPER shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that the DEVELOPER concealed or failed to disclose a material fact to the CITY, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to the DEVELOPER inadvertence, the DEVELOPER shall have a 30 day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect;

D. The DEVELOPER shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, State or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within 90 days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under State or federal law, and such judgment or decree is not vacated or set aside within 90 days;

E. The DEVELOPER's failure, inability or admission in writing of its inability to pay its debts as they become due or the DEVELOPER assignment for the benefit of creditors;

F. A receiver, trustee, or liquidator shall be appointed for the DEVELOPER or any substantial part of the DEVELOPER's assets or properties, and not be removed within (10) days;

G. The DEVELOPER's breach of any other material condition, covenant, warranty, promise or representation contained in this Agreement not otherwise identified within this Section.

H. Any substantial or continuous breach by the DEVELOPER of any material obligation owned by the DEVELOPER imposed by any other agreement with respect to the financing, of the Project, whether or not the CITY is a party to such agreement after expiration of all notice and cure periods contained within such document.

9.2 Notice of Default and Opportunity to Cure. The CITY shall give written notice to the DEVELOPER of any Event of Default by specifying: (1) the nature of the event or deficiency giving rise to the default; (2) the action required to cure the deficiency, if any action to cure is possible, and (3) a date, which shall not be less than the lesser of any time period provided in this Agreement, any time period provided for in the notice no less than 10 days, or 30 calendar days from the date of the notice, by which such deficiency must be cured, provided that if the specified deficiency or default cannot reasonably be cured within the specified time, with the CITY's written consent, the DEVELOPER shall have an additional reasonable period to cure so long as it commences cure within the specified time and thereafter diligently pursues the cure in good faith. The CITY acknowledges and agrees that the DEVELOPER shall have the right to cure any defaults hereunder and that notice, and cure rights hereunder shall extend to any and all partners of the DEVELOPER that are previously identified in writing delivered to the CITY in the manner provided in this Agreement.

9.3 Remedies Upon an Event of Default. Upon the happening of an Event of Default and a failure to cure said Event of Default within the time specified, the CITY's obligation to disburse the Project Units shall terminate. The CITY may also at its option and without notice institute any action, suit, or other proceeding in law, in equity or otherwise, which it shall deem necessary or proper for the protection of its interests and may without limitation proceed with any or all of the following remedies in any order or combination that the CITY may choose in its sole discretion:

- A. Terminate this Agreement immediately upon written notice;
- B. Bring an action in equitable relief: (1) seeking specific performance of the terms and conditions of this Agreement, and/or (2) enjoining, abating or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
- C. Pursue any other remedy allowed by law or in equity or under this Agreement; and

## **ARTICLE 10. GENERAL PROVISIONS**

Without waiver of limitation, the parties agree that the following general provisions shall apply in the performance hereof:

10.1 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by the parties hereto, and subject to approval as to form by the CITY Attorney's Office.

10.2 Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party will be entitled to recover from the other party its reasonable 'Attorney's fees and legal expenses.

10.3 Binding on All Successors and Assigns. Unless otherwise expressly provided in this Agreement, all the terms and provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto, and their respective heirs, successors, assigns, and legal representatives.

10.4 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. The execution of this Agreement by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.

10.5 Disclaimer of Relationship. Nothing contained in this Agreement, nor any act of the CITY or of the DEVELOPER, or of any other person, shall in and by itself be deemed or construed by any person to create any relationship of third-party beneficiary, or of principal and agent, of limited or general partnership, or of joint venture.

10.6 Discretionary Governmental Actions. Certain planning, land use, zoning and other permits and public actions required in connection with the Project including, without limitation, the approval of this Agreement, the environmental review and analysis under CEQA or any other statute, and other transactions contemplated by this Agreement are discretionary government actions. Nothing in this Agreement obligates the CITY or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. The CITY cannot take action with respect to such matters before completing the environmental assessment of the Project under CEQA and any other applicable statutes. The CITY cannot and does not commit in advance that it will give final approval to any matter. The CITY shall not be liable, in contract, law or equity, to the DEVELOPER or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

10.7 Effective Date. This Agreement shall be effective upon the date first above written, upon the CITY and the DEVELOPER's complete execution following CITY Council approval and recordation of related documents.

10.8 Entire Agreement. This Agreement represents the entire and integrated agreement of the parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiations, representations or agreements, either written or oral.

10.9 Exhibits. Each exhibit and attachment referenced in this Agreement is, by reference, incorporated into and made a part of this Agreement.

10.10 Expenses Incurred Upon Event of Default. The DEVELOPER shall reimburse the CITY for all reasonable expenses and costs of collection and enforcement, including

reasonable attorney's fees, incurred by the CITY as a result of one or more Events of Default by the DEVELOPER under this Agreement.

10.11 Governing Law and Venue. Except to the extent preempted by applicable federal law, the laws of the State of California shall govern all aspects of this Agreement, including execution, interpretation, performance, and enforcement. Venue for filing any action to enforce or interpret this Agreement will be the CITY of Fresno.

10.12 Headings. The headings of the articles, sections, and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

10.13 Interpretation. This Agreement in its final form is the result of the combined efforts of the parties. Any ambiguity will not be construed in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

10.14 No Assignment or Succession. The DEVELOPER shall not sell, transfer, assign or otherwise dispose of all or a material part of any interest it might hold in the Property without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, upon prior written notice to the CITY, the DEVELOPER shall be permitted to assign its rights and obligations under this Agreement with respect to the Project without the CITY's consent.

10.15 No Third-Party Beneficiary. No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person hired or retained by the DEVELOPER shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, but each such person shall be deemed to have agreed: (a) that they shall look to the DEVELOPER as their sole source of recovery if not paid, and (b) except as otherwise agreed to by the CITY and any such person in writing, they may not enter any claim or bring any such action against the CITY under any circumstances. Except as provided by law, or as otherwise agreed to in writing between the CITY and such person, each such person shall be deemed to have waived in writing all right to seek redress from the CITY under any circumstances whatsoever.

10.16 No Waiver. Neither failure nor delay on the part of the CITY in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by the DEVELOPER therefrom shall be effective unless the same shall be in writing, signed on behalf of the CITY by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the DEVELOPER in any case shall entitle the DEVELOPER to any other or further notices or demands in similar or other circumstances or constitute a waiver of any of the CITY's right to take other or further action in any circumstances without notice or demand.

10.17 Non-reliance. The DEVELOPER hereby acknowledges having obtained such independent legal or other advice as it has deemed necessary and declares that in no manner has it relied on the CITY, its agents, employees, or attorneys in entering into this Agreement.

10.18 Notice. Any notice to be given to either party under the terms of this Agreement shall be given by certified United States mail, postage prepaid, return receipt requested, at

the addresses specified below, or at such other addresses as may be specified in writing by the parties.

If to the CITY: CITY of Fresno  
Planning and Development Department  
Housing and Community Development Division  
2600 Fresno Street, Room 3065  
Fresno, CA 93721-3605

If to DEVELOPER: Divisadero Prime LLC  
Attn: Ben Dreicer  
24930 Balboa Blvd Ste 260002.  
Encino, CA 91426

10.19 Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement will control.

10.20 Recording of Documents. The DEVELOPER agrees to cooperate with the CITY and execute any documents required, promptly upon the CITY's request, and to promptly effectuate the recordation of this Agreement, the Declaration of Restrictions, and any other documents/instruments that the CITY requires to be recorded, in the Official Records of Fresno County, California, consistent with this Agreement.

10.21 Remedies Cumulative. All powers and remedies given by this Agreement shall be cumulative and in addition to those otherwise provided by law.

10.22 Severability. The invalidity, illegality, or un-enforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality, or enforceability of the remaining provisions hereof or thereof.

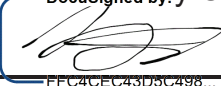
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement in Fresno, California, the day and year first above written.

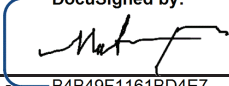
CITY OF FRESNO,  
a California municipal corporation

Divisadero Prime LLC  
A Limited Liability Company

By: \_\_\_\_\_  
Georgeanne A. White  
CITY Manager  
(Attach notary certificate of acknowledgment)

By:   
Ben Dreicer  
President

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

By:   
Marat Dreicer  
Secretary

APPROVED AS TO FORM:  
ANDREW JANZ  
CITY Attorney

By:  6/2024  
Brent Richardson  
Deputy City Attorney

ATTEST:  
TODD STERMER, CMC  
CITY Clerk

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

\_\_\_\_\_ Date

- EXHIBIT A: NOFA
- EXHIBIT B: Legal Description
- EXHIBIT C: Project Description and Schedule
- EXHIBIT D: Declaration of Restriction Form
- EXHIBIT E: Certificate of Completion Form
- EXHIBIT F: Performance Milestones
- EXHIBIT G: Self Certification of Annual Income Form

**EXHIBIT "A"**  
**NOFA NO 12402087**



**Encampment Resolution Funding (ERF)  
Program  
Notice of Funding Availability**

**New Construction  
Affordable Rental Housing**

**Bid File No. 12402087**

Planning and Development Department  
Housing and Community Development Division

PROPOSAL SUBMISSION DEADLINE: (Prior to 5:00 p.m., March 25, 2024)

CONTACT: Kristine Longoria  
**PLANNING AND DEVELOPMENT DEPARTMENT**  
Email: [Kristine.Longoria@fresno.gov](mailto:Kristine.Longoria@fresno.gov)  
Phone: (559) 621-8326



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## Development Opportunity

The City of Fresno (City) is soliciting proposals from housing development organizations to construct, a minimum of 20 units, new affordable rental housing restricted to households with average incomes of no more than 60% Area Median Income (AMI) with a minimum of 30% of units supporting households with an average income of no more than 30% AMI. The selected developer(s) will be required to perform all aspects of development (i.e.: property acquisition, entitlement, environmental clearance, financing, and construction). As an incentive, the City will provide \$1 million in funding through the City of Fresno's Encampment Resolution Funding Program (ERF) towards the development project. Upon selection of a proposed project(s), the City and developer will enter into a funding agreement for a proposed project.

Funding contribution will prioritize developers who meet the objectives of the ERF Program, proposals that address the number of units that will provide a clear pathway to safe, stable permanent housing without preconditions or barriers for people experiencing homelessness in the designated encampment area and foster an environment that prevents residents from falling back into unsheltered homelessness.

An encampment typically includes the following:

- A group of people sleeping outside in the same location for a sustained period.
- The presence of some type of physical structures (e.g., tents, tarps, lean-tos).
- The presence of personal belongings (e.g., coolers, bicycles, mattresses, clothes).
- The existence of social support or a sense of community residents.

The ERF Downtown encampment area is an 8 by 15-block triangle bounded by Highway 99, Fresno Street, and Highway 41. The encampment consists of a decentralized array of small homemade shanties or tents primarily on City sidewalks. The various structures and groups form a connected encampment network, with people frequenting various areas of the encampment daily.

Additional information:

- <https://www.huduser.gov/portal/sites/default/files/pdf/Unsheltered-Homelessness-and-Homeless-Encampments.pdf>
- <https://www.huduser.gov/portal/sites/default/files/pdf/Understanding-Encampments.pdf>

Additionally, proposals should incorporate sustainable design, environmentally friendly construction (Fresno Green Ordinance) method, open space, all in a manner that reflects the City's vision, goals, and objectives for the neighborhood and site.

### ► Scope of Work

The City of Fresno is requesting proposals from qualified and experienced developers for new construction of affordable rental housing developments restricted to households with average incomes of no more than 60% AMI with a minimum of 30% of units to support households with

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an average income of no more than 30% AMI.

### **Eligible Activities**

Construction of new affordable housing

- **Non-Traditional Housing Units** - May include Tiny Homes, Accessory Dwelling Units (ADU), Cottages or other structure that fit the requirements as defined in this bid request.
- **Traditional Multifamily** – May include multiple separate housing units for residential inhabitants contained within one building or several buildings within one complex.

All units must comply with California Building Standards Code, City of Fresno Building Codes, and the Housing Quality Standards of the United States Department of Housing and Urban Development (HUD), 24 CFR 982.401.

The work to be performed by the selected developer(s) includes, but is not limited to, the following:

- Acquire the affordable housing site and complete construction of the project.
- Obtain all necessary entitlements including a rezone, plan amendment, and final subdivision map (if applicable)
- Obtain all the necessary utilities for the property (electricity, gas, sewer, water, cable, garbage, etc.)
- Construct the required on- and off-site improvements.
- Commission environmental assessments and studies (CEQA and NEPA) and comply with mitigation measures.
- Work collaboratively with City Housing and Community Development Division staff on all aspects of the development including design, financing, construction, and monitoring.
- Obtain the necessary bonds and insurances.
- Work with community and/or neighborhood groups as part of the planning process
- Secure senior financing to complete development of the project

**These units are to meet or exceed the following specifications (as defined in 24 CFR 982.401):**

- Each unit is to be at minimum 288 square feet.
  - Each unit is to be designed for an individual or family.
- Each unit is to include a living room, kitchen area, and bathroom.
  - Living room must have at least one window, two electrical outlets, and reasonable space for a bed for sleeping for an individual or family.
  - Kitchen area must include an oven, and a stove or range, a refrigerator suitable for an individual or family, a kitchen sink, at least one electrical outlet, at least one permanent ceiling or wall light fixture, and space for storage/preparation/serving of food.

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- Bathroom must be located in a separate private room and have a flush toilet, a fixed sink basin, a shower or tub, at least one openable window or exhaust ventilation, and at least one permanent ceiling or wall light fixture.
  - Each unit must provide appropriate cooling and heating mechanisms to maintain a thermal environment healthy for the human body.
  - Each unit must have exterior doors that are lockable.
  - Each unit must include at least one battery-operated or hard-wired smoke detector.
  - Each unit must be single level (no loft sleeping areas accessible by stairs)

Each bidder is responsible for reviewing and ensuring that their proposal meets the standards as referenced above. The minimum specifications as defined above are not meant to be an exhaustive list for bidders, but a baseline guide. There must be compliance with all codes as defined in this section for the bid to be considered responsive. It is expected that each bidder will provide at least rough plans of their proposed units.

#### ▶ **Construction Allocation**

- \$1,000,000 million dollars from the City of Fresno's ERF Program funds is available for this project.

#### ▶ **Selection Criteria**

#### **Prioritized Factors**

In awarding projects, funding shall be prioritized for the following:

- Target Population – Proposals that resolve the experience of unsheltered homelessness for people residing in encampments. (10 pts)
- Community Need – Projects that include a documented community need such as publicly accessible plazas or parks, a healthy food grocery store or medical facilities (10 pts)
- Adaptive Reuse – Projects that transform old building into new residences (9 pts)
- Location – Projects that promote new affordable housing in areas of high-opportunity. Location MUST be within City of Fresno limits.(8 pts)
- Climate Change – Projects that are designed to reduce the impact of climate change (7 pts)
- Universal Design – Projects that include accessibility into their design so that people of all ages and abilities can live their lives (6 pts)
- BIPOC/Women Led – Projects that are led by or committed to hiring local Black, Indigenous, People of Color (BIPOC) and women-owned businesses (5 pts)
- Nonprofit Led – Projects that are led by non-profit entities whose mission is related to affordable housing, community empowerment and/or neighborhood development (4 pts)
- Construction Type:
  - Non-Traditional Housing – May include Tiny Homes, Accessory Dwelling Units (ADU),

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Cottages or other structure that fit the requirements as defined in this bid request (10 pts)

- Traditional Multifamily – May include multiple separate housing units for residential inhabitants are contained within one building or several buildings within one complex (5 pts)

Selection will be based on the following (one point for each):

- Demonstrated ability to perform.
- Have site control, an executed Purchase and Sale Agreement, or be in written negotiations with the property owner.
- History of successful completion of at least five similar projects
- Documentation of meeting projected deadlines within budget
- Key personnel experience with the proposed project type
- Submittal of a current signature authorization by minute order or Resolution to enter into a funding agreement with the City for a specified amount of funds
- If providing funds to the project, submittal of a Resolution of Board commitment of funds to the project, by project name, no general Resolutions
- Leverage City funds with other local, State, federal or private funding
- Generate additional revitalization in the area, instill community pride, and transmit a positive change in the surrounding neighborhood.
- Local developer or have an office located in the City of Fresno
- Infill development that utilizes the capacity of the City's existing infrastructure
- Create local construction jobs for the duration of the project.
- Be near amenities such as grocery stores, banking, schools.
- Within one mile of a Fresno Area Express bus stop
- Aesthetically pleasing design and quality construction
- Evidence of solid and viable financing structure
- Provide accessibility of the units to low-income households
- Ability to comply with City insurance requirements (non-negotiable)
- Residential square foot/unit cost indicative of the housing type
- Experience utilizing federal and State funding.
- Commission environmental reviews
- Higher density development preferred for multifamily.
- Incorporation of the City's "Green" building methods
- Compliance with the City's Universal Design Ordinance (2008-53)
- Condition of existing properties (if any)
- Market study completed by a third party showing the need for the project.
- Demonstrated alignment with the City's One Fresno Housing Strategy
- Projects that include two- or three-bedroom units at an affordability level of 30-60% AMI will receive preference.

► **Consistency with Housing Objectives**

Projects assisted with City funds must demonstrate consistency with one or more of the City's housing goals, priorities and objectives as follows:

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- Housing Rehabilitation and Acquisition Improve the affordable housing stock for lower income households.
  - New Construction of Affordable Housing Increase affordable housing opportunities, especially those with five or more household members or members with special needs.
  - Redevelopment and Relocation Provide increased affordable housing opportunities and assistance for those displaced through either code enforcement or redevelopment.
  - Permanent Housing for Homeless Persons Provide housing for homeless individuals and those in danger of becoming homeless.

▶ **Submission Instructions and Requirements**

Submit one cover letter, one application, and supporting documents per project on a USB flash drive to the address and room below by or before 5:00pm on March 25, 2024.

City of Fresno  
Housing and Community Development Division  
Attention: Kristine Longoria, Project Manager  
2600 Fresno Street, Room 3065  
Fresno, CA 93721

The City of Fresno reserves the right to reject any and all proposals.

▶ **Technical Assistance and Questions**

There will be no on-site technical assistance workshops for this NOFA. Developers may submit questions via email to: Kristine.Longoria@fresno.gov. A response will be provided via email by the end of the following business day. Developers applying for the first time may contact Kristine Longoria, Project Manager, at (559) 621-8326 or by email at: Kristine.Longoria@fresno.gov for one-on-one assistance.

▶ **Review, Recommendation, Approval**

Review – A Project Manager will perform an initial technical review and analysis of the applications for eligibility, feasibility, and completeness. The department Project Manager may interview development teams, contact references, investigate previous projects, and current commitments, and conduct any other type of inquiry and investigation necessary to determine the qualifications to deliver the proposed project. Incomplete or ineligible applications will be eliminated from further funding consideration. Developers may be requested to submit additional or clarifying information.

Recommendation – Housing and Community Development Division staff familiar with the development process will rank the proposed projects for review by the Planning Director, in consultation with the City's administration, for a determination of which project(s) will be recommended to City Council for approval.

Approval – City Council has final approval of funding to a proposed project(s).

▶ **Terms and Conditions**

The City reserves the right, at its sole discretion, to suspend, amend, or modify the provisions of the proposal and selection process. If such an action occurs, the City will notify all interested

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parties.

Prior to entering into a funding agreement with the City, it is expected that the prospective development team will complete their own due diligence of their selected site(s).

All applications received by the City for funding consideration will not be returned to the applicant. The cost of preparing applications shall be borne by the respondent.

Completion of this proposal/application process in no way guarantees or commits City funding to a proposed project. The Housing and Community Development Division reserves the right to:

- Request clarification of the information submitted.
- Request additional information from any applicant responding to this NOFA.
- Award funds to the next most feasible project, if the successful applicant does not execute an agreement within the applicable timeframe after notification of initial funding recommendation.
- Reject any application that does not address the items listed in the NOFA.
- Negotiate with selected applicants.
- Reject all applications submitted at its sole and absolute discretion.
- Accept application(s) that it considers to be in the interest of the City, with or without negotiation
- Waive any informality or minor irregularity when in the best interest of City to do so.
- Have no obligation to enter into an agreement with any party responding to this NOFA.

► **City Insurance and Indemnity Requirements (non-negotiable)**

**Insurance Requirements.**

(a) Throughout the life of this Agreement, DEVELOPER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than “A-VII” in the Best’s Insurance Rating Guide, or (ii) as may be authorized in writing by CITY’S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, DEVELOPER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve DEVELOPER of its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by CITY that an insurer has commenced

proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by DEVELOPER shall not be deemed to release or diminish the liability of DEVELOPER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DEVELOPER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DEVELOPER, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than the following:

\$2,000,000 per occurrence for bodily injury and property damage  
\$2,000,000 per occurrence for personal and advertising injury  
\$4,000,000 aggregate for products and completed operations  
\$4,000,000 general aggregate applying separately to work performed under the Agreement

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYEE LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 diseased each employee.

(v) BUILDERS RISK (Course of Construction) insurance, obtained by the DEVELOPER or subcontractor in an amount equal to the completion value of the Project with no coinsurance penalty provisions. (Only required if the project includes new construction of a building; or renovation of, or addition to, an existing building.)

(vi) CONTRACTOR POLLUTION with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

\$1,000,000 per occurrence  
\$2,000,000 general aggregate per annual policy period

In the event the work involves any lead-based, mold or asbestos environmental hazard, either the Automobile Liability insurance policy or the Pollution Liability insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by the DEVELOPER pursuant to the SLFRF Agreement.

In the event the work involves any lead-based environmental hazard (e.g., lead-based paint), the DEVELOPER's Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event the DEVELOPER involves any asbestos environmental hazard (e.g., asbestos remediation), the DEVELOPER's Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event the SLFRF Agreement involves any mold environmental hazard (e.g., mold remediation), the Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and "microbial matter including mold" within the definition of "Pollution" under the policy.

### **UMBRELLA OR EXCESS INSURANCE**

In the event DEVELOPER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents, and volunteers.

### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self-insured retentions.

### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

- (i) All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice has been given to the CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the DEVELOPER shall furnish the CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the CITY, the DEVELOPER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The General Liability, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The General Liability, Automobile Liability and Pollution Liability insurance policies shall name the CITY, its officers, officials, agents, employees, and volunteers as an additional insured for ongoing and completed operations. All such policies of insurance shall be endorsed so the DEVELOPER's insurance



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shall be primary and no contribution shall be required of the CITY.

- (iv) The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents, and volunteers.
- (v) If the DEVELOPER maintains higher limits of liability than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits of liability maintained by the DEVELOPER.
- (vi) The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the CITY as loss payee.
- (vii) All insurance policies required including the Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City, its officers, officials, agents, employees, and volunteers.

The DEVELOPER shall furnish the CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the CITY's Risk Manager or his/her designee before work commences. Upon request of the CITY, the DEVELOPER shall immediately furnish the CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Agreement and the final acceptance by the CITY of the work or materials to be performed or supplied thereunder, the DEVELOPER shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the DEVELOPER or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of this Agreement.

### **SUBCONTRACTORS**

If DEVELOPER subcontracts any or all of the services to be performed under this Agreement, DEVELOPER shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the CITY to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONTRACTOR will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

### **INDEMNIFICATION**

To the furthest extent allowed by law, including California Civil Code section 2782, DEVELOPER shall indemnify, defend and hold harmless CITY and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury,

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death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract . DEVELOPER 'S obligations as set forth in this section shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, DEVELOPER , whenever there is any causal connection between the DEVELOPER's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, DEVELOPER expressly agrees to undertake a duty to defend CITY and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by DEVELOPER expressly includes all costs of litigation, attorneys fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to DEVELOPER as reasonably determined by CITY.

Upon the tender by CITY to DEVELOPER , DEVELOPER shall be bound and obligated to assume the defense of CITY and any of its officers, officials, employees, agents, or volunteers, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from CITY or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by DEVELOPER that if CITY tenders a defense of a claim on behalf of CITY or any of its officers, officials, employees, agents, or volunteers and DEVELOPER fails, refuses or neglects to assume the defense thereof, CITY and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and DEVELOPER shall be bound and obligated to reimburse CITY and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether CITY provided approval for, or did not review or object to, any insurance DEVELOPER may have procured in a accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by CITY, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

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If DEVELOPER should subcontract all or any portion of the work to be performed under this Contract, DEVELOPER shall require each subcontractor to Indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms as set forth above. **PROPERTY INSURANCE**

The DEVELOPER shall maintain in full force and effect, throughout the remaining life of this Agreement, a policy or policies of property insurance acceptable to the CITY, covering the Project premises, with limits reflective of the value of the Project premises upon issuance of the Certificate of Completion or substantial completion of the project referenced in this agreement, including fire and Extended Comprehensive Exposure (ECE) coverage in an amount, form, substance, and quality as acceptable to the CITY's Risk Manager. The CITY shall be added by endorsement as a loss payee thereon.

### **BOND OBLIGATIONS**

The developer or its General Contractor shall obtain, pay for, and deliver good and sufficient payment and performance bonds along with a Primary Obligee, Co-Obligee or Multiple Obligee Rider in a form acceptable to the City from a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California and Treasury-listed, in a form satisfactory to the City and naming the City as Obligee.

- (i) The "Faithful Performance Bond" shall be at least equal to one hundred (100) percent of the developer's estimated construction costs as reflected in the developer's pro forma budget, to the guarantee faithful performance of the Project, within the time prescribed, in a manner satisfactory to the City, consistent with this agreement, and that all material and workmanship will be free from original or developed defects.
- (ii) The "Payment Bond" shall be at least equal to one hundred (100) percent of construction costs approved by the City to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by the developer in full force and effect until the Project is completed and until all claims for materials and labor are paid and as required by the applicable provisions of Chapter 7, Title 15, Part 4, Division 3 of the California Civil Code.
- (iii) The "Material and Labor Bond" shall be at least equal to one hundred (100) percent of the developer's estimated construction costs as reflected in the developer's pro forma budget, to satisfy claims of material supplies and of mechanics and laborers employed for this Project. The bond shall be maintained by the developer in full force and effect until the Project is completed, and until all claims for materials and labor are paid, released, or time barred, and shall otherwise comply with any applicable provision of the California Code.
- (iv) In lieu of the bonds required above, the City, in its sole discretion, may accept from the developer an Irrevocable Standby Letter of Credit issued with the City named as the sole beneficiary in the amount(s) of the bonds required above. The Standby Letter of Credit is to be issued by a bank, and in the form, acceptable to the City. This Irrevocable Standby Letter of Credit shall be maintained by the developer in full force and effect until the City is provided with a recorded Notice of Completion for the

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construction of the Project and shall be subject to and governed by the laws of the State of California.

The City encourages minority- and women-owned firms to submit applications consistent with the City's policy to ensure that minority- and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services.

No person shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any financial assistance program or activity funded in whole or in part with federal or State program funds made available through the City of Fresno.

## Affordable Housing Development Application

Check-off List Separate sections with a tab and number accordingly			X
Section	Section Heading	Attachment/Documents	
<b>1</b>	Project Summary	<ul style="list-style-type: none"> <li>• First three pages</li> </ul>	<input type="checkbox"/>
<b>2</b>	Project Description	<ul style="list-style-type: none"> <li>• Narrative (one page)</li> <li>• Pictures</li> <li>• Attachments</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>3</b>	Meeting Program Priorities	<ul style="list-style-type: none"> <li>• Narrative</li> </ul>	<input type="checkbox"/>
<b>4</b>	Site and Project Readiness	<ul style="list-style-type: none"> <li>• Narrative (one page)</li> <li>• Zoning &amp; Local Approval</li> <li>• Site Control Documentation</li> <li>• Phase I, Phase II, etc.</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>5</b>	Project Schedule	<ul style="list-style-type: none"> <li>• Scope of Work (one page)</li> </ul>	<input type="checkbox"/>
<b>6</b>	Tenant Relocation Plan	<ul style="list-style-type: none"> <li>• Narrative (if applicable) (one page)</li> </ul>	<input type="checkbox"/>
<b>7</b>	Experience: Applicant/Development Team	<ul style="list-style-type: none"> <li>• Narrative</li> <li>• Resumes</li> <li>• Form: Completed projects/projects under development/properties owned (one page)</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>8</b>	Consistency with Federal/ Local Funding Requirements	<ul style="list-style-type: none"> <li>• Program Consistency/ Plan Consistency</li> </ul>	<input type="checkbox"/>
<b>9</b>	Underwriting templates or comparable worksheets	<ul style="list-style-type: none"> <li>• Template all pages (include: budget, sources and uses, cash flow statement, rents, income, etc.)</li> </ul>	<input type="checkbox"/>

**SECTION 1 - PROJECT SUMMARY**

Organization Name: \_\_\_\_\_

Address: \_\_\_\_\_

Federal Tax I.D. Number: \_\_\_\_\_

Organization Type (check all that apply):

- Local Government
- Housing Authority
- Non-Profit Community Based Organization
- Regional Non-Profit Housing Assistance Organization
- Statewide Non-Profit Housing Assistance Organization
- Qualified Tenant Organization
- Private Development Corporation/Individual
- Community Housing Development Organization (CHDO)
- Community Based Development Organization
- Community Development Corporation

Executive Director Name: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Project Contact Name: \_\_\_\_\_

Contact Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

**PROJECT SUMMARY CONTINUED**

Project Name: \_\_\_\_\_

Project Address or Location: \_\_\_\_\_

Assessor's Parcel Number(s): \_\_\_\_\_

City Council District: \_\_\_\_\_

For Housing Stock Only (check one):

- Existing Privately Owned
- Existing Publicly Owned
- Other (please specify): \_\_\_\_\_

**Project Activities (check all that apply):**

- Acquisition
- Rehabilitation (Single Family)
- Rehabilitation (Multi-Family)
- New Construction (Single Family)
- New Construction (Multi-Family)
- HUD/USDA Preservation
- Independent Seniors
- Housing for the Homeless
- Homeownership
- Housing for Farmworkers
- Other: \_\_\_\_\_

**Target Populations**

Length of Commitment to Target Population:  55 years for rental housing

**Number of Units/Beds per Special Needs Populations:**  Check if Not Applicable

Units	Beds	Population
		Mentally Ill
		Developmentally Disabled
		Domestic Violence
		Frail Elderly
		Homeless
		At Risk of Homelessness
		HIV/AIDS
		Alcohol/Substance Abuse
		Youth Under Age 21
		Other: _____

**PROJECT SUMMARY CONTINUED**

Proposed Number of Units Per Bedroom Count and Income. Place an asterisk next to the City-funded units. Include the square foot of the units.

% Median Income	Studio/ sq. ft.	1-bed /sq. ft.	2-bed /sq. ft.	3-bed /sq. ft.	4-bed /sq. ft.	5-bed /sq. ft.	Totals
Totals							

**Construction and Perm Funding Sources and Total Development Cost**

RESIDENTIAL NEW CONSTRUCTION			
Source (Insert Name)	Proposed Funding Amount	Committed/Conditional Funding Amount	Total Funding Amount
ERF			
<b>Total</b>			
RESIDENTIAL PERMANENT			
Source	Proposed Funding Amount	Committed/Conditional Funding Amount	Total Funding
<b>Total</b>			
TOTAL DEVELOPMENT COST			
	Proposed Funding Amount	Committed/Conditional Funding Amount	Total Funding
<b>TOTAL</b>			

Original Signature of Authorized Official (attached Board/company Resolution) Electronic signature is acceptable.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

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

**SECTION 2 - PROJECT DESCRIPTION** Limit narrative to one page



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Provide a complete description of the project activity and the population to be served.

Include the following:

- Describe the property to be acquired, constructed and/or substantially rehabilitated. Include the acreage, square footage, physical description of the proposed project that includes the bedroom/bathroom size, number of stories, type of construction, layout of the buildings on the site, and any other unique features of the proposed project. If there is a community room within the project, provide the square footage. If parking is being provided, include the square footage.
- If the project is substantial rehabilitation, include the number and type of the existing buildings, provide the original construction date, and provide any engineering assessments completed for the structures. Explain why the substantial rehabilitation is preferred over new construction. If the project is substantial rehabilitation, include a capital needs assessment, if available.
- If the developer already owns the project site(s), provide the date of acquisition, purchase price, appraisal, and deed.
- Provide a detailed description of any on- and off-site improvements, including map, pictures, aerial photos, etc.
- Describe any environmental mitigation or abatement issues for the project/site.
- Provide a description of the type of household to be served, including information such as the number of tenants, the size and description of the households, and known special characteristics of tenants (i.e., age, disabilities, special needs, seniors, etc.). Also include a description of the living arrangement (i.e., individual apartments, shared housing with onsite management, etc.).
- If a property management company has been selected, provide a copy of the signed agreement.
- Explain how the selected design features is compatible with the housing needs of the target population.
- Describe the project location and the surrounding neighborhood. Include a discussion of the transportation options, amenities, nearby health and medical services, schools, etc.

**SECTION 3 - MEETING PROGRAM PRIORITIES      Limit narrative to one page**

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- Describe how the project is consistent with the City's priorities as outlined in the following documents:
    - 2015-2023 Housing Element at <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2018/01/FresnoHEAdoptedApril2017smallfile.pdf>
    - 2020-2024 Consolidated Plan at <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2020/08/2020-2024-Consolidated-Plan.pdf>
    - 2022-2023 Annual Action Plan at <https://www.fresno.gov/darm/housing-community-development/#tab-04>
    - One Fresno Housing Strategy at <https://www.fresno.gov/mayor/>
    - 2035 General Plan at <https://www.fresno.gov/darm/general-plan-development-code/#tab-01>
    - Homeless Continuum of Care Plan (if applicable)
    - Housing plans or programs for group of individuals with special needs (if applicable)

<b>SECTION 4 - SITE AND PROJECT READINESS</b>	<b>Limit narrative to one page</b>
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Discuss any issues with site control, zoning, special permits, environmental hazards and how they can be resolved in a timely manner.

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Include the following:

- Status of site control. If in discussions with a property owner, provide a written agreement or a similar written commitment. If in negotiations with the owner for the property, provide a proposed Purchase and Sale Agreement or written correspondence between the owner and developer.
- Status of the architectural plans and design elements.
- Description of all proposed and firm financing sources and a plan for obtaining additional financing including a timeline. Provide any letters of commitment.
- Proposed project consistency with existing zoning and permit process. If not, describe the steps necessary to alleviate the inconsistency.
- Describe how any required mitigation of existing conditions noted in the environmental assessment, Phase I, Phase II, and any special study prepared for the site will be addressed.
- Substantial rehabilitation projects shall include a discussion for abatement of asbestos, lead-based paint, and/or mold as noted in the environmental documents and studies.
- If substantial rehabilitation, describe how ADA features will be introduced.
- Include any final environmental documents completed.

## **SECTION 5 - PROJECT SCHEDULE**

Provide a detailed timeline for completion of major milestones related to the project. Identify all key aspects as well as the dates when all funding sources will be secured. Assume that the available funding will be available, if awarded, by May 2023.

The project schedule should indicate that all proposed and conditional funds will be committed within six months of the award of City funding and that the project **must** commence construction within one year of the City funding agreement execution and **must** be completed within four years of the agreement execution.

List each task in chronological order, the projected completion date, and the responsible party to complete the task. At a minimum, show the projected dates for commitment of all funding sources, any land use approvals, and date of property acquisition and construction commencement.

Schedule of Milestones		
Task	Projected Completion Date	Responsible Party
Submit Application	March 25, 2024	Applicant

**Describe any aspects of the project that may lead to delays and how the schedule will be adapted to respond.**

If relocation is required (**STOP**) read carefully. If not, skip to Section 7.

Relocation benefits are triggered under the Uniform Relocation Act (“URA”) when a resident is displaced permanently or temporarily. If a proposed development is partially or fully occupied, a relocation plan must be submitted concurrently with this application and the applicant is required to contact the Project Manager for instruction on tenant notification.

A relocation plan should describe the process to be used for permanent or temporary relocation and how these activities will be funded.

- List availability of comparable replacement units
- Include a budget for relocation with estimates
- Describe how the relocation plan is consistent with the relocation requirements of the funding sources anticipated for the project
- Include sample letters to the tenants
- Include consultant information if applicable

## **SECTION 7 - EXPERIENCE**

**Limit narrative to one page**

Demonstrate in narrative form how the skills and experience of the development team are appropriate to the size and complexity of the proposed project.

- Describe the applicant’s experience and capacity to develop the housing type proposed.
- Describe the applicant’s experience with the utilization of HOME/CHDO/CDBG/HOME-ARP/PLHA funds or other public funds.
- List key development team members, including consultants such as legal counsel, architects, engineers, planners, General Contractor, property manager, etc. and their qualifications. Attach current resumes and agreements.
- Identify the roles of key individuals in the development team (Development Director, Project Manager(s), Project Coordinator(s), etc.). Attach current resumes.
- Provide a fully executed Minute Order or Resolution identifying the person(s) with the authority to represent and make legal binding commitments on behalf of the organization. The Resolution must be project specific and include the amount and type of funding requested.
- If the applicant is also providing funds to the project, provide a fully executed Minute Order or Resolution outlining the funding commitment to the project.
- Identify any legal action, bankruptcies, or lawsuits currently involving the organization.

## **EXPERIENCE (CONTINUED)**

Complete one form with the organization's information and a second form with the developer's information (if separate entities). Must show at least five prior completed projects.

### COMPLETED PROJECTS

Name	Location	# of Units	Year Completed	Total Project Cost	Sources of Financing

**PROJECTS UNDER DEVELOPMENT:** Include all projects currently under construction or projects for which you plan to seek funding in the next 6 months or have received at least one funding commitment.

Name	Location	# of Units	Funding Status	Begin Construction	Complete Construction	Key Staff

### OTHER COMMERCIAL AND/OR RENTAL PROPERTIES OWNED

Include all commercial and rental properties owned by the applicant and all primary principals, owners, board members and/or development consultants of the organization (attach additional pages if necessary).

Name	Location	# of Units	Management Agency/Name

**SECTION 8 - CONSISTENCY WITH FEDERAL/STATE/LOCAL FUNDING  
REQUIREMENTS****Limit narrative to one page**

Developments funded in part with California Interagency Council on Homelessness (Cal ICH) funds are subject, but not limited, to applicable federal and state laws. CAL ICH Funds may be subject, but not limited to applicable federal and state laws, including the State of California Department of Housing and Community Development Local Housing Trust Fund guidelines issued April 2020. The Guidelines implement, interpret, and make specific Health and Safety (HSC) Sections 50250 et seq., which govern the Encampment Resolution Funding Program. Any, or all, of the following may be part of the funding agreement between the City and the developer's organization.

- Equal Opportunity and Fair Housing at 24 CFR § 92.350
- Affirmative Marketing at 24 CFR § 92.351
- Tenant Selection and Participation at 24 CFR § 92.303
- Environmental Review at 24 CFR § 92.352
- Layering Review at Section 212(f) of the Cranston-Gonzalez National Affordable Housing Act, 24 CFR § 91.92.250(b), and CPD Notice 98-01
- Davis Bacon and Related Acts at 24 CFR § 92.354 (12 or more HOME-funded units)
- Lead-Based Paint at 24 CFR § 92.355
- City of Fresno Universal Design Ordinance (No. 2008-53)
- Debarment and Suspension at 24 CFR § 92.350 and E.O. 12549 and 12689
- Section 504 of the Rehabilitation Act of 1973 at 29 USC § 794
- Minority Business Enterprise/Women's Business Enterprise at 24 CFR § 92.351(b)
- Equal Opportunity and Housing, E.O. 11063
- Civil Rights Act of 1968, Title VIII § 19.01.203
- Drug-Free Workplace Act of 1988 (42 USC § 701), in accordance with the Act and with HUD regulations at 24 CFR Part 24, subpart F
- Byrd Anti-Lobbying Amendment at 31 USC § 1352
- National Environmental Policy Act of 1969, 42 USC § 4321, et seq.
- Copeland "Anti-Kickback" Act at 18 USC § 874, as supplemented by Department of Labor regulations at 29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"
- Equal Employment Opportunity, as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", as supplemented by regulations at 41 CFR Part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor
- Contract Work Hours and Safety Standards Act at 40 USC § 327-333, as supplemented by Department of Labor Regulations at 29 CFR Part 5, in regard to the construction and management of the proposed project
- Property Standards at 24 CFR § 92.251
- Project Requirements at 24 CFR Part 92, Subpart F, as applicable and in accordance with the type of project assisted
- Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs and applicable regulations at 42 USC 61 Sec. 4601, 49 CFR 24, 42 USC 69 Sec. 5304, 24 CFR 570.606 (a-g), 24 CFR 92.353
- Violence Against Women Act (VAWA), 24 CFR 92.359 and 24 CFR 92.504(c)(3)(v)(F), including but not limited to notice requirements, obligations under emergency transfer plan,

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bifurcation of lease requirements, imposition of requirements for the duration of the period of affordability, and inclusion of VAWA lease addendum requirements.

- Broadband infrastructure requirements for new housing and rehabilitation projects as set forth in 24 CRF 92.251.

## **SECTION 9 – UNDERWRITING TEMPLATES**

Include underwriting templates that provide project financial information (i.e., Construction budget, permanent phase budget, 55-year cash flow statement, gap financing analysis, property management itemized costs, rents, utility allowance, income level, itemized development budget, etc.).

- Multi-Family Underwriting template can be found at the HUD Exchange at: <https://www.hudexchange.info/resource/2468/home-multifamily-underwriting-template/>
- Sufficient financial information to complete thorough underwriting.
- If, this is a Low-Income Housing Tax Credit project, provide a copy of the application on a USB flash drive.



**EXHIBIT "B"**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 8 TO 15 INCLUSIVE, AND FRACTIONAL LOTS 16, 17 AND 18 IN BLOCK 14 OF CENTRAL ADDITION TO FRESNO CITY, ACCORDING TO THE MAP THEREOF RECORDED SEPTEMBER 19, 1887, IN BOOK 1, PAGE 30 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 465-020-02

## **EXHIBIT “C”**

### **PROJECT DESCRIPTION, SCHEDULE AND INCOME LEVEL**

#### **I. PROJECT DESCRIPTION**

Divisadero Prime LLC (Consultant) to construct, a minimum of 20 units, new affordable rental housing restricted to households with average incomes of no more than 60% Area Median Income (AMI) with a minimum of 30% of units supporting households with an average income of no more than 30% AMI.

The Project is to be built by Consultant and preliminarily named Divisadero Commons.

The Project is to be built on vacant land Consultant owns located at 510 E Divisadero, Fresno Ca 93721, APN 465-020-02 covering .76 acres.

The Project will consist of at least 20 factory-built homes with each home being a minimum of 288 sq ft with a kitchen, bathroom and living/sleeping area.

Consultant will be required to perform all aspects of development (i.e.: property acquisition, entitlement, environmental clearance, financing, and construction).

Consultant must meet the objectives of the ERF Program by: Addressing the number of units that will provide a clear pathway to safe, stable permanent housing without preconditions or barriers for people experiencing homelessness in the designated encampment area and foster an environment that prevents residents from falling back into unsheltered homelessness.

The Project will follow guidelines from the Encampment Resolution Funding (ERF) program, round 2.

#### **II. PROJECT SCHEDULE**

<b>TASK</b>	<b>PROJECT COMPLETION DATE</b>
Submit Plans to Building and Planning	July 30, 2024
Approval of Plans	March 25,2025
Start Construction Onsite & Offsite	April 1,2025
Complete all Sitework	November 1, 2025
Complete all Prefab Units	March 1, 2026
Compleat Project/Obtain Cof O	June 1,2026

#### **III. INCOME LEVEL**

In order to qualify for housing, tenants will be required to meet or be below 60% AMI with a minimum of 30% of units with tenants required to meet or be below 30% AMI to be eligible for housing. While they will not lose their housing if they start making more income, once they move out, the new tenant will be required to meet the income requirements as stated above for Fresno.

## EXHIBIT "D" EXEMPLAR DECLARATION OF RESTRICTIONS

Recorded at the Request of  
and When Recorded Return to:

CITY of Fresno  
Planning and Development Dept.  
Housing and Community Development Division  
2600 Fresno Street, Room 3065  
Fresno, CA 93721-3605

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

*The document is exempt from the payment of a recording fee in accordance with Government Code Sections 6103 and 27383.*

APN:

### DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (Declaration) is executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Divisadero Prime, a limited liability company (DECLARANT), in favor of the CITY OF FRESNO, a California municipal corporation (The CITY).

WHEREAS, the DECLARANT is the owner of the real estate in the CITY of Fresno, County of Fresno, California, located at, Fresno, CA particularly described in EXHIBIT "A" – Property Description, attached hereto and made a part hereof, including the improvements thereon (Property); and

WHEREAS, pursuant to a certain CITY of Fresno Encampment Resolution Funding ("ERF") Agreement dated \_\_, 2024, incorporated herein by reference ("ERF Agreement") and instruments referenced therein, the DECLARANT agrees to utilize, and the CITY agrees to provide, certain ERF round 2 funds from the State of California, to the DECLARANT and the DECLARANT agrees to develop site to place 20 factory-built home units, reserved for households with average incomes of no more than 60% AMI with a minimum of 30% of the units supporting Extremely Low-Income households, at or below 30% of AMI; and

WHEREAS, these restrictions are intended to bind the DECLARANT, and all purchasers of the Property and their successors.

NOW THEREFORE, the DECLARANT declares that the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the Project. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, will inure to the benefit of the CITY, and will be enforceable by it. Any purchaser under a contract of sale covering any right, title or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts

the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration commencing on the date the DECLARANT is notified by the CITY that the Affordable Unit Household information has been obtained and verified, constituting the commencement of the 30-year Affordability Period.

1. Declarations. The DECLARANT hereby declares that the Property is and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Project and the ERF Agreement and are established and agreed upon for the purpose of enhancing and protecting the value of the Property and in consideration of the CITY entering into the ERF Agreement with the DECLARANT.

2. Restrictions. The following covenants and restrictions on the use and enjoyment of the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of the CITY and shall run with the Property and be binding on any future owners of the Property and inure to the benefit of and be enforceable by CITY. These covenants and restrictions are as follows:

a. The DECLARANT for itself and its successor(s) on title covenants and agrees that from the date the Project is determined by the CITY to be complete, until the expiration of the Affordability Period, it shall cause all tiny homes in this project to be used as rental affordable housing to Extremely Low-Income households (at or below 60% AMI). The DECLARANT further agrees to file a recordable document setting forth the Project Completion Date when determined by the CITY. Unless otherwise provided in the Agreement, the term Affordable Housing shall include, without limitation, compliance with the following requirements:

i. Nondiscrimination. There shall be no discrimination against nor segregation of any persons or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall the DECLARANT establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Project and/or Property.

ii. Principal Residence. The Housing Units constituting the Affordable Units upon the Project Property shall be leased only to eligible natural persons, who shall occupy the Affordable housing units as the tenants' principal place of residence. The forgoing requirement that the tenant of unit occupy the unit as their principal residence does not apply to (i) persons, other than natural persons, who acquire the Project Property or portion thereof by foreclosure or deed in lieu of foreclosure; or qualified entities that acquire the Property or portion thereof with the consent of the CITY.

iii. Household Income Requirements. In order to qualify for housing, all tenants will be required to meet or be below 60% AMI to be eligible for housing. While they will not lose their housing if they start making more income, once they move out, the new tenant will be at or below 60% AMI for Fresno.

Item (a) above is hereinafter referred to as the Covenant and Restriction.

3. Enforcement of Restrictions. Without waiver or limitation, the CITY shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any Covenant and Restriction.

4. Acceptance and Ratification. All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the Covenant and Restriction. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Covenant and Restriction, as may be amended or supplemented from time to time, are accepted and ratified by future owners, tenant or occupant, and such Covenant and Restriction shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Covenant and Restriction was recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

Notwithstanding the foregoing, upon foreclosure by a lender or other transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD, the Affordability Period shall be terminated unless the foreclosure or other transfer in lieu of foreclosure or assignment recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid the termination of affordability. However, the requirements with respect to an Affordable Unit shall be revived according to their original terms, if during the original Affordability Period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner of those with whom the former owner has or had formally, family or business ties, obtains an ownership interest in the Project or the Property, the Affordability Period shall be revived according to its original terms.

5. Benefit. This Declaration shall run with and bind the Property for a term of 30 years from the date of recordation of the Notice of Completion. The failure or delay at any time of the CITY and/or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

6. Costs and Attorney's Fees. In any proceeding arising because of failure of the DECLARANT or any future owner of the Property to comply with the Covenant and Restriction required by this Declaration, as may be amended from time to time, the CITY shall be entitled to recover its respective costs and reasonable attorney's fees incurred in connection with such default or failure.

7. Waiver. Neither the DECLARANT nor any future owner of the Property may exempt itself from liability for failure to comply with the Covenant and Restriction required in this Declaration; provided however, that upon the transfer of the Property, the transferring owner may be released from liability hereunder, upon the CITY's written consent of such transfer, which consent shall not be unreasonably withheld, conditioned or delayed.

8. Severability. The invalidity of the Covenant and Restriction or any other covenant, restriction, condition, limitation, or other provision of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and each shall be enforceable to the greatest extent permitted by law.

9. Pronouns. Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

10. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Declaration are inserted herein for ease

and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

11. Amendment. No amendment or modification of this Declaration shall be permitted without the prior written consent of the CITY and the DECLARANT.

12. Recordation. The DECLARANT acknowledges that this Declaration will be filed of record in the Office of the Recorder of County of Fresno, State of California.

13. Capitalized Terms. All capitalized terms used in this Declaration, unless otherwise defined herein, shall have the meanings assigned to such terms in the SLFRF Agreement.

14. Headings. The headings of the articles, sections, and paragraphs used in this Declaration are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

IN WITNESS WHEREOF, DECLARANT has executed this Declaration of Restrictions on the date first written above.

DECLARANT:

DIVISADERO PRIME, LLC,  
A limited liability company

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

By: DIVISADERO PRIME LLC, A California limited liability company

\_\_\_\_\_  
By: Ben Dreicer

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

**(Attach notary certificate of acknowledgment)**

**EXHIBIT "E"**  
**CERTIFICATE OF COMPLETION**

Recorded at the Request of  
and When Recorded Return to:

CITY of Fresno  
Planning and Development Department  
Housing and Community Development Division  
2600 Fresno Street, Room 3065  
Fresno, CA 93721-3605

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

This Certificate of Completion is recorded at the request and for the benefit of the CITY of Fresno and is exempt from payment of a recording fee pursuant to Government Code Section 6103.

APN:

CITY of Fresno

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

Planning and Development Department

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



## Certificate of Completion

APN:

Recitals:

A. By an Encampment Resolution Funding(ERF) Agreement dated \_\_\_\_\_, 2024, (ERF Agreement) between the CITY of Fresno, a municipal corporation (the CITY), and Divisadero Prime, LLC, a limited liability company (DEVELOPER), the DEVELOPER agreed to develop the site located at 510 E Divisadero Fresno Ca 93721 with 20 factory built homes, and related on-site and off-site improvements , with assistance of ERF while meeting the affordable housing, income targeting and other requirements of the ERF and according to the terms and conditions of the ERF Agreement other documents/instruments referenced therein.

B. The ERF Agreement was recorded on \_\_\_\_\_, as Instrument No. \_\_\_\_\_ in the Official Records of Fresno County, California.

C. Under the terms of the ERF Agreement, after the DEVELOPER completes the Project, the DEVELOPER may ask the CITY to record a Certificate of Completion.

D. The DEVELOPER has asked the CITY to furnish the DEVELOPER with a recordable Certificate of Completion.

E. The CITY's issuance of this Certificate of Completion is conclusive evidence that the DEVELOPER has completed the Project as set forth in the ERF Agreement.

NOW THEREFORE:

1. The CITY certifies that the DEVELOPER commenced construction of the Project on \_\_\_\_\_, 20XX and completed construction of the Project on \_\_\_\_\_ 20XX, and has done so in full compliance with the ERF Agreement.

2. This Certificate of Completion is not evidence of the DEVELOPER's compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.

3. This Certificate of Completion is not a notice of completion as referred to in California Civil Code Section 3093.

4. Nothing contained herein modifies any provision of the ERF Agreement.

//

IN WITNESS WHEREOF, CITY has executed this Certificate of Completion as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF FRESNO

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

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

Planning & Development Department  
(Attach notary certificate of acknowledgment)

## **EXHIBIT “F”**

### **PERFORMANCE MILESTONES**

#### Milestone #1

- Demonstrate financial capacity to develop project

#### Milestone #2

- Submit Plans to City of Fresno Planning Department
- Submit plans to City of Fresno Building Department
- Continue to resubmit building plans for back check to address all corrections

#### Milestone #3

- Approval of Plans

#### Milestone #4

- Demonstrate procurement of tiny home builder

#### Milestone #5

- Start Construction

#### Milestone #6

- Complete Project
- Obtain Certificate of Occupancy

**Developer must continue to show progress in the movement of the PROJECT. Failure to satisfy any of the performance milestones, dates listed in Project Schedule (EXHIBIT C) plus 90 days, will constitute a breach of this agreement and entitles the CITY to mandate the DEVELOPER to return to the CITY any funds disbursed; in any such instances, the CITY may also cancel this agreement without owing any damages or other payment to the DEVELOPER.**

## EXHIBIT "G"

### SELF CERTIFICATION OF ANNUAL INCOME

Please complete one form and include the requested information for all persons in the household. Complete an additional form if the applicant needs more space. The adult head of household must sign and date the form.

#### PART I: ELIGIBILITY

HOME funded rental assistance is limited to income eligible families whose annual income does not exceed 60 percent of the area median income, [as determined by HUD](#).

U.S. DEPARTMENT OF HUD STATE: CALIFORNIA		----- 2023 ADJUSTED HOME INCOME LIMITS -----							
PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON	
<b>Bakersfield, CA MSA</b>									
30% LIMITS	17350	19800	22300	24750	26750	28750	30700	32700	
VERY LOW INCOME	28900	33000	37150	41250	44550	47850	51150	54450	
60% LIMITS	34680	39600	44580	49500	53460	57420	61380	65340	
LOW INCOME	46200	52800	59400	65950	71250	76550	81800	87100	
<b>Chico, CA MSA</b>									
30% LIMITS	17350	19800	22300	24750	26750	28750	30700	32700	
VERY LOW INCOME	28900	33000	37150	41250	44550	47850	51150	54450	
60% LIMITS	34680	39600	44580	49500	53460	57420	61380	65340	
LOW INCOME	46200	52800	59400	65950	71250	76550	81800	87100	
<b>El Centro, CA MSA</b>									
30% LIMITS	17350	19800	22300	24750	26750	28750	30700	32700	
VERY LOW INCOME	28900	33000	37150	41250	44550	47850	51150	54450	
60% LIMITS	34680	39600	44580	49500	53460	57420	61380	65340	
LOW INCOME	46200	52800	59400	65950	71250	76550	81800	87100	
<b>Fresno, CA MSA</b>									
30% LIMITS	17350	19800	22300	24750	26750	28750	30700	32700	
VERY LOW INCOME	28900	33000	37150	41250	44550	47850	51150	54450	
60% LIMITS	34680	39600	44580	49500	53460	57420	61380	65340	
LOW INCOME	46200	52800	59400	65950	71250	76550	81800	87100	
<b>Hanford-Corcoran, CA MSA</b>									
30% LIMITS	17350	19800	22300	24750	26750	28750	30700	32700	
VERY LOW INCOME	28900	33000	37150	41250	44550	47850	51150	54450	
60% LIMITS	34680	39600	44580	49500	53460	57420	61380	65340	
LOW INCOME	46200	52800	59400	65950	71250	76550	81800	87100	
<b>Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area</b>									
30% LIMITS	26500	30300	34100	37850	40900	43950	46950	50000	
VERY LOW INCOME	44150	50450	56750	63050	68100	73150	78200	83250	
60% LIMITS	52980	60540	68100	75660	81720	87780	93840	99900	
LOW INCOME	70650	80750	90850	100900	109000	117050	125150	133200	
<b>Santa Ana-Anaheim-Irvine, CA HUD Metro FMR Area</b>									
30% LIMITS	30150	34450	38750	43050	46500	49950	53400	56850	
VERY LOW INCOME	50250	57400	64600	71750	77500	83250	89000	94750	
60% LIMITS	60300	68880	77520	86100	93000	99900	106800	113700	
LOW INCOME	80400	91850	103350	114800	124000	133200	142400	151550	

**PART II: HOUSEHOLD INFORMATION**

Enter legal address (where the applicant currently lives) and contact information below. If a household is experiencing homelessness or is in temporary housing, provide a mailing address (where the applicant currently receives mail).

	Legal Address	Mailing Address (if different from legal)
Street, Apt./Unit #		
State, CITY, Zip Code		
Phone Number(s)		
Email(s)		

Date of Occupancy \_\_\_\_\_

**PART III: ANNUAL INCOME**

Report all current income and income expected to be received in the next 12 months including long-term **unemployment compensation and all hazard pay**. **DO NOT INCLUDE:** IRS Economic Impact Payments (stimulus checks), Federal Pandemic Unemployment Compensation (the additional \$600 per week), Lost Wages Supplemental Payment Assistance (up to \$400 per week), income of a live-in-aide, children of live-in-aides, foster children, foster adults, or the income of minors.

The DEVELOPER, shall make a good faith effort to verify that the income provided by an applicant or occupying Household in an income certification is accurate by taking one or more of the following steps as part of the verification process: (1) obtain a pay stub for the three most recent pay periods; (2) obtain an income verification form from the applicant's current employer; (3) obtain an income verification form from the Social Security Administration and California Department of Social Services if the applicant receives assistance from either of such agencies; (4) obtain income tax return for the most recent three years; or (5) if the applicant is unemployed, obtain another form of independent verification. Copies of Household income certification and verification must be available for review and approval by the CITY prior to initial lease up. The DEVELOPER further warrants, covenants, and agrees that it will cooperate with the CITY in the CITY's income certification/affordability monitoring activities.

# Worksheet for Computing Income

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

## Summary of Family Income Data

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**Assets:**

Family Member	Asset Description	Current Market Value	Income From Assets	Monthly Income From Asset
---------------	-------------------	----------------------	--------------------	---------------------------

- |   |    |       |       |    |
|---|----|-------|-------|----|
| 1. Net Cash Value of Assets:  | \$ | ----- | ----- |    |
| 2. Total Actual Income From Assets:   |    | \$    |       | \$ |
| 3. If Line 1 is greater than \$5,000, multiply by .025 and enter results here, otherwise leave blank. |    | \$    |       | \$ |

**Anticipated Monthly Income:**

Family Member:	Wages/Salaries:	Benefits/Pensions:	Public Assistance:	Other Income:	Asset Income:
----------------	-----------------	--------------------	--------------------	---------------	---------------

Enter the Greater of Lines 2 or 3, Monthly Income, Below

- |                                       |    |               |    |                            |    |
|---------------------------------------|----|---------------|----|----------------------------|----|
| 4. Totals:                            | a. | b.            | c. | d.                         | e. |
| 5. Enter Total of Items 4a through 4e |    |               |    | This is the <u>monthly</u> | \$ |
|                                       |    | <u>income</u> |    |                            |    |

Number of Household Members \_\_\_\_\_

Annual income: \_\_\_\_\_ %

60% AMI Limit: \_\_\_\_\_

Staff: \_\_\_\_\_

### PART IV: APPLICANT CERTIFICATION

I certify under penalty of perjury that the above information is complete and accurate to the best of my knowledge. I understand that Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony and assistance can be terminated for knowingly and willingly making a false or fraudulent statement to a department of the United States Government. I agree to provide any additional documentation required by the program administer to document my/our household income.

<b>HEAD OF HOUSEHOLD</b>		
<b>Signature</b>	<b>Printed Name</b>	<b>Date</b>
<b>OTHER ADULT HOUSEHOLD MEMBERS</b>		
<b>Signature</b>	<b>Printed Name</b>	<b>Date</b>
<b>Signature</b>	<b>Printed Name</b>	<b>Date</b>
<b>Signature</b>	<b>Printed Name</b>	<b>Date</b>