

**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

<b>RESOLUTION AUTHORIZING THE</b>	)	
<b>BOARD CHAIR TO EXECUTE THE</b>	)	<b>RESOLUTION NO.:</b> <u>2021-077</u>
<b>ACQUISITION FUNDING AGREEMENT,</b>	)	
<b>SUB-RECIPIENT AGREEMENT AND</b>	)	
<b>ESCROW INSTRUCTIONS FOR THE</b>	)	
<b>HABITAT AFFORDABLE HOUSING</b>	)	
<b>PROJECT</b>	)	

**WHEREAS,** Habitat for Humanity Yuba/Sutter, Inc (Habitat) reached out to Yuba County Community Development and Services Agency (CDSA) about Habitat's desire to purchase the Travel Inn & Suites located at 1111 North Beale Road (APN: 020-020-070) in the unincorporated Yuba County community of Marysville and turn the hotel into a 61-unit affordable housing project; and

**WHEREAS,** CDSA informed Habitat that to allow an existing hotel to be utilized as a Single-Room Occupancy land-use, approval of an Administrative Use Permit (AUP) was required; and

**WHEREAS,** on April 7<sup>th</sup>, 2021 Habitat submitted an application for an AUP to utilize the Travel Inn & Suites as a Single-Room Occupancy land-use and, subject to neighboring noticing requirements and no requests for a project public hearing, CDSA's Planning Manager approved the AUP on April 23, 2021; and

**WHEREAS** Habitat is seeking to utilize funding from the California Department of Housing and Community Development's (HCD) Community Development Block Grant (CDBG) program to purchase the Travel Inn & Suites in the amount of \$6,200,000; and

**WHEREAS,** HCD has confirmed a CDBG program funding source specific to Yuba County for Habitat's acquisition of the Travel Inn & Suites and subject to CDSA submitting an application to HCD for the funding; and

**WHEREAS,** on June 8, 2021, the Board adopted a resolution authorizing CDSA to apply for CDBG funding and enter into a Standard Agreement with HCD for funding for Habitat's acquisition of the Travel Inn and Suites; and

**WHEREAS,** the Acquisition Funding Agreement is an agreement that ensures use of the 61-unit affordable housing project is consistent with CDBG funding guidelines and that the county has a mechanism to enforce CDBG funding guidelines if Habitat is no longer able to manage the property ; and

**WHEREAS**, the Sub-Recipient Agreement is an agreement between Yuba County and Habitat that allows Habitat to get refunded for eligible expenses, such as project activity time and consultant related expenses, through the Yuba County CDBG program and

**WHEREAS**, the Escrow Instructions are instructions between Yuba County and Placer Title Company that states the terms of escrow for the acquisition of the Travel Inn & Suites; and

**WHEREAS**, pursuant to GC 25339.4, the County finds the project will serve a public purpose and such use will be in the county's best interest by providing affordable housing for a period of 30 years;

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors authorizes the Board Chair to execute the Acquisition Funding Agreement, Sub-Recipient Agreement and Escrow Instructions for the Habitat Affordable Housing Project.

**PASSED AND ADOPTED** this 8 day of June 2021, by the Board of Supervisors of the County of Yuba, by the following vote:

**AYES:** Supervisors Vasquez, Blaser, Fuhrer, Bradford, Fletcher

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None



Chair

**ATTEST: RACHEL FERRIS**  
Clerk of the Board of Supervisors



**APPROVED AS TO FORM:**  
Mike Ciccozzi, County Counsel

By: 

**SUBRECIPIENT AGREEMENT  
BETWEEN  
COUNTY OF YUBA  
AND  
HABITAT FOR HUMANITY YUBA/SUTTER, INC.  
FOR  
COUNTY OF YUBA – CDBG AFFORDABLE HOUSING PROGRAM**

THIS AGREEMENT, entered this \_\_\_\_\_ day of June, 2021, by and between COUNTY OF YUBA (herein called the "Grantee") and HABITAT FOR HUMANITY Yuba/Sutter, Inc. (herein called the "SUBRECIPIENT").

WHEREAS, the Grantee has funds allocated for the acquisition of an Affordable Housing Project in the County of Yuba and

WHEREAS, the Grantee wishes to engage the SUBRECIPIENT to assist the Grantee in utilizing such funds,

NOW, THEREFORE, it is agreed between the parties hereto that;

I. **SCOPE OF SERVICE**

A. **Principal Tasks**

The Major goal of the SUBRECIPIENT will be to identify a highly-suitable property, for the acquisition of an Affordable Housing Project within the County of Yuba; utilizing funding available under the State Community Development Block Grant Program. SUBRECIPIENT will coordinate the escrow process from the initial acquisition of property, through the recording of the property transfer, and escrow closing. The SUBRECIPIENT will administer and perform all tasks in connection with the aforesaid project in compliance with all applicable Federal, state, and local rules and regulations governing these funds, and in a manner satisfactory to Grantee.

The SUBRECIPIENT's due diligence efforts under this Agreement will include a property inspection; needs assessment; feasibility analysis; site appraisal; and a Phase 1 environmental study. SUBRECIPIENT will also be responsible for the preparation of an operating proforma. Changes to the projects goals, scope of services, schedules or budgets, unless otherwise noted, may only be made through a written amendment to the Agreement, executed by the SUBRECIPIENT and Grantee. Toward the goal of the completion of the acquisition of the project, the major tasks the SUBRECIPIENT will perform include, but not necessarily limited to, the following:

- 1) **Development proforma:** the SUBRECIPIENT will prepare a development proforma that incorporates expenditures associated with the acquisition of property, to include: acquisition, property needs assessment, appraisal, phase I environmental report, and title fees, title endorsement fees, escrow fees, and document recording fees.

- 2) **Operating proforma:** the SUBRECIPIENT will prepare an operating proforma that incorporates expenditures associated with the operation of an Affordable Housing Project, to include but limited to; onsite manager, utilities, ongoing anticipated maintenance fees, on-site security, projected monthly revenue, vacancy loss, as well as projected cash flow; based on rents obtained from low to very low-income occupants.
- 3) **Coordinate Escrow process:** the SUBRECIPIENT will coordinate the escrow process; recording of property transfer; title report; and closing statements. SUBRECIPIENT will coordinate with the County of Yuba for the signing of all escrow and recording documents, and final closing statements.
- 4) **Approval of payments:** as project progresses and invoices are submitted for reimbursement, SUBRECIPIENT will verify that the expenses are reasonable and the assessments/studies have been completed property, prior to authorizing drawdown of funds from the Grantee, and disbursement to SUBRECIPIENT.
- 5) **Maintenance of case files and other records:** the SUBRECIPIENT will maintain case files including assessment; analysis; appraisal; environmental studies; documentation of liens and any other forms of security; copy of purchase contract; documentation on all necessary licenses and permits; site visit/inspection reports (including final inspection); and approved invoices for payment (with sign-off). The SUBRECIPIENT will maintain appropriate information on persons residing in the property, including a list or lists identifying persons in a project immediately before purchase of property; after purchase of property; those moving in during the project; and information on those displaced or temporarily relocated (per 24 CFR 570.606 and 24 CFR 2424). The SUBRECIPIENT will maintain these and other project and financial records in accordance with the general requirements for record keeping specified in Section VIII of this Agreement.

#### B. Performance Measures

The SUBRECIPIENT agrees to provide the following levels of project services:

Completion of the Acquisition of an Affordable Housing Project.

#### C. Performance Monitoring

The Grantee will monitor the performances of the SUBRECIPIENT against the goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the SUBRECIPIENT within a reasonable period after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the SUBRECIPIENT shall start on \_\_\_\_\_. All funds received by SUBRECIPIENT under this Agreement shall be spent prior to \_\_\_\_\_. All funds not spent within the allotted time shall be returned to the Grantee within (30) days, unless an amendment, creating an extension to this Agreement is made.

III. BUDGET

The following is the budget for the CDBG FY 2021 affordable housing project to be administered by Habitat for Humanity Yuba/Sutter, Inc. Unless otherwise noted, this budget may only be modified through a formal written amendment approved by the Grantee.

<u>Line Items</u>	<u>Amount</u>
1. Staff Time	not to exceed \$35,000.00
2. Consultant Services	not to exceed \$70,000.00

IV. PAYMENT

Funding shall be payable in one lump sum draw and monthly thereafter, or upon approval of submitted invoices. It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$105,000.00.

(Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for activity delivery shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.)

V. METHOD OF COMPENSATION/SCHEDULE OF PAYMENTS

The SUBRECIPIENT may draw down funds (against the budget line item) upon accrual of staff time, or for reimbursement of invoices.

VI. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communications and details concerning this Agreement shall be directed to the following contract representatives:

Grantee

Mike Lee, CDSA Director  
County of Yuba  
915 8<sup>th</sup> Street, Ste. 123  
Marysville, CA 95901

SUBRECIPIENT

Joseph Hale, CEO  
Habitat for Humanity Yuba/Sutter, Inc.  
202 D Street  
Marysville, CA 95901

Phone (530) 749-5430  
Fax (550) 749-5434  
E-Mail: mlee@co.yuba.ca.gov

Phone (530) 742-2727, Ext. 211  
Fax (530) 742-2721  
E-mail: jhale@yubasutterhabitat.org

## VII. GENERAL CONDITIONS

### A. General Compliance

The SUBRECIPIENT agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations, concerning Community Development Block Grants (CDBG) including subpart K of these regulations, except: (1) the SUBRECIPIENT does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the SUBRECIPIENT does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The SUBRECIPIENT also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided in this contract. The SUBRECIPIENT further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

### B. "Independent Contractor"

Nothing contained in this Agreement shall be construed in any manner, as creating or establishing a relationship of employer/employee between the parties. In respect to the services to be performed under this Agreement, the SUBRECIPIENT shall at all times remain an "independent contractor". The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's Compensation Insurance, as the SUBRECIPIENT is an independent contractor.

### C. Hold Harmless

The SUBRECIPIENT shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgements whatsoever that arise out of the SUBRECIPIENT's performance or nonperformance of the services or subject matter called for in this Agreement.

### D. Worker's Compensation

The SUBRECIPIENT shall provide Worker's Compensation Insurance coverage for all of its employees involved in the performance of the Agreement.

### E. Insurance & Bonding

The SUBRECIPIENT shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to 25% of the cash advanced from the Grantee.

The SUBRECIPIENT shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

#### F. Grantee Recognition

The SUBRECIPIENT shall ensure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the SUBRECIPIENT will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

#### G. Amendments

The Grantee or SUBRECIPIENT may amend this Agreement at any time, provided such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such Amendments shall not invalidate this Agreement, nor relieve or release the Grantee or SUBRECIPIENT from its obligations under this Agreement.

The Grantee may amend this Agreement to conform to Federal, state or local government guidelines and policies, available funding amounts, or other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and SUBRECIPIENT.

#### H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate the Agreement if the SUBRECIPIENT materially fails to comply with any terms of this Agreement, which include (but are not limited to), the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD/HCD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the SUBRECIPIENT to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the SUBRECIPIENT to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the SUBRECIPIENT, in whole or in part, by setting forth reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

## VIII. ADMINISTRATIVE REQUIREMENTS

### A. Financial Management

#### 1. Accounting Standards

The SUBRECIPIENT agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilizing adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### 2. Cost Principles

The SUBRECIPIENT shall administer its program in conformance with 2 CFR 230 "Cost Principles for Non-Profit Organizations," as applicable. These principles shall be applied for all costs incurred whether charged on direct or indirect basis.

### B. Documentation and Record Keeping

#### 1. Records to be maintained

The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. SUBRECIPIENT shall provide complete copies of all pertinent documents to Grantee. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

#### 2. Retention

The SUBRECIPIENT shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later. A copy of such financial records shall be provided to Grantee upon the completion of property rehabilitation and the close out of each file.



### 3. Client Data

The SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. A copy of such information shall be provided to Grantee and made available to HCD and/or Grantee monitors or their designees for review upon request.

### 4. Disclosure

The SUBRECIPIENT understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or SUBRECIPIENT's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

### 5. Close-outs

The SUBRECIPIENT's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets [other than acquisition of the real property for the Affordable Housing Project] (including the return of all unused materials, equipment, unspent cash advances, program income balances, to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the SUBRECIPIENT has control over CDBG funds, including program income.

### 6. Audits & Inspections

All SUBRECIPIENT records with respect to any matters covered by this Agreement shall be made available to the Grantee, or any authorized representative, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit report must be fully cleared by the SUBRECIPIENT within 30 days after receipt by the SUBRECIPIENT. Failure of the SUBRECIPIENT to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning SUBRECIPIENT audits and OMB Circular A-133.

## C. Reporting and Payment Procedures

### 1. Program Income

The SUBRECIPIENT shall report monthly to Grantee all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the SUBRECIPIENT may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be

returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

If indirect costs are charged, the SUBRECIPIENT will develop an indirect cost allocation plan for determining the appropriate SUBRECIPIENT's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the SUBRECIPIENT, funds available under this Agreement based upon information submitted by the SUBRECIPIENT, and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for actual eligible expenses incurred by the SUBRECIPIENT, not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance funds and program income balances available in SUBRECIPIENT accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the SUBRECIPIENT.

4. Progress Reports

The SUBRECIPIENT shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee

D. Procurement

1. Compliance

The SUBRECIPIENT shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets [other than acquisition of real property for the Affordable Housing Project] (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this Agreement, the SUBRECIPIENT shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.41.

3. Travel

The SUBRECIPIENT shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

E. Use of Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570-502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

The SUBRECIPIENT shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR ONE HOUSING REPLACEMENT

The SUBRECIPIENT agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementation regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. The SUBRECIPIENT shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The SUBRECIPIENT also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPATION CONDITIONS

A. Civil Rights

1. Compliance

The SUBRECIPIENT agrees to comply with: Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1964 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; Executive Order 1106, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The SUBRECIPIENT agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

### 3. Land Covenants

The contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the SUBRECIPIENT shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee are beneficiaries of and entitled to enforce such covenants. The SUBRECIPIENT, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

### 4. Section 504

The SUBRECIPIENT agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any government assisted program. The Grantee shall provide the SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

## B. Affirmative Action

### 1. Approved Plan

The SUBRECIPIENT agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the SUBRECIPIENT to assist in the formulation of such program. The SUBRECIPIENT shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

### 2. Access to Records

The SUBRECIPIENT shall furnish and cause each of its own sub-SUBRECIPIENTS or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, or its agents for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

### 3. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that is an Equal Opportunity or Affirmative Action employer.

## C. Employment Restrictions

### 1. Prohibited Activities

The SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

### 2. Labor Standards

The SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The SUBRECIPIENT agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementation regulations of the U.S Department of Labor at 29 CFR Part 5. The SUBRECIPIENT shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

## D. Conduct

### 1. Assignability

The SUBRECIPIENT shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the SUBRECIPIENT from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

### 2. Hatch Act

The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

### 3. Conflict of Interest

The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The SUBRECIPIENT shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by these funds.
- b. No employee, officer or agent of the SUBRECIPIENT shall participate in the selection, or in the award, or administration of, a contract supported by these funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract or

have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the SUBRECIPIENT, or any designated public agency.

#### 4. Lobbying

The SUBRECIPIENT hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an offer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS shall certify and disclose accordingly:
- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### 5. Copyright

If this contract results in any copyrightable material or inventions, the Grantee reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

#### 6. Religious Activities

SUBRECIPIENT agrees that funds provided under the Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

## XI. ENVIRONMENTAL CONDITIONS

### A. Air and Water

The SUBRECIPIENT agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

### B. Lead-Based Paint

The SUBRECIPIENT agrees that any construction or rehabilitation of residential structures with assistance provided under the Agreement shall be subject to Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. That if lead-based paint is effected by the construction taken place, that abatement measures may be undertaken.

### C. Historic Preservation

The SUBRECIPIENT agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

## XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

## XIII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

## XIV. WAIVER

The Grantee's failure to act with respect to a breach by the SUBRECIPIENT does not waive its right to act with respect to subsequent or similar breaches. The failure of Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between Grantee and SUBRECIPIENT for the use of funds received under this agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the SUBRECIPIENT with respect to this Agreement.


The PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Date: June 8, 2021

**COUNTY OF YUBA**

By:   
Gary Bradford, Chair  
Yuba County Board of Supervisors

ATTEST: County Clerk

By:   
Deputy Clerk of the Board

APPROVED AS TO LEGAL FORM  
MICHAEL J. CICCOTZI  
COUNTY COUNSEL

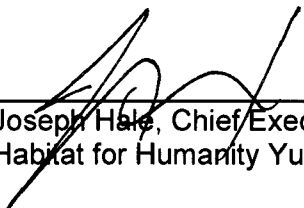
By:   
For Michael J. Ciccozzi, County Counsel

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

By: \_\_\_\_\_  
Jill Abel, Director  
Human Resources and Risk Manager

**SUBRECIPIENT**

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

By:   
Joseph Hale, Chief/Executive Officer  
Habitat for Humanity Yuba/Sutter, Inc.



## **Exhibit "A"**

### **Legal Description**

The land described herein is situated in the State of California, County of Yuba, unincorporated area, described as follows:

#### **Parcel 1:**

Parcel 1, as shown on that certain entitled "Parcel Map No. 97-12", filed September 2, 1998 in Book 70 of Parcel Maps, Page 2, in the Office of the County Recorder of said County.

#### **Parcel 2:**

An easement for ingress and egress access over a strip of land designated and delineated as "40' ingress and egress access easement to benefit Parcels 1, 2 & 3", as shown on that certain map entitled "Parcel Map No. 97-12", filed September 2, 1998 in Book 70 of Parcel Maps, Page 2, in the Office of the County Recorder of said County.

APN: 020-020-070-000

**ACQUISITION FUNDING AGREEMENT**

by and between

**COUNTY OF YUBA**

and

**HABITAT FOR HUMANITY YUBA/SUTTER, INC.,  
A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**

for

**County of Yuba – CDBG Affordable Housing Project**

/

## ACQUISITION FUNDING AGREEMENT

THIS ACQUISITION FUNDING AGREEMENT (this “Agreement”) is entered into as of June \_\_\_\_, 2021 (“Effective Date”), between the County of Yuba (“County”), and Habitat for Humanity Yuba/Sutter, Inc., A California Nonprofit Public Benefit Corporation (“Recipient”). Recipient and County are hereinafter collectively referred to as the “Parties.”

### RECITALS

A. WHEREAS there is a great demand for affordable rental homes in the unincorporated communities of Marysville and Linda, California, and

B. WHEREAS County therefore desires, under California Government Codes 25539.4 and 65916, to assist in the acquisition and the development of up to 61 units of affordable rental housing and one (1) manager’s unit, for a total of sixty-two (62) units in unincorporated Marysville in Yuba County, California (collectively, the “Project”), and

C. WHEREAS Recipient has agreed to purchase with CDBG funds the real property known as Assessor Parcel Number 020-020-070 more particularly described in Exhibit A attached hereto (the “Property”) and agrees to acquire and improve the housing units described in Recital B, above, on the Property, and

D. WHEREAS County has agreed to provide acquisition funding with CDBG funds in an amount of six million two hundred thousand (\$6,200,000.00) (the “Acquisition Funding”) for the purpose of financing the acquisition of the Property, and

E. WHEREAS County represents that no portion of the principal of the Acquisition Funding is derived from proceeds of issuance of tax-exempt bonds, and

F. WHEREAS concurrently herewith, Recipient shall execute: (i) a promissory note in the amount of six million two hundred thousand (\$6,200,000.00) to evidence the Acquisition Funding (the “Acquisition Funding Note”), (ii) a Deed of Trust and Security Agreement (the “Deed of Trust”) to provide County with a security interest in the Property and the Project (collectively, the “Development”), and (iii) a Regulatory Agreement to establish certain restrictive covenants that will run with the land (“Regulatory Agreement”). This Agreement, the Acquisition Funding Note and the Deed of Trust are hereinafter collectively referred to as the “Funding Documents,” and

G. WHEREAS concurrently herewith, County and Recipient shall enter into a Subrecipient Agreement; and

H. WHEREAS County has determined that the Acquisition Funding is necessary to make the Development economically feasible and affordable to low- and very low-income households, and

I. WHEREAS the California Department of Housing and Community Development (“HCD”) requires documents evidencing County’s security interest in CDBG grant funds in order

to fund the Project and other assurances pursuant to 24 CFR 570.503 and assurances pursuant to Change of Use (24 CFR § 570.489).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **ARTICLE I**

RECITALS. The foregoing recitals are a part of this Agreement.

### **DEFINITIONS**

- 1.1. "Acquisition Funding" is defined in Recital D of this Funding Agreement.
- 1.2. "Acquisition Funding Note" is defined in Recital F of this Funding Agreement.
- 1.3. "Agreement" means this Acquisition Funding Agreement.
- 1.4. "Development" is defined in Recital F of this Funding Agreement.
- 1.5. "Note" means the Acquisition Funding Note.
- 1.6. "Parties" means County and Recipient.
- 1.7. "Project" is defined in Recital B of this Funding Agreement.
- 1.8. "Property" is defined in Recital C of this Funding Agreement.
- 1.9. "Regulatory Agreement" is defined in Recital F of this Funding Agreement.

1.10. Exhibits. The following exhibit is attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

## **ARTICLE II**

### **FUNDING PROVISIONS**

#### **2.1. Acquisition Funding.**

(a) Acquisition Funding Amount. County agrees to provide to Recipient the principal amount of \$6,200,000.00 ("Acquisition Funding Proceeds"). The Acquisition Funding shall be evidenced by the Acquisition Funding Note ("Promissory Note") executed by Recipient.

(b) Acquisition Funding Interest. There shall be no interest (0%) on the Acquisition Funding.

(c) Term. The term of this Agreement is for five (5) years (the "Acquisition Funding Maturity Date"). Any real property under Recipient's control acquired with CDBG funds pursuant to this Agreement shall be used to meet one of the national objectives pursuant to 24 CFR § 570.208 until no less than five (5) years after the expiration of this Agreement.

(i) Reversion of Assets. Upon the expiration of this agreement any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds shall be allocated for project related expenses or transferred to County at the time of expiration.

## **2.2. Contingent Repayment of Funding**

(a) Payment in Full. All unpaid principal and interest on the Acquisition Funding shall be due upon the earliest of:

(i) A Transfer (as such term is defined in Section 2.3, below) of the Development other than a Transfer permitted or approved by County as provided in this Agreement; or

(ii) The occurrence of an Event of Default, including but not limited to any Change of Use as defined in 24 CFR § 570.489 for which County exercises its right to cause the Acquisition Funding indebtedness to become immediately due and payable, or for which the Acquisition Funding indebtedness is automatically specified to become immediately due and payable pursuant to applicable subsections of this Agreement; and

(b) Forgiveness. If Recipient remains in compliance with all covenants and conditions of the Funding Documents of this Agreement and pursuant to 24 CFR § 570.503(b)(7)(i), the Acquisition Funding shall be forgiven in its entirety.

**2.3. Books and Records**. Recipient shall keep and maintain on the Property or at another location within County full, complete and appropriate books, records and accounts relating to the Acquisition and improvement. Books, records and accounts relating to Recipient's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles. All such books, records, and accounts shall be open to and available for inspection by County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Recipient may be required to furnish to any governmental entity shall at all reasonable times during normal business hours be open for inspection by County at the place that the books, records and accounts of Recipient are kept. Recipient shall preserve records on which any statement of Residual Receipts is based for a period of five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (a) below then pending.

(a) County Audits.

(i) County or any designated agent or employee of County at any time shall be entitled to audit all books, records, and accounts pertaining to the funding.

(ii) Such audit shall be conducted during normal business hours at the principal place of business of Recipient and other places where records are kept. Immediately after the completion of an audit, County shall deliver a copy of the results of such audit to Recipient.

(b) Non-Recourse. Except as provided below, Recipient shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Acquisition Funding or the performance of the covenants of Recipient under the Deed of Trust. The sole recourse of County with respect to the principal of, or interest on, the Acquisition Funding Note and defaults by Recipient in the performance of its covenants under the Deed of Trust shall be to foreclose on the Property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall:

(i) Limit or impair the enforcement against all such security for the Note of all the rights and remedies of County thereunder, or

(ii) Be deemed in any way to impair the right of County to assert the unpaid principal amount of the Note as a demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of Borrower's obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve Recipient of its obligation to indemnify County under Sections 4.9 and 5.3 of this Agreement. or liability for:

(A) Fraud or willful misrepresentation;

(B) The fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and

(C) The misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

**2.4. Due on Sale or Transfer of Property.** Unless County agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Funding Documents shall be due and payable upon the transfer or sale (each a "Transfer") of all or any part of, or interest in, the Property, except any Transfer after which the Property is subject to deed restrictions requiring the Property to continue to be operated as an affordable rental housing development (an "Affordable Development"), or upon Recipient's breach of the Agreement through at least the Acquisition Funding Maturity Date for the Acquisition Funding.

**2.5. Security.** As security for the Acquisition Funding Note, Recipient shall execute the Deed of Trust pursuant to which Recipient shall provide County a lien against the Property. The Deed of Trust shall be dated as of the Effective Date and shall be recorded in the official records of Yuba County.

**2.6. Conditions Precedent to County's Obligation to Disburse.** The obligation of County to fund the Acquisition Funding and disburse the proceeds thereof is conditioned upon the receipt by County of the following:

- (a) The executed Funding Documents, acknowledged where appropriate;
- (b) A copy of Recipient's enabling Articles of Incorporation or enabling documents, certificate of good standing, corporate borrowing resolution and such other evidence satisfactory to County that Recipient is duly formed, validly existing, in good standing under the laws of the State of California, has the power and authority to enter into the Funding Documents, and shall be bound by their terms when executed and delivered;
- (c) Recordation of the Deed of Trust & Security Agreement and the Regulatory Agreement in the official records of Yuba County; and,
- (d) Copies of such other documents related to the acquisition and financing of the Property and the Project as County may reasonably request.

**2.7. No Obligation to Disburse Proceeds upon Default.** Notwithstanding any other provision of this Agreement, County shall have no obligation to disburse any portion of the Acquisition Funding Proceeds if Recipient's representations and warranties fail to be true and correct in all material respects.

**2.8. Use of Funds.** Recipient agrees to use the Acquisition Funding Proceeds solely to finance the acquisition and predevelopment costs of the Project.

**2.9. Disbursement of the Acquisition Funding Proceeds.** Upon satisfaction of the conditions set forth in Section 2.5 herein, County shall disburse an amount equal to the amount of the Acquisition Funding.

**2.10. Uniform Requirements.** Recipient shall comply with applicable uniform requirements as described in 24 CFR § 570.502.

**2.11. Other Program Requirements.** Recipient shall carry out each activity in compliance with all Federal laws and regulations described in 24 CFR 570 Subpart K, except that:

- (a) Recipient does not assume County's environmental responsibilities described in 24 CFR § 570.604; and

- (b) Recipient does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

### **ARTICLE III**

#### **RECIPIENT REPRESENTATIONS AND WARRANTIES**

**3.1. Duly Organized.** Recipient warrants that it is duly organized under applicable laws of the State of California, is qualified to do business in the State of California, and is in compliance in all material respects with all laws and regulations necessary to acquire the Property.

**3.2. Authority.** Recipient warrants that it has authority, and has completed all proceedings and obtained all approvals necessary to execute, deliver, and perform its obligations under the Funding Documents and the transactions contemplated thereby.

**3.3. No Contravening Agreements.** Recipient warrants that the execution, delivery, and performance of the Funding Documents will not contravene, or constitute a default under or result in a lien upon assets of Recipient pursuant to any applicable law or regulation, any charter document of Recipient, or any instrument binding upon or affecting Recipient, or any contract, agreement, judgment, order, decree, or other instrument binding upon or affecting Recipient.

**3.4. Valid and Binding Obligations.** Recipient warrants that, when duly executed by Recipient, this Agreement and the Note shall constitute the valid and binding obligations of Recipient enforceable in accordance with their respective terms. Recipient hereby waives any defense to the enforcement of the terms of the Funding Documents related to alleged invalidity of any provisions or conditions contained therein.

**3.5. No Adverse Action.** Recipient warrants that there is no action, suit or proceeding pending or threatened against it which might adversely affect Recipient in any material respect.

#### **ARTICLE IV RECIPIENT COVENANTS**

**4.1. Use of Proceeds.** Recipient agrees to use the Acquisition Funding Proceeds solely to finance the acquisition and predevelopment costs of the Project.

**4.2. Taxes and Other Liabilities.** Recipient shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state income taxes, property taxes, and special taxes or assessments due to the County of Yuba which are the obligations of Recipient in relation to the Property except those that Recipient may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of County for eventual payment thereof in the event that it is found that the same is an obligation of Recipient.

**4.3. Compliance with Laws.** Recipient covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property. Without limiting the generality of the foregoing, Recipient shall comply with all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled.

**4.4. Assignment.** Recipient shall not cause or permit any voluntary transfer, assignment or conveyance of this Agreement. Any transfer, assignment or conveyance shall be voidable and shall constitute a default under Article 6 of this Agreement.

**4.5. Insurance.** Recipient covenants to maintain insurance equivalent to a commercial general liability policy in the amount of One Million Dollars (\$1,000,000.00) combined single limit, including contractual liability coverage. Such insurance shall be written on an occurrence basis and shall name County as loss payee as its interests may appear. Recipient covenants to maintain and keep the Property insured against loss or damage by fire and such other hazards,



casualties and contingencies and by such companies on such forms and in the amount of the replacement cost of the Property and any improvements thereon, and shall deliver a copy of proof of all such policies to County, together with receipts satisfactory to County evidencing payment of the premiums. Recipient shall provide County not less than thirty (30) days advance written notice of the cancellation, expiration or termination of any such policy or any material change in the coverage afforded by it. Proof of renewal policies and any replacement policies, together with premium receipts satisfactory to County, shall be delivered to County at least thirty (30) calendar days prior to the expiration of existing policies. Neither Recipient nor County shall by reason of accepting, rejecting, approving or obtaining insurance incur any liability for the existence, nonexistence, form or legal sufficiency of such insurance, or solvency of any insurer for payment of losses. All insurance proceeds for such losses must be utilized for the repair or restoration of the Property and improvements thereon.

**4.6. Accounting Records; Property Inspection.** Recipient covenants to maintain accurate books and records in accordance with standard accounting principles consistently applied, and to permit County, during business hours and upon reasonable notice to inspect, audit and examine such books and records with respect to the Project, the Property and the Funding Documents and to inspect the Property and Project during normal business hours upon reasonable notice.

**4.7. Maintenance.** During the term of this Agreement, Recipient shall maintain the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Recipient has not cured such condition within thirty (30) days after receiving an County notice of such a condition (or such additional time as may be reasonably necessary provided Recipient has commenced to cure the same within such 30-day period), then in addition to any other rights available to County, County shall have the right to perform all acts necessary to cure such condition.

**4.8. Indemnification.** Recipient shall indemnify, defend (with counsel reasonably acceptable to County), and hold harmless County and its officials, officers, agents, and employees (collectively the "Indemnitees"), from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, injunctive or other relief, expenses and charges (including attorneys' fees and expenses of attorneys, but excluding the principal and interest due under the Acquisition Funding) (collectively "Liabilities") arising directly or indirectly in any manner in connection with or as a result of: (a) any breach of Recipient's covenants under the Funding Documents, (b) any failure of Recipient's representations and warranties to be true and correct in all material respects when made, (c) any injury or death to persons or damage to property or other loss occurring on the Property, whether caused by the negligence or any other act or omission of Recipient or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnatee which relates to or arises out of the Acquisition Funding, the Funding Documents, or any transaction contemplated thereby, or any failure of Recipient to comply with all applicable state, federal and local laws and regulations, provided that no Indemnatee shall be entitled to indemnification under this Section for matters caused by such Indemnatee's gross negligence or willful misconduct. The obligations of Recipient under this Section shall survive the expiration or termination of this Agreement.

**4.9. Notice to County.** Within three business days after any of the following shall occur, Recipient shall provide written notice thereof to County: (1) any change in name, identity, legal structure, business location, or address of Recipient; (2) any uninsured or partially uninsured loss affecting the Property or any improvements thereon through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000.00); and (3) Recipient's receipt of a notice of default under any mortgage or other financing document affecting the Property or any improvements thereon.

**4.10. Lease of Property.** Unless County agrees and approves tenants in writing, Recipient shall not convey all or any part of the Property by lease, except in the ordinary course of operating the Development as a residential rental project.

**4.11. Expenses of Collection or Enforcement.** If at any time Recipient defaults under any provision of the Funding Documents, Recipient shall pay to County in addition to any other sums that may be due to County, an amount equal to the costs and expenses (including without limitation, attorneys' fees and expenses) County incurs in connection with the collection, enforcement, or correction of the default, and such amounts shall be a part of the indebtedness secured by the Deed of Trust.

**4.12. Non-Discrimination.** Recipient covenants by and for itself, and any successors in interest, that there shall be no discrimination against or segregation of, any person, or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Recipient itself or any person claiming under or through it establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of Recipient. The foregoing covenants shall run with the land.

Notwithstanding the foregoing, with respect to familial status, nothing herein shall be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor shall be construed to affect Section 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this Section 4.13.

## **ARTICLE V**

### **ENVIRONMENTAL REQUIREMENTS**

**5.1. Hazardous Materials.** Recipient shall not cause or permit any Hazardous Materials (as defined in below) to be brought upon, kept, stored or used in, on, or about the Property by Recipient, or the agents, employees, contractors or invitees of Recipient except for materials commonly used in construction activities similar to those related to the Project, or in the operation and maintenance of the Property and the Project, in each case in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Property. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or

about the Property and results in any contamination of the Property or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Property, Recipient shall promptly take all actions at Recipient's sole expense as are necessary to comply with all Hazardous Materials Laws (as defined below).

## **5.2. Definitions.**

(a) Hazardous Materials. As used in this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, city or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "or any other terms comparable to the foregoing terms under any provision of California law or federal law as any such statutes and regulations now exist or may hereafter be amended, (ii) petroleum or petroleum products; (iii) asbestos; (iv) polychlorinated biphenyls, (v) radioactive chemicals, (vi) any material determined to hazardous based on deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity or toxicity, (vii) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (viii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); (ix) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq; or (x) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

(b) Hazardous Materials Laws. As used in this Agreement, "Hazardous Materials Laws" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 5.2(a), as they may be amended from time to time.

**5.3. Indemnification.** Recipient shall indemnify, defend (with counsel reasonably acceptable to County), and hold the Indemnitees harmless from and against liabilities arising directly or indirectly in any manner in connection with or as a result of the breach of Recipient's covenants set forth in Section 5.1 or the actual or alleged release or presence of any Hazardous Materials on, under, in or about the Property, whether known or unknown, foreseeable or unforeseeable, regardless of the source of such release or when such release occurred or such presence is discovered. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of such Hazardous Materials, all costs of determining whether the Property is in compliance with Hazardous Materials Laws, all costs associated with bringing the Property into compliance with all applicable Hazardous Materials Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources. The indemnity described in this Section shall survive the expiration or termination of this Agreement, the making and repayment of the Acquisition Funding, the release or re-conveyance of the Deed of Trust, and any foreclosure proceeding, foreclosure sale or delivery of deed in lieu of foreclosure. Recipient's indemnity obligations under this Section will not extend to claims resulting from Indemnitees' gross negligence or willful misconduct.

## ARTICLE VI

### DEFAULT AND REMEDIES

**6.1.** Events of Default. Each of the following events will constitute an event of default ("Event of Default") under this Agreement:

(a) Noncompliance with Funding Documents. Recipient's failure, neglect or refusal to perform any promise, agreement, covenant or obligation contained in the Funding Documents after any applicable cure periods.

(b) Noncompliance with Governmental Requirements. Recipient's failure to timely comply with any governmental requirements, including but not limited to any terms of any Regulatory Agreement or any of the provisions of 24 CFR § 570.

(c) False Representations. If any material representation or disclosure made to County by Recipient in connection with the Funding Documents proves to be false or misleading in any material adverse respect when made.

(d) Bankruptcy. The filing by or against Recipient of a voluntary or involuntary petition in bankruptcy or the adjudication of Recipient as bankrupt or insolvent, or the filing of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or the seeking or consenting to or acquiescing in the appointment of any trustee, receiver, liquidator of Recipient or any substantial part of or all of the property of Recipient, and if any such proceeding is not dismissed within sixty (60) days; Recipient is named in any such proceeding and the same is not dismissed within one hundred twenty (120) days.

(e) Lease. Conveyance of all or a portion of the Property by lease without the prior written consent of County to such conveyance, except in the ordinary course of operating the Development as a residential rental project.

(f) Transfer. The occurrence of a Transfer in violation of Section 2.4 of this Agreement.

(g) Occurrence of an Event of Default in Other Funding Documents. An event of default under any Funding Document, or any other funding agreement and related documents by and between Borrower and County other than the Funding Documents, subject to the expiration of any applicable cure period set forth in such documents.

**6.2.** Declaring Default. Whenever any Event of Default has occurred County shall give written notice of default to Recipient at the time of such notice. If the default is not cured by any of the noticed parties within thirty (30) business days after the Date of Default (defined herein or longer if set forth in any Funding Document), or any extension approved in writing by County, County may enforce its rights and remedies under Section 6.3 below. Any default that has occurred shall be deemed to commence on the date that written notice of default is effective per Section 7.4 of this Agreement (the "Date of Default"). If Default is of a nature that will reasonably take longer to cure than thirty (30) days, Recipient shall have such additional time as may be reasonably

necessary to cure any condition provided that Borrower commences to cure within 30 days of notice of default and diligently pursues to cure.

**6.3. Remedies.** Upon the occurrence of any Event of Default, in addition to its other rights in this Agreement, and the Acquisition Funding Note, at law, or in equity, County may exercise any one or more of the following rights and remedies:

(a) Accelerate and declare the entire unpaid principal balance of the Acquisition Funding Note together with all accrued interest thereon, and all other sums owing to County immediately due and payable; and

(b) Proceed at law, or in equity, to require Recipient to perform its obligations and covenants under the Funding Documents; and

(c) Proceed with remedies for noncompliance and provisions on termination in accordance with 2 CFR 200 Subpart D; and

(d) Proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, pursue any and all other remedies available under law to enforce the terms of this Agreement or any other Funding Document.

The remedies provided herein are cumulative and not exclusive of, and shall not prejudice any other remedy provided in any Funding Document.

## **ARTICLE VII**

### **MISCELLANEOUS**

**7.1. Relationship of Parties.** Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between County and Recipient or Recipient's agents or employees, and Recipient shall at all times be deemed a recipient and shall be wholly responsible for the manner in which it or its agents, or both, perform under this Agreement.

**7.2. No Third Party Claims.** Nothing contained in this Agreement shall create or justify any claim against County by any third person whom Recipient may have employed or contracted or may employ or contract relative to the purchase of any material, supplies or equipment, or the furnishing or the performance of any work or services with respect to any programs or projects being undertaken by Recipient.

**7.3. Conflict of Interest.** Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of County or Recipient who exercises or has exercised any function or responsibilities with respect to activities assisted by tax increment funds in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities assisted under this Agreement, may obtain a personal or financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter.

**7.4. Notices.** Any notice, request or consent required pursuant to this Agreement shall be deemed delivered upon receipt when delivered personally or by facsimile transmission, provided that a transmission report is generated reflecting the accurate transmission thereof, or three (3) business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, or one (1) day after deposit with a nationally recognized overnight carrier addressed as follows:

County: County of Yuba, CDSA  
915 8<sup>th</sup> Street, Suite 123  
Marysville, CA 95901  
Attn: Michael Lee, Director

With copy to:

Yuba County Counsel  
915 8th Street, Suite 111  
Marysville, CA 95901

Recipient: Habitat for Humanity Yuba/Sutter, Inc.,  
A California Nonprofit Public Benefit Corporation  
202 D Street  
Marysville, CA 95901  
Attn: Joseph Hale, CEO

or to such other addresses as the parties may designate by notice as set forth above.

**7.5. Successors and Assigns.** All of the terms of this Agreement shall apply to and be binding upon, and inure to the benefit of, the successors and permitted assigns of County and Recipient, respectively, and all persons claiming under or through them.

**7.6. Attorneys' Fees.** If any action is instituted by any Party to this Agreement to enforce this Agreement, the Acquisition Funding or the Note, or to collect any sums due hereunder or pursuant to the Acquisition Funding or the Note, the prevailing Party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in that action.

**7.7. Severability.** If one or more provisions of this Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Agreement shall remain in full force and effect.

**7.8. Amendments/Entire Agreement.** County and Recipient reserve the right to amend this Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alteration or variation of the terms of this Agreement shall be valid unless in writing and signed and acknowledged and approved by both parties. This Agreement constitutes the entire agreement of the parties and no oral understandings or agreement not incorporated herein shall be binding on either Party.

**7.9. Joint and Several Liability.** If Recipient consists of more than one person or entity, each shall be jointly and severally liable to County for the performance of this Agreement.

**7.10. Time.** Time is of the essence in the performance of the terms and conditions of this Agreement.

**7.11. Governing Law.** The laws of the State of California shall govern this Agreement.

**7.12. Non-Liability of County and County Officials, Employees and Agents.** No member, official, employee or agent of County or County shall be personally liable to Recipient, or any successor in interest to Recipient, in the event of any default or breach by County or for any amount which may become due to Recipient or any successor under the terms of this Agreement.

**7.13. County's Rights and Consent.** No forbearance, failure or delay by County in exercising any right, power or remedy, nor any single or partial exercise by County of any right or remedy hereunder shall preclude the further exercise of such right, power or remedy.

County's consent to any act or omission by Recipient may not be construed as County's consent to any other or subsequent act or omission or as a waiver of the requirement to obtain County's consent in any other instance. All of County's rights, powers and remedies are cumulative and shall continue in full force and effect until specifically waived in writing by County.

**7.14. Duration/Survival.** This Agreement shall continue in full force and effect until the obligations due under this Agreement and the Note have been satisfied. Notwithstanding the foregoing, the indemnification provisions of Section 4.9 and Section 5.3 of this Agreement shall survive the expiration of this Agreement and the making and any repayment of the Acquisition Funding.

**7.15. Assignment or Assumption.** This Agreement and the Funding Documents may not be assigned to, or assumed by, a third party. Any attempt to assign or assume the Funding Documents shall be void.

**7.16. Headings.** The headings within this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Agreement.

**7.17. Counterparts, Facsimile Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This Agreement shall be effective upon transmission by any Party to the other parties of a fully signed facsimile copy of the Agreement after the formal approval by the governing body of County, so long as a copy of the Agreement signed by the transmitting Party is delivered to the other parties within five (5) business days thereafter. In case of any conflict, the counterpart maintained by County shall be deemed to be determinative.

**7.18. Indemnity.** All indemnification provision in the Funding Documents in favor of County shall apply only to losses, claims, liabilities and/or damages actually incurred and shall not include any claim or liability resulting from County's gross negligence or willful misconduct.

7.19. Consent Standard. In any approval, consent or other determination by County required under any of the Funding Documents, County shall act reasonably and in good faith.

IN WITNESS WHEREOF, County and Borrower have executed this Agreement as of the date first above written.

THE COUNTY:

County of Yuba

By:

Name: Gary Bradford

Title: Chairman of the Board

ATTEST:

By:

Rachel Ferris, Clerk of the Board

APPROVED AS TO FORM

By:

Michael Ciccorini, County Counsel

RECIPIENT:

HABITAT FOR HUMANITY YUBA/SUTTER, INC.,  
A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION

By:

Name: Joseph Hale

Its: CEO



## **Exhibit "A"**

### **Legal Description**

The land described herein is situated in the State of California, County of Yuba, unincorporated area, described as follows:

#### **Parcel 1:**

Parcel 1, as shown on that certain entitled "Parcel Map No. 97-12", filed September 2, 1998 in Book 70 of Parcel Maps, Page 2, in the Office of the County Recorder of said County.

#### **Parcel 2:**

An easement for ingress and egress access over a strip of land designated and delineated as "40' ingress and egress access easement to benefit Parcels 1, 2 & 3", as shown on that certain map entitled "Parcel Map No. 97-12", filed September 2, 1998 in Book 70 of Parcel Maps, Page 2, in the Office of the County Recorder of said County.

**APN: 020-020-070-000**

# The County of Yuba

## Community Development & Services Agency

**Mike Lee, Director**

Phone – (530) 749-5430 • Fax – (530) 749-5434  
915 8<sup>th</sup> Street, Suite 123  
Marysville, California 95901

[www.co.yuba.ca.us](http://www.co.yuba.ca.us)



**BUILDING**  
749-5440 • Fax 749-5616

**CODE ENFORCEMENT**  
749-5455 • Fax 749-5464

**ENVIRONMENTAL HEALTH • CUPA**  
749-5450 • Fax 749-5454

**PLANNING**  
749-5470 • Fax 749-5434

**PUBLIC WORKS • SURVEYOR**  
749-5420 • Fax 749-5424

**FINANCE AND ADMINISTRATION**  
749-5430 • Fax 749-5434

May 26, 2021

Carol Montgomery  
Placer Title Company  
1110 Civic Center Blvd., Suite 302  
Yuba City, CA 95993

Re: Lender's Escrow Instructions, Escrow # P-486249

Habitat for Humanity Yuba/Sutter Inc.  
Joseph Hale  
202 D Street  
Marysville, CA 95901

Property Address: 1111 North Beale Road, Marysville, CA 95901

Dear Ms. Montgomery:

Enclosed are documents relating to the above referenced escrow account. You are directed to follow these instructions in full and record the necessary documents. There is no interest rate expiration date and the loan documents do not expire. Please notify Karma Ferguson, Yuba County Community Development and Services Agency, at 530-749-5452 immediately if there are any problems.

**WE ENCLOSE THE FOLLOWING ORIGINAL DOCUMENTS AND COPIES FOR BORROWER, WHEN APPLICABLE:**

1. Regulatory Agreement
2. County Deed of Trust & Security Agreement
3. County Promissory Note

**PLEASE INSERT DATES IN THE FOLLOWING:**

I. **THE FOLLOWING DOCUMENTS ARE TO BE *RECORDED BY YOU* AND RETURNED TO: COUNTY OF YUBA, 915 8TH STREET, SUITE 123, MARYSVILLE, CA 95901.**

**A. Regulatory Agreement**

To be signed by the County; contact Mike Lee, CDSA Director at 530-749-5430 and Joseph Hale, Habitat for Humanity Yuba/Sutter Inc. at 530-742-2727, Ext. 211.

**B. Deed of Trust & Security Agreement and Promissory Note:**

Complete and have the enclosed Deed of Trust executed and recorded which will secure the enclosed Promissory Note in the amount of **\$6,200,000.00** at zero percent (0%) interest, in favor of the **County of Yuba, 915 8<sup>th</sup> Street, Suite 123, Marysville, CA 95901.**

**II. PRIOR TO CLOSING, YOU MUST COMPLETE THE FOLLOWING:**

1. **Obtain title insurance**, in the form of an ALTA Extended Lender's Policy of Title Insurance in the amount of **\$6,200,000.00**.
2. **Pay current all taxes and supplemental taxes due and/or delinquent.**
3. **ALTA POLICY** must contain endorsements **100, 116, 8.1, 103.1, ALTA 9** with liability in the amount of our loan on property described herein.  
**LIABILITY SUBJECT ONLY TO:** (General and Spec. taxes) Fiscal Year **21/22, not yet due or payable**  
Funds may be used for account of the vestees, and you will record all instruments when you comply with the following:
  1. Issue said form of Policy showing title vested as:
  2. ALTA Policy must cover **\$ 6,200,000.00**
  3. Issue said form of Policy free from encumbrances except items **1, 4, 5 & 6 paid current, 7, 8, 9, 10, 11, 12, 13, 14, 19, 20** of preliminary Title Report dated **April 8, 2021**  
Secondary financing in the amount of **None** has been approved
4. The County of Yuba, a political subdivision of the State of California, is to be insured in 1st position subject only to the following exceptions as noted in the Preliminary Title Report dated April 8, 2021:

none

**Please send the original policy of Title Insurance to: County of Yuba, 915 8th Street, Suite 123, Marysville, CA 95901.**

5. Obtain Certificate of **Fire and Hazard Insurance** in the amount of **\$6,200,000.00** purchase price or guaranteed replacement cost, showing Yuba County as the Lender's Loss Payee in 1st position. The Lender's Loss Payee should appear as follows:  
**County of Yuba, and or assigns**  
**915 8th Street, Suite 123**  
**Marysville, CA 95901.**
6. Obtain signature/notary on all documents, where necessary.
7. Please prepare the Borrower's escrow instructions and closing statement.
8. The following conditions shall be completed prior to the closure of escrow, all information shall be submitted to County of Yuba, Community Development and Services Agency, 915 8<sup>th</sup> Street, Suite 123, Marysville, CA 95901.

You can contact the borrower at 530-742-2727, Ext. 211 for an appointment. This escrow is being coordinated with Carol Rosset at Thurman Consulting (530) 304-7863 .

Enclosed loan documents shall not be altered, changed or modified in any way without prior written consent of Yuba County.

Any excess funds shall be reimbursed to the County, not the Borrower.

Ensure the following documents are returned to Yuba County:

- 1) Certified copy of Deed of Trust
- 2) Signed Original Promissory Note
- 3) Certified County Regulatory Agreement
- 4) Certificate of Insurance
- 5) Copy of Alta Title Policy
- 6) Final Seller/Borrowers Escrow Closing Statement

**Please forward** all executed loan documents, certified copies of recorded documents, and final buyer/seller HUD-1 to:

County of Yuba  
915 8<sup>th</sup> Street, Suite 123  
Marysville, CA 95901  
Attn: Karma Ferguson

If you are unable to comply with these instructions for any reason, please contact Ms. Ferguson at 530-749-5452.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Bradford", written in a cursive style.

Gary Bradford  
Chair, Yuba County Board of Supervisors

Enclosure