

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF FRESNO AND FRESNO MISSION COMMUNITIES
FOR THE CITY STUDIOS PROJECT**

THIS MEMORANDUM OF UNDERSTANDING (MOU or Agreement) is made and entered into on March 29, 2024 (Effective Date), by and between the CITY OF FRESNO, a California municipal corporation (City), and FRESNO MISSION COMMUNITIES, INC., a California nonprofit public benefit corporation (Fresno Mission Communities), hereinafter referred to collectively as a Party or Parties.

RECITALS

WHEREAS, the State of California Department of Housing and Community Development (HCD) issued a Notice of Funding Availability dated March 29, 2023 (Homekey NOFA), under Round 3 of the Homekey Program established by the American Rescue Plan Act of 2021 (ARPA) and the State General Fund;

WHEREAS, the City and Fresno Mission Communities jointly submitted an application in response to the Homekey NOFA for the acquisition, rehabilitation, and operation of the Travelodge Motel located at 3876 North Blackstone Avenue, Fresno, CA 93726, Assessor's Parcel Number 436-260-22 (Property) to permanent affordable housing for qualified individuals and youth experiencing or at risk of homelessness (City Studios Project or Project);

WHEREAS, the City acquired the Property through a Purchase and Sale Agreement for \$4,401,709 to facilitate a timely close of escrow for the seller, and with the intent to develop permanent affordable housing on the Property for those experiencing or at-risk of homelessness;

WHEREAS, HCD awarded the City and Fresno Mission Communities \$9,598,131 in Homekey Round 3 Program Funds (Homekey Award) for the Project, which includes a capital funds award of \$8,510,526 from which the City will be reimbursed for the acquisition cost of \$4,401,709 (see Exhibit B – Budget and Disbursement Schedule);

WHEREAS, the City is and will act as the owner of the Property through the completion of construction, and will exercise effective site control, site access coordination, and implementation of the Homekey Award;

WHEREAS, the City will act as the developer exercising effective project control as to the rehabilitation of 21 studio apartment units, 9 one-bedroom apartment units, 2 two-bedroom apartment units, and 2 three-bedroom apartment units on the Property, and related on-site and off-site improvements;

WHEREAS, the City will transfer ownership of the Property to Fresno Mission Communities upon completion of construction, to manage and operate the Project;

WHEREAS, once construction is completed and Fresno Mission Communities takes ownership of the property, Fresno Mission Communities will act as a direct service provider to the Project and will operate and maintain the Project's 34 permanent affordable housing units with Supportive Services, as defined by HCD and the Homekey NOFA;

WHEREAS, the City recognizes a considerable increase in individuals and youth experiencing or at risk of homelessness, and the tightening of the availability of permanent supportive housing for this population; and

WHEREAS, the City has determined that the Project is vital and in the best interest of the City, and the health, safety, and welfare of City residents and will increase, improve, and preserve the community's supply of affordable housing.

NOW, THEREFORE, in consideration of the recitals and mutual covenants and conditions contained in this MOU, incorporated herein, the Parties agree, as follows:

Section 1. The Parties to this MOU encourage the highest possible degree of cooperative relationships between their respective representatives with regard to the Homekey Program, including but not limited to, acting in good faith to ensure the transparency, mutual success, and liability prevention, to acquire, develop, and maintain the Property and provide Supportive Services to the residents.

Section 2. The Parties to this MOU shall coordinate their resources and efforts to develop the Project and manage the Property in a timely manner. The Parties agree that 34 units of permanent affordable housing shall be developed and operated as a result of this round of the Homekey Program.

Section 3. The Parties agree to comply with all Homekey Program requirements, regulations, and any other guidelines issued by the State of California that directly relate to the Homekey Program.

Section 4. The Parties agree that the City shall be entitled to reimbursement through the Homekey funds for all third-party costs incurred in connection with the Homekey Program application.

Section 5. Attachment "A" (Project Description and Project Schedule) provides a summary of the Project and performance deadlines. Attachment "B" (Budget and Disbursement Schedule) outlines the disbursement of funds. Both documents are hereby fully incorporated herein.

Section 6. Indemnification and Insurance.

Insurance Requirements.

(a) Throughout the life of this Agreement, FRESNO MISSION COMMUNITIES 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, FRESNO MISSION COMMUNITIES 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, and all payments due or that become due to FRESNO

MISSION COMMUNITIES shall be withheld 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 FRESNO MISSION COMMUNITIES 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 FRESNO MISSION COMMUNITIES shall not be deemed to release or diminish the liability of FRESNO MISSION COMMUNITIES, 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 FRESNO MISSION COMMUNITIES. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of FRESNO MISSION COMMUNITIES, 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 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 the 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 by the State of California and Employer's Liability Insurance.

(iv) EMPLOYEE LIABILITY insurance with limits of liability of no less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 diseased each employee.

UMBRELLA OR EXCESS INSURANCE

In the event FRESNO MISSION COMMUNITIES 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

FRESNO MISSION COMMUNITIES shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and FRESNO MISSION COMMUNITIES 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 CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, FRESNO MISSION COMMUNITIES 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, FRESNO MISSION COMMUNITIES 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 and Automobile Liability insurance policies shall be written on an occurrence form.

The General Liability and Automobile 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 FRESNO MISSION COMMUNITIES's insurance shall be primary, and no contribution shall be required by 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 FRESNO MISSION COMMUNITIES 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 FRESNO MISSION COMMUNITIES.

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.

At the time of transfer of ownership from the CITY to FRESNO MISSION COMMUNITIES, FRESNO MISSION COMMUNITIES, shall purchase a policy or policies of property insurance covering the premises with limits reflective of the value of the premises including fire and Extended Comprehensive Exposure (ECE) coverage. FRESNO MISSION COMMUNITIES will provide a Certificate of Insurance to the CITY prior to transfer of the property.

FRESNO MISSION COMMUNITIES 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, FRESNO MISSION COMMUNITIES 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.

SUBCONTRACTORS

If FRESNO MISSION COMMUNITIES subcontracts any or all of the services to be performed under this Agreement, FRESNO MISSION COMMUNITIES 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, FRESNO MISSION COMMUNITIES 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, FRESNO MISSION COMMUNITIES 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. FRESNO MISSION COMMUNITIES'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, FRESNO MISSION COMMUNITIES, whenever there is any causal connection between FRESNO MISSION COMMUNITIES'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, FRESNO MISSION COMMUNITIES 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 FRESNO MISSION COMMUNITIES 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 FRESNO MISSION COMMUNITIES as reasonably determined by CITY.

Upon the tender by CITY to FRESNO MISSION COMMUNITIES, FRESNO MISSION COMMUNITIES 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 FRESNO MISSION COMMUNITIES that if CITY tenders a defense of a claim on behalf of CITY or any of its officers, officials, employees, agents, or volunteers and FRESNO MISSION COMMUNITIES 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 FRESNO MISSION COMMUNITIES 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 FRESNO MISSION COMMUNITIES 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 FRESNO MISSION COMMUNITIES should subcontract all or any portion of the work to be performed under this Contract, FRESNO MISSION COMMUNITIES 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.

Section 7. Non-Performing Deed of Trust. The City can enforce the obligation of Fresno Mission Communities to the Project and City to ensure compliance with this MOU by executing a deed of trust, and recording it as a lien against the Property, in a subordinate lien priority to all liens, including but not limited to a senior secured debt or regulatory agreement at the close of escrow.

Section 8. Time is of the essence in the performance of this MOU. When any party has knowledge that any actual or potential situation is delaying or threatens to delay timely performance, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party or parties.

Section 9. Any alterations, modifications, or amendments shall only be valid when reduced to writing, duly signed and approved by the authorized representative of the Parties as an amendment to this MOU. The City and Fresno Mission Communities

recognize and acknowledge that the State of California may require amendments to this MOU as the Homekey Program grant funds are awarded.

Section 10. All actions in this MOU are contingent on the State of California awarding Homekey Program grant funds for the application. In the event the State of California does not award Homekey Program funds to the City for its application, this MOU shall be of no force or effect and shall be deemed terminated. The indemnification requirements of this section shall survive termination of this MOU.

Section 11. The parties understand and agree that the availability of Homekey Program grant funds is subject to the control of the State of California, and should said funds be encumbered, withdrawn, or otherwise made unavailable to the City, whether earned or promised to Fresno Mission Communities, and/or should the City in any fiscal year hereunder fail to allocate said Funds, the City shall not provide the Homekey Program grant funds unless and until they are made available for payment to the City by the State of California and the City receives and allocates said Homekey Program grant funds. No other funds owned or controlled by the City shall be obligated under this MOU.

Section 12. Fresno Mission Communities may assign its rights, obligations, and duties contemplated under this MOU to controlled subsidiaries (Assignee), and may form one or more jointly controlled or owned special purpose entities as may be required for the financing or other purposes related to the execution of the obligations of Fresno Mission Communities under this MOU, so long as such assignment or creation of special purposes entities do no substantively change the obligations of Fresno Mission Communities or the rights of City. The assignment of rights, obligations, and duties does not relieve Fresno Mission Communities of their obligations under this MOU.

Section 13. This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other email transmission), which shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed MOU upon request.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this MOU to be executed below at Fresno, California, the day and year first written above.

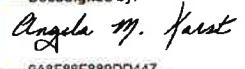
CITY OF FRESNO,
a California municipal corporation

By:  4B59C02BA274420 4/29/2024
Georgianne A. White Date
City Manager

APPROVED AS TO FORM:

ANDREW JANZ

City Attorney

By:  4/1/2024
Angela M. Karst Date
Senior Deputy City Attorney

ATTEST:

TODD STERMER, CMC

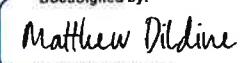
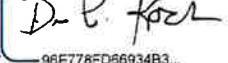
City Clerk

By:  5-10-2024
Deputy Susan Mdc Date

Addresses:

CITY OF FRESNO
Planning & Development Department
Attention: Phil Skei, Assistant Director
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8300

FRESNO MISSION COMMUNITIES, INC.,
a California nonprofit public benefit corporation

By:  3/29/2024
Matthew Dildine Date
Chief Executive Officer
By:  3/29/2024
Dennis Koch Date
Secretary

Attachments:

EXHIBIT A: PROJECT DESCRIPTION AND PROJECT SCHEDULE
EXHIBIT B: BUDGET AND DISBURSEMENT SCHEDULE

EXHIBIT A

I. PROJECT DESCRIPTION

The City Studios Project consists of developing 34 units of Permanent Housing for individuals and youth experiencing or at risk of homelessness. The Project will be located at the real property owned by the City of Fresno at 3876 North Blackstone Avenue, Fresno, CA 93726, APN 436-260-22. The target populations will be Homeless Youth and Youth at Risk of Homelessness and General Homeless. Of the 34 project units, 10 units will be set aside for Homeless Youth or Youth at Risk of Homelessness, 23 units will be set aside for General Homeless, and 1 unit will be the on-site manager's unit. The project involves the rehabilitation and conversion of a 44-room motel to 34 project units consisting of 21 studio apartment units, 9 one-bedroom apartment units, 2 two-bedroom apartment units, and 2 three-bedroom apartment units, and related on-site and off-site improvements.

II. PROJECT SCHEDULE

- A. Capital Funds Expenditure Deadline: October 14, 2024
- B. Completion of Construction: February 14, 2025
- C. Occupancy Deadline: May 14, 2025
- D. Operating Funds Expenditure Deadline: November 14, 2026

EXHIBIT B

BUDGET AND DISBURSEMENT SCHEDULE

USES OF FUNDS	Homekey Award	City of Fresno	Total Sources/Costs
Project Development Costs			
LAND COST/ACQUISITION			
Land Cost or Value			
Demolition			
Legal			
Land Lease Rent Prepayment			
Total Land Cost or Value	\$0	\$0	
Existing Improvements Cost or Value			\$4,400,000
Off-Site Improvements			
Total Acquisition Cost	\$0	\$4,400,000	\$4,400,000
Total Land Cost / Acquisition Cost	\$0	\$4,400,000	\$4,400,000
REHABILITATION			
Site Work	\$5,125,520	\$484,000	\$5,609,520.00
Contractor Profit	\$775,000		\$775,000
Prevailing Wages	\$25,000		\$25,000
General Liability Insurance	\$75,000		\$75,000
Solar	\$100,000		\$100,000
Utilities	\$18,000		\$18,000
Total Rehabilitation Costs	\$6,118,520	\$484,000	\$6,602,520
Total Relocation Expenses	\$50,000	\$50,000	\$100,000
NEW CONSTRUCTION			
Site Work			
Structures			
General Requirements			
Contractor Overhead			
Contractor Profit			
Prevailing Wages			
General Liability Insurance			
Urban Greening			
Total New Construction Costs	\$0	\$0	
ARCHITECTURAL FEES			
Design	\$287,595		\$287,595
Supervision	\$28,758		\$28,758
Total Architectural Costs	\$316,343	\$0	\$316,343
Total Survey & Engineering	\$43,138		\$43,138
CONSTRUCTION INTEREST & FEES			
Title & Recording	\$15,000		\$15,000
Taxes	\$46,200		\$46,200
Insurance	\$100,000		\$100,000
Total Construction Interest & Fees	\$161,200	\$0	\$161,200
PERMANENT FINANCING			
Loan Origination Fee			
Credit Enhancement/Application Fee			
Title & Recording			
Taxes			
Insurance			
Total Permanent Financing Costs	\$0	\$0	
Subtotals Forward	\$6,689,201	\$4,934,000	\$11,623,201
LEGAL FEES			
Legal Paid by Applicant	\$45,000		\$45,000
Total Attorney Costs	\$45,000	\$0	\$45,000
RESERVES			
Operating Reserve	\$178,769		\$178,769
Replacement Reserve	\$22,000		\$22,000
Rent Reserve			
Operating Reserves Years 1-3		\$66,000	\$66,000
Other Reserve Costs: (Specify)			
Other Reserve Costs: (Specify)			
Total Reserve Costs	\$200,769	\$66,000	\$266,769
CONTINGENCY COSTS			
Construction Hard Cost			
Contingency	\$667,493		\$667,493
Soft Cost Contingency	\$20,000		\$20,000
Total Contingency Costs	\$687,493	\$0	\$687,493
OTHER PROJECT COSTS			
TCAC App/Allocation/Monitoring Fees			
Environmental Audit	\$15,000		\$15,000
Local Development Impact Fees	\$75,000		\$75,000
Permit Processing Fees	\$66,749		\$66,749
Accounting/Reimbursable	\$30,000		\$30,000
PGE/Utility	\$100,000		\$100,000
MGP Compliance			
Third Party Reports	\$30,000		\$30,000
Landscape Architect	\$4,314		\$4,314
Other Costs' (Specify)			
Total Other Costs	\$321,063	\$0	\$321,063
SUBTOTAL PROJECT COST	\$7,943,526	\$5,000,000	\$12,943,526
DEVELOPER COSTS			
Developer Overhead/Profit			
Project Administration	\$17,000		\$17,000
Total Developer Costs	\$567,000	\$0	\$567,000
Total Project Costs	\$8,510,526	\$5,000,000	\$13,510,526

Disbursement Schedule:

Total Homekey Award	\$9,598,131
Capital Award	\$8,510,526
Operating Award	\$1,087,605

- Upon full execution of the HCD Homekey Standard Agreement and receipt of the Homekey Program Funds by the City, the City will immediately be reimbursed for the property acquisition cost of \$4,401,709. The City will then disburse an initial advance payment of 50% of remaining capital funds to RH Community Builders (Contractor) to be used as working capital to cover expenses in the following categories:
 - Construction costs
 - Development management fees
 - Design and Engineering
 - Construction testing
 - Title and Recording fees
 - Construction-related insurance
 - Legal Fees
 - City Fees (Plan Review, Permitting, Inspections)
 - Prevailing Wage Monitoring
 - Miscellaneous Consultant expenses
- Contractor will submit all required documentation to the City for the request for funds as described in the Repair Service Agreement between the City and Contractor.

Disbursement of Funds. The City will disburse the Homekey funds related to this project directly to Contractor.