

AHSC SUBRECIPIENT DISBURSEMENT AGREEMENT

THIS AHSC SUBRECIPIENT DISBURSEMENT AGREEMENT made as of _____, 2024, by and between the City of Fresno, a municipal corporation (the "City"), California Vanpool Authority ("CalVans"), the Fresno Rescue Mission, (the "Mission"), and UP Holdings, LLC, an Illinois limited liability company, dba UP Holdings California, LLC ("UPH").

RECITALS

WHEREAS, UPH applied to the California Department of Housing and Community Development ("HCD") for certain Affordable Housing and Sustainable Communities (AHSC) Program funding (the "AHSC Funding"), which AHSC Funding is described in that certain Conditional Award Commitment and Acceptance of Terms and Conditions letter, dated September 1, 2023 (the "Award Letter"), which awarded \$33,184,958 in loan funds and \$15,581,049 in grant funds (the "AHSC Grant Funds"), which collective award it to be used in connection with that certain project located at 3787 N. Blackstone Avenue, Fresno, CA and to be known as The Dakota (the "Project").

WHEREAS, UPH, or its successor limited partnership (the "UPH Limited Partnership"), shall cooperate with HCD to cause the execution by HCD and UPH of that certain Standard Agreement (the "Standard Agreement") related to the AHSC Funding.

WHEREAS, UPH will enter into that certain Memorandum of Understanding with CalVans in connection with certain rideshare services that is to be provided at the Project and will be funded by a portion of the AHSC Grant Funds.

WHEREAS, UPH has entered into that certain Memorandum of Understanding with the City of Fresno dated March 30, 2023 (the "City MOU") in connection with certain improvements the City shall make funded with a portion of the AHSC Grant Funds.

WHEREAS, UPH and the Mission will enter into that certain letter agreement in connection with certain services that will be provided by the Mission to the tenants at the Project and which shall be funded with a portion of the AHSC Grant Funds.

WHEREAS, UPH shall cause the UPH Limited Partnership to provide certain free internet services to tenants of the Project which shall be funded with a portion of the AHSC Grant Funds.

WHEREAS, HCD has agreed to cause the AHSC Grant Funds to be disbursed to the City, and the City has agreed to disburse to the Mission, CalVans and the UPH Partnership their respective portion of the AHSC Grand Funds according to the terms set forth below.

Accordingly, the parties hereto agree as follows:

1 Delivery of the CalVans AHSC Grant Funds. The City and CalVans agree that according to the terms of the CalVans MOU, the AHSC Award Letter and the Standard Agreement, CalVans shall be disbursed \$4,473,398 (the "CalVans Portion"), which funds shall be disbursed to

CalVans by the City promptly, but no later than 15 days after receipt by the City of disbursements of the AHSC Grant Funds from HCD where such funds are disbursed for the services provided by CalVans in accordance to the terms of the Standard Agreement. CalVans, the City and UPH shall cooperate in preparing disbursement requests to HCD for the AHSC Grant Funds relating to the CalVans Portion and all documents related to such disbursement request.

2 Delivery of the Mission AHSC Grant Funds. The City and Mission agrees that according to the terms of the Mission MOU, the AHSC Award Letter and the Standard Agreement, Mission shall be disbursed \$350,700 (the “Mission Portion”), which funds shall be disbursed to Mission by the City promptly, but no later than 15 days after receipt by the City of disbursements of the AHSC Grant Funds from HCD where such funds are disbursed for the services provided by Mission in accordance to the terms of the Standard Agreement. Mission, the City and UPH shall cooperate in preparing disbursement requests to HCD for the AHSC Grant Funds relating to the Mission Portion and all documents related to such disbursement request.

3 Delivery of the UPH Limited Partnership AHSC Grant Funds. The City and UPH, as successor in interest to the UPH Limited Partnership, agrees that according to the terms of the AHSC Award Letter and the Standard Agreement, the UPH Limited Partnership shall be disbursed \$390,931 (the “UPHLP Portion”), which funds shall be disbursed to the UPH Limited Partnership by the City promptly, but no later than 15 days after receipt by the City of disbursements of the AHSC Grant Funds from HCD where such funds are disbursed for the services provided by the UPH Limited Partnership in accordance to the terms of the Standard Agreement. The City and UPH shall cooperate in preparing disbursement requests to HCD for the AHSC Grant Funds relating to the UPHLP Portion and all documents related to such disbursement request.

4 AHSC Grant Funds. The City, Mission, CalVans and UPH agree that the City is acting herein as a disbursement party only and shall have no liability for payments of any of the CalVans Portion, Mission Portion and/or UPHLP Portion until and unless HCD shall disburse to the City those respective funds. The City shall not be liable for any action taken or omitted in good faith by the City in connection with the disbursements made under this Agreement. The City shall be liable to the Mission, CalVans and/or UPH under this Agreement only for its own willful misconduct or gross negligence, as finally determined by a court of competent jurisdiction.

5 Conflicts. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including the Standard Agreement or any of the associated documents, the terms, conditions and provisions of the Standard Agreement shall prevail.

6 Notice. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be sent by FedEx or similar overnight delivery service, or delivered personally, in each case addressed to the party hereto to receive such notice or other communication at its respective address as follows:

to the City:

City of Fresno, Department of Transportation / FAX
2223 G Street
Fresno, CA 93706
Attn: Linda Taylor
Administrative Manager of Transportation Department / FAX
Email: linda.taylor@fresno.gov

to CalVans:

California Vanpool Authority
P.O. Box 209
Hanford, CA 93232
Attn: Georgina Landecho
Executive Director
Email: Georgina.landecho@co.kings.ca.us

to Mission:

Fresno Rescue Mission
263 G Street
Fresno, CA 93706
Attn: Matthew Dildine
Chief Executive Officer
Email: mdildine@fresnomission.org

to UPH:

UP Holdings, LLC
7370 N. Lincoln Avenue, Suite A
Lincolnwood, IL 60712
Attn: Cullen Davis
Project Manager
Email: cullen@upholdings.net

Any party may, by notice to the others, change its address for any subsequent notice. It being understood and agreed that each party will use reasonable efforts to send copies of any notices

to all parties; provided, however, that failure to deliver such copy or copies shall have no consequences whatsoever to the effectiveness of any notice made to any of the foregoing.

7 Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California and shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns, and may not be changed orally.

8 Entire Agreement. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior documents and communications with respect to the subject matter hereof. This Agreement may not be changed, terminated or modified orally or in any manner other than by an agreement in writing signed by the party sought to be charged therewith.

9 Waiver of Trial by Jury. **The parties hereby expressly and unconditionally waive, in connection with any suit, action or proceeding brought by the parties to this Agreement in connection with this Agreement and/or the advanced pursuant to the Standard Agreement, any and every right it may have to (i) injunctive relief, (ii) trial by jury, (iii) interpose any counterclaim therein (other than a counterclaim brought that cannot be maintained in any separate action) and (iv) have the same consolidated with any other or separate suit, action or proceeding. Nothing herein contained shall prevent or prohibit any of the parties hereto from instituting or maintaining a separate action against another party hereto with respect to any asserted claim.**

10 Enforceability. In the event that any provision of this Agreement or the application thereof to any party hereto, or to any circumstance or in any jurisdiction governing this Agreement, shall, to any extent, be invalid or unenforceable under any applicable statute, regulation or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule or law, and the remainder of this Agreement and the application of any such individual or unenforceable provision to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall the validity or enforceability of any other provision of this Agreement be affected thereby.

11 Effect of Agreement. Nothing contained in this Agreement shall be deemed or construed to create any relationship of principal and agent, or of limited or general partnership, or of joint venture, or of any association by and between the City, the Mission, CalVans and UPH.

12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

CITY:

CITY OF FRESNO,
a California municipal corporation

By: _____
Name:
Title:

APPROVED AS TO FORM:

City Attorney

By: _____
Name:
Title:
Date:

ATTEST:

City Clerk

By: _____
Name:
Title:
Date:

CALVANS:

California Vanpool Authority

By: _____
Name: Georgina Landecho
Title: Executive Director

MISSION:

Fresno Rescue Mission

By: _____
Name: Matthew Dildine
Title: Chief Executive Officer

UPH:

UP Holdings, LLC, an Illinois limited liability
company, dba UP Holdings California, LLC

By: _____
Name: Cullen J. Davis
Title: Manager