



## AGENDA REGULAR MEETING

### CHOWCHILLA CITY COUNCIL

Council Chambers, Chowchilla City Hall  
130 S. Second Street, Chowchilla, CA 93610

**April 26, 2016**

Agendas for all City Council meetings are posted at least 72 hours prior to the meeting at the Civic Center, 130 S. Second St., Written communications from the public for the agenda must be received by Administrative Services no less than 7 days prior to the meeting date.

Any writing or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the City Clerk's Counter. In addition, most documents will be posted on the city website at [www.CityofChowchilla.org](http://www.CityofChowchilla.org).

The City of Chowchilla complies with the Americans with Disabilities Act (ADA of 1990). The Council Chambers is accessible to the physically disabled. If you need special assistance, please call (559) 665-8615, ext. 112 at least 4 days prior to the meeting.

#### CALL TO ORDER

#### ROLL CALL:

Mayor: Waseem Ahmed

Mayor Pro Tem: Mary Gaumnitz

Council: John Chavez, Dennis Haworth, Richard Walker

City staff and contract employees present at the meeting will be noted in the minutes

#### PUBLIC ADDRESS – CLOSED SESSION

This time is reserved for members of the audience to address the City Council on items listed on the closed session agenda only. It is recommended that speakers limit their comments to no more than 3 minutes each. Speakers are asked to please use the microphone and provide their name for the record. Any handouts should be provided to the City Clerk who will distribute them to the Council Board and appropriate staff.

#### CLOSED SESSION – 6:00 PM

This time has been set aside for the City Council to meet in a closed session to discuss matters pursuant to Government Code Section 54957 (b)(1) 54957.6, and 54956.9(d) (2). Based on the advice of the City Attorney, discussion in open session concerning these matters would prejudice the position of the City in this litigation. The City Attorney will give an additional oral report regarding the Closed Session at the beginning of the next regular City Council Meeting.

#### 1. Conference with Labor Negotiators, Gov. Code Section 54957.6

Negotiating Parties: CEA, CCOEA, CPOA, MMCA, Management

In the event that not all the items on the closed session agenda have been deliberated in the time provided, the City Council may continue the closed session until the end of the regularly scheduled Council Meeting.

#### OPEN SESSION – 7:00 PM

#### PLEDGE OF ALLEGIANCE:

INVOCATION: Mr. Hansen

#### CLOSED SESSION REPORT:

**CEREMONIAL / PRESENTATIONS – Section 1**

- 1.1 Recognition: Non-Sworn Officer of the Year and Chowchilla Police Department Dispatchers
- 1.2 Mid Valley Quarterly Report

**WORKSHOPS****PUBLIC ADDRESS**

This time is reserved for members of the audience to address the City Council on items of interest that are **not** on the Agenda and that are within the subject matter jurisdiction of the Council.

It is recommended that speakers limit their comments to **no more than 3 minutes** each and it is requested that no comments be made during this period on items on the Agenda. Members of the public wishing to address the Council on items on the Agenda should notify the Mayor when that Agenda item is called.

The Council is prohibited by law from taking any action on matters discussed that are not on the Agenda. No adverse conclusions should be drawn if the Council does not respond to public comment at this time.

Speakers are asked to please **use the microphone and provide their name for the record**. Prior to addressing the Council, any handouts are to be provided to City Clerk who will distribute them to the Council and the appropriate staff.

**COUNCIL AND STAFF REPORTS – Section 2**

- 2.1 COUNCIL REPORTS**
  - Legislative Items
  - Oral / Written Reports
- 2.2 STAFF REPORTS**
  - Written/Oral Reports

**CONSENT CALENDAR – Section 3**

All items listed under Consent Calendar are considered to be routine and will be enacted by one motion. For discussion of any Consent Item, it will be made a part of the Regular Agenda at the request of any member of the City Council or any person in the audience.

- 3.1 Approval of April 12, 2016 City Council Minutes (McClendon)**
- 3.2 Approval of Monthly Financials for the Month of March 2016 (Pruett)**
- 3.3 Council Resolution # -16, Implementing the City of Chowchilla Water Department Drought Contingency Plan Water Conservation Level II Measures (Locke)**
- 3.4 Council Resolution # -16, Authorizing Federal Funding Under FTA Section 5311 with the California Department of Transportation and Designating Authorized Signatory (Piepenbrok)**

**PUBLIC HEARINGS – Section 4**

- 4.1 Council Resolution # -16, Approving Changes to the Homebuyer and Housing Rehabilitation Program Guidelines (Pruett)**

## DEFERRED BUSINESS – Section 5

- 5.1 Council Resolution # -16, Setting the Fee for Events Held in the Downtown Area (Haddix)

## NEW BUSINESS – Section 6

- 6.1 Council Resolution # -16, Authorizing the City Administrator to Execute an Amended Lease Agreement with Cleargas Inc. for Tenancy and Easements to Allow Provision of Airplane Fuel and a Pilot Lounge at the Chowchilla Airport (Attorney)
- 6.2 Council Resolution # -16, Authorizing the City Administrator to execute an Agreement for Maintenance and Minor Repairs of Airport Facilities Between the City and Cleargas (Attorney)
- 6.3 Council Resolution # -16, Authorizing the City Administrator to Execute a Joint Use Agreement and Memorandum of Agreement with Harmer Steel Products Co. for use of the Rail Spur (Turner)
- 6.4 Council Resolution # -16, Amending the Project Development Agreement with Johnson Controls, Inc. (JCI) to Develop a Water and Energy Efficiency Project and Authorizing the City Administrator to Execute the Same; and Establish an Additional \$352,092 Reserve for the JCI Step 2 Project Development Agreement (Locke)
- 6.5 Council Resolution # -16, Approving a Reserve Policy (Pruett)
- 6.6 Council Resolution # -16, Approving a Debt Management Policy (Pruett)

## ANNOUNCEMENTS – Section 7

Apr 28	RDA Successor Agency Meeting, Chowchilla City Hall, 9 AM
Apr 29	City Hall Closed
Apr 29	Chowchilla Athletic Foundation Golf Outing Fundraiser, Pheasant Run GC,
Apr 30	Little League Grand Slam Fundraiser Dinner, SFA Hall, 6 PM
May 5	Chamber of Commerce Candidates Forum, City Hall, 6 PM
May 7	Chowchilla Treasure Hunters Spring Market 8 AM-Noon
May 7	Chowchilla Fair Fundraiser Dinner & Auction, Fairgrounds, 6 PM
May 8	American Legion Mother's Day Breakfast, American Legion Building, 8AM-12NOON
May 10	City Council Meeting, City Hall, 7PM

## ADJOURNMENT

I, Joann McClendon, CMC, City Clerk, do hereby declare under penalty of perjury that the foregoing agenda was posted at the Chowchilla City Hall, 130 S Second Street, Chowchilla, CA and made available for public review on this 22nd day of April 2016 at or before 5:00 p.m.

/s/

Joann McClendon, CMC  
City Clerk



## MINUTES REGULAR MEETING

### CHOWCHILLA CITY COUNCIL

Council Chambers, Chowchilla City Hall  
130 S. Second Street, Chowchilla, CA 93610

**April 12, 2016**

**CALL TO ORDER 6:05 PM**

**ROLL CALL:**

Mayor: Waseem Ahmed

Mayor Pro Tem: Mary Gaumnitz

Council: John Chavez, Dennis Haworth (absent), Richard Walker

**City staff and contract employees present:** City Administrator Brian Haddix, City Attorney David Ritchie, Fire Chief Harry Turner, Engineer/Public Works Director Craig Locke, Finance Director Rod Pruett, Community Relations Manager Marty Piepenbrok, City Clerk Joann McClendon.

**PUBLIC ADDRESS – CLOSED SESSION**

None.

**CLOSED SESSION – 6:07 PM**

- 1. Conference with Labor Negotiators, Gov. Code Section 54957.6**  
Negotiating Parties: CEA, CCOEA, CPOA, MMCA, Management
- 2. Public Employee Performance Evaluation California Government Code Section 54957:**  
Title: City Administrator
- 3. Conference with Legal Counsel – Existing Litigation, Government Code Section 54956.9(d)(1)**  
Number of Cases: 1  
City of Chowchilla v. County of Madera  
Madera County Superior Court Case Number MCV067610
- 4. Conference with Real Property Negotiators, Gov. Code Section 54956.8**  
Property: Rancho Calera Specific Plan Area  
Agency Negotiator: City Administrator  
Negotiating Party: Pembroke Development  
Under Negotiation: Price & Terms of Payment

**OPEN SESSION – 7:0 PM**

**PLEDGE OF ALLEGIANCE:** Council Member Chavez

**INVOCATION:** Mr. Hansen

**CLOSED SESSION REPORT:** Closed Session will reconvene after the announcements have been read.

## **CEREMONIAL / PRESENTATIONS – Section 1**

### **WORKSHOPS**

### **PUBLIC ADDRESS**

Emile Stagnaro inquired about a Union Pacific Rail Road Public Notice.

Kacey Austen introduced herself to Council as the City's consultant to the California High Speed Rail Board.

## **COUNCIL AND STAFF REPORTS – Section 2**

### **2.1 COUNCIL REPORTS**

Legislative Items  
Oral / Written Reports

Council Member Walker discussed the status of the Chowchilla Task Force.

Mayor Pro Tem Gaumnitz attended the Madera County Economic Development Commission's State of the County Luncheon along with the rest of the Council and the City Administrator.

Mayor Ahmed attended a California High Speed Rail Authority Board meeting in Sacramento along with Council Member Chavez and City Administrator Haddix. He attended another meeting where it was discussed that a Boys and Girls Club could possibly come to Chowchilla.

### **2.2 STAFF REPORTS**

Written/Oral Reports

City Administrator Haddix attended the Galloway Engineering Grand Opening; Trinity Crisis Pregnancy Center meeting regarding a fundraising marathon. He is also working with the Madera County Economic Development Commission on some prospects; dialing up code enforcement activities, especially in the downtown area and boarded up homes.

Community Relations Manager Piepenbrok reminded council of the Lioness Lions club dinner at Eastman hall this Saturday; next Tuesday Lets Talk Chowchilla at Veterans Park at 5pm.

## **CONSENT CALENDAR – Section 3**

**3.1 Approval of the March 22, 2016 Regular City Council Meeting Minutes (McClendon)**

**3.2 Approval of the March 29, 2016 Special Town Hall Meeting Minutes (McClendon)**

**3.3 Approval of April 5, 2016 Special City Council Minutes (McClendon)**

**3.4 Approval of General Payments for the Month of March 2016 (Pruett)**

**3.5 Authorization for the City Engineer to Advertise a Request for Proposals for Construction of the Fuller Neighborhood Sidewalk Project (Locke)**

**3.6 Council Resolution # 36-16, Authorizing the City Engineer to Execute Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements for Federal and/or State Funded Transportation Projects (Locke)**

Motion by Council Member Walker, Seconded by Mayor Pro Tem Gaumnitz to Approve the Consent Calendar as Presented. Motion passed unanimously by roll call vote with Council Member Haworth absent.

**PUBLIC HEARINGS – Section 4**

**4.1 Council Resolution # 37-16, Amending the Chowchilla Master User Fee Schedule (Pruett)**

Mayor Ahmed opened the Public Hearing at 7:34 p.m.

No one came forward for or against the item.

Mayor Ahmed closed the Public Hearing at 7:34 p.m.

Motion by Council Member Walker, Seconded by Council Member Gaumnitz to Approve Council Resolution # 37-16, Amending the Chowchilla Master User Fee Schedule. Motion passed unanimously by roll call vote with Council Member Haworth absent.

**DEFERRED BUSINESS – Section 5**

**NEW BUSINESS – Section 6**

**6.1 Council Resolution # -16, Setting the Fee for Events Held in the Downtown Area (Haddix)**

Motion by Council Member Walker, Seconded by Mayor Pro Tem Gaumnitz to table the item, Setting the Fee for Events Held in the Downtown Area. Motion passed unanimously by roll call vote with Council Member Haworth absent.

**6.2 Receive a Project from Johnson Controls, Inc. (JCI) Discussing the Water and Energy Efficiency Project Progress and Providing Explanation of the Benefits of Amending the Project Development Agreement and Merging the Financing for Phase 1 and Phase 2 Projects (Locke)**

This was informational item only.

**6.3 Council Resolution # 38-16, Approval of a Side letter of Agreement Providing for Education and Certificate Incentives for Non-Represented Management Employees, and Represented Employees of Bargaining Groups CCOEA, and CMMCA, Represented by Operating Engineers Local 3; and CCEA; and Authorizing the City Administrator to Execute Such Side Letters of Agreement (Attorney)**

Motion by Mayor Pro Tem Gaumnitz, Seconded by Council Member Walker to Approve Council Resolution #38-16, Approval of a Side Letter of Agreement Providing for Education and Certificate Incentives for Non-Represented Management Employees, and Represented Employees of Bargaining Groups CCOEA, and CMMCA, Represented by Operating Engineers

Local 3; and CCEA; and Authorizing the City Administrator to Execute Such Side Letters of Agreement. Motion passed unanimously by roll call vote with Council Member Haworth absent.

#### **6.4 Council Resolution # 39-16, Approving a Budget and Finance Policy (Pruett)**

Motion by Mayor Pro Tem Gaumnitz, Seconded by Council Member Walker to Approve Council Resolution #39-16, Approving a Budget and Finance Policy. Motion passed unanimously by roll call vote with Council Member Haworth absent.

#### **6.5 Council Resolution # 40-16, Approving an Investment Policy (Pruett)**

Motion by Council Member Walker, Seconded by Council Member Chavez to Approve Council Resolution #40-16, Approving an Investment Policy. Motion passed unanimously by roll call vote with Council Member Haworth absent.

#### **6.6 Council Resolution # 41-16, Authorization for the City Engineer to Advertise a Request for Bids for Construction of the Robertson and 11<sup>th</sup> Street Sidewalk Project and the Allocation of an Additional \$200,000 in Funding for Construction (Locke)**

Motion by Council Member Walker, Seconded by Mayor Pro Tem Gaumnitz to Approve Council Resolution #41-16, Authorization for the City Engineer to Advertise a Request for Bids for Construction of the Robertson and 11<sup>th</sup> Street Sidewalk Project and the Allocation of an Additional \$200,000 in Funding for Construction. Motion passed unanimously by roll call vote with Council Member Haworth absent.

### **ANNOUNCEMENTS – Section 7**

Apr 13 Chowchilla Task Force Mtg, City Hall, 5pm  
 Apr 15 City Offices Closed  
 Apr 16 Lioness Lions Club K-9 Dinner, Fairgrounds, 6pm  
 Apr 19 Community Conversation Mtg, Veterans Memorial Park, 5:30pm  
 Apr 20 Planning Commission Mtg, City Hall, 7pm  
 Apr 26 City Council Mtg, City Hall, 7pm

The City Council Reconvened into Closed Session at 9:10pm

**Closed Session Report:** In regards to Item 3 of the Closed Session, City of Chowchilla v. Madera County, the Council voted in support of the mediator's recommendation.

### **ADJOURNMENT**

Motion by Mayor Ahmed, Seconded by Council Member Walker to Adjourn the April 12, 2016 Regular City Council Meeting at 10:07 p.m. Motion passed unanimously by voice vote with Council Member Haworth absent.

ATTEST:

APPROVED:

\_\_\_\_\_  
 Joann McClendon, CMC  
 City Clerk

\_\_\_\_\_  
 Mayor Waseem Ahmed



# CITY COUNCIL STAFF REPORT

Item 3.2

[CLICK HERE  
TO RETURN TO  
THE AGENDA](#)

April 26, 2016

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**AGENDA SECTION:** Agenda Section

**SUBJECT:** Consideration of Monthly Financial Statements

**PREPARED BY:** Rod Pruett, City Treasurer/Finance Director

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

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**RECOMMENDATION:**

Approve the February Financial Statements shown in the attachment

**HISTORY / BACKGROUND:**

Staff provides Council with monthly financial information as an ongoing financial status update.

**DISCUSSION:**

The monthly financial statements consist of a Budget vs Actual and a Balance Sheet for the General Fund. The Budget vs Actual shows the current year Revenues and Expenses by Department in summary form compared to the current year budget, as well as the prior year revenues and expenses compared to budget for the same time period. This report presents year-to-date amounts. The Balance Sheet shows the Assets, Liabilities and Fund Balance at the time the report is generated. This provides an overview of cash, amounts owed to the City, amounts the City owes and the fund balance at a specific point in time. The financial statements are being presented as an overview of the City's finances and are not meant to be a comprehensive in-depth review. As a reference to compare to the percentage columns in the report, the percentage of the year that has expired is 75% for March 2016

If there are questions regarding the actual amounts or budget vs actual variances, please forward your questions to me in enough time before the meeting for staff to research them to

**FINANCIAL IMPACT:**

Revenues- General Administration is less than the 75% benchmark due to VLF and Property Taxes only come in 2 installments which are usually around January and May. Sales tax is expected to be less than budgeted due to the decrease in gas sales tax but we received a one-time payment in property taxes from the county due to a State Controller's Office audit which offsets that decrease in sales tax revenue.

Police Sworn is at 59% because we have grants such as AB 109 Realignment that are reimbursement grants and reimbursements are usually requested annually.

Police Net is a fully reimbursable grant and all expenses will be reimbursed. The total amount budgeted will most likely not be met since we currently only have 1 position in the program and the budget assumed more than 1.

Special Investigations Unit is showing revenue which is from the COPS grant.

Recreation Programs is at 39% because we haven't received all of the event fees and donations/sponsorships yet.

Expenses- City Attorney is at 85%. We have incurred more in expenses for the lawsuit than anticipated. We will make necessary budget amendments if we exceed the original budgeted amount.

General Services is at 98%- The debt service payments account for almost all the budget in this department. We have paid for both installments of the Civic Center bond and paid off our Public Safety bond so all bond expense for the year has already been incurred.

The Property Taxes department is a once a year fee that has already been incurred.

Insurance Holding is just a holding account and will be fully allocated at the end of each quarter.

**ATTACHMENTS:**

March 2016 Budget vs Actual and Balance Sheet

	Prior Budget	Prior Actual	Percent	Current Budget	Current Actual	Difference	Percent
<b>GENERAL FUND</b>							
<b>GENERAL ADMINISTRATION</b>							
Total Expenditure:	41,951.38	61,649.16	0%	43,831.00	5,159.20	38,671.80	12%
Total Revenue:	4,940,035.00	5,059,911.69	3%	5,298,899.00	2,741,614.82	2,557,284.18	52%
<b>CITY COUNCIL</b>							
Total Expenditure:	65,418.99	48,001.03	3%	75,402.00	35,873.15	39,528.85	48%
Total Revenue:	20,634.00	20,634.00	8%	20,160.00	15,120.00	5,040.00	75%
<b>CITY CLERK</b>							
Total Expenditure:	119,298.52	112,936.30	7%	93,924.00	23,753.25	70,170.75	25%
Total Revenue:	75,938.00	76,937.92	8%	42,288.00	31,716.00	10,572.00	75%
<b>CITY ATTORNEY</b>							
Total Expenditure:	212,000.00	870,650.17	24%	383,200.00	326,414.53	56,785.47	85%
Total Revenue:	44,000.00	58,283.09	7%	35,000.00	39,556.66	4,556.66	113%
<b>GENERAL SERVICES</b>							
Total Expenditure:	647,748.26	477,917.30	1%	639,638.00	627,912.88	11,725.12	98%
Total Revenue:	74,481.00	74,481.00	8%	74,233.00	55,675.50	18,557.50	75%
<b>ADMINISTRATIVE SERVICES</b>							
Total Expenditure:	517,996.44	464,042.57	6%	467,629.00	313,551.50	154,077.50	67%
Total Revenue:	324,109.00	324,108.96	8%	128,088.00	96,927.41	31,160.59	76%
<b>CITY PROPERTY - RENTS</b>							
Total Expenditure:	9,293.21	9,307.75	5%	15,850.00	9,342.24	6,507.76	59%
Total Revenue:	92,480.00	84,511.68	1%	93,300.00	67,979.90	25,320.10	73%
<b>FINANCE DEPARTMENT</b>							
Total Expenditure:	592,593.57	591,126.71	10%	619,706.00	447,410.56	172,295.44	72%
Total Revenue:	418,308.00	418,051.08	8%	314,451.00	239,487.44	74,963.56	76%
<b>PROPERTY TAXES</b>							
Total Expenditure:	540.00	539.40	0%	550.00	539.40	10.60	98%
<b>INSURANCE HOLDING</b>							
Total Expenditure:	.00	21,623.00	0%	.00	105,181.00	105,181.00	0%
<b>POLICE - SWORN</b>							
Total Expenditure:	2,857,092.24	2,879,370.56	7%	2,867,397.00	1,895,988.08	971,408.92	66%
Total Revenue:	310,655.00	371,480.13	4%	398,605.00	236,984.19	161,620.81	59%
<b>POLICE - NET</b>							
Total Expenditure:	140,280.00	38.50	0%	109,250.00	62,353.04	46,896.96	57%
Total Revenue:	141,761.00	.00	0%	109,250.00	47,054.30	62,195.70	43%
<b>SPECIAL INVESTIGATIONS UNIT</b>							
Total Expenditure:	86,443.00	58,593.09	9%	.00	.00	.00	0%
Total Revenue:	60,000.00	18,276.38	0%	.00	25,954.41	25,954.41	0%
<b>POLICE - K-9</b>							
Total Expenditure:	4,750.00	4,324.36	5%	241,590.00	180,332.68	61,257.32	75%
Total Revenue:	20,000.00	23,093.94	0%	10,000.00	9,762.14	237.86	98%
<b>FIRE SERVICES</b>							
Total Expenditure:	331,781.40	330,706.10	6%	546,541.00	203,070.95	343,470.05	37%
Total Revenue:	80,426.00	81,206.16	13%	232,152.86	227,735.73	4,417.13	98%
<b>ANIMAL CONTROL</b>							
Total Expenditure:	110,556.61	109,570.11	8%	130,540.00	71,365.77	59,174.23	55%
Total Revenue:	8,900.00	6,330.95	22%	5,000.00	8,202.99	3,202.99	164%
<b>STREETS-OLD</b>							
Total Revenue:	.00	50.00	0%	.00	.00	.00	0%
<b>PLANNING &amp; ZONING</b>							
Total Expenditure:	225,890.37	223,072.70	5%	192,242.00	93,795.52	98,446.48	49%
Total Revenue:	59,138.00	45,397.46	6%	30,642.00	29,193.85	1,448.15	95%
<b>COMMUNITY &amp; ECONOMIC DVLPMT</b>							
Total Expenditure:	595.00	384.63	0%	650.00	.00	650.00	0%
<b>BUILDING &amp; CODE ENFORCEMENT</b>							
Total Expenditure:	134,812.00	132,807.40	6%	148,235.00	99,764.83	48,470.17	67%

	Prior Budget	Prior Actual	Percent	Current Budget	Current Actual	Difference	Percent
Total Revenue:	154,190.00	148,555.73	9%	<b>168,650.00</b>	<b>135,084.37</b>	<b>33,565.63</b>	<b>80%</b>
<b>COMMUNITY PROMOTION</b>							
Total Expenditure:	39,541.00	14,057.35	0%	<b>19,047.00</b>	<b>15,522.24</b>	<b>3,524.76</b>	<b>81%</b>
<b>SENIOR SERVICES</b>							
Total Expenditure:	29,681.14	28,557.84	8%	<b>31,760.00</b>	<b>23,392.94</b>	<b>8,367.06</b>	<b>74%</b>
Total Revenue:	5,100.00	7,949.62	4%	<b>9,100.00</b>	<b>7,125.82</b>	<b>1,974.18</b>	<b>78%</b>
<b>PARKS AND FACILITIES</b>							
Total Expenditure:	599,252.87	304,575.65	5%	<b>364,773.00</b>	<b>175,654.88</b>	<b>189,118.12</b>	<b>48%</b>
Total Revenue:	50,875.00	64,879.18	12%	<b>58,731.00</b>	<b>53,164.56</b>	<b>5,566.44</b>	<b>91%</b>
<b>RECREATION PROGRAMS</b>							
Total Expenditure:	25,708.00	14,271.60	0%	<b>27,450.00</b>	<b>10,230.32</b>	<b>17,219.68</b>	<b>37%</b>
Total Revenue:	6,500.00	6,885.00	0%	<b>7,500.00</b>	<b>2,940.00</b>	<b>4,560.00</b>	<b>39%</b>
GENERAL FUND Revenue Total:	6,887,530.00	6,890,923.97	4%	<b>7,036,049.86</b>	<b>4,071,280.09</b>	<b>2,964,769.77</b>	<b>58%</b>
GENERAL FUND Expenditure Total:	6,793,224.00	6,714,877.28	7%	<b>7,019,205.00</b>	<b>4,726,608.96</b>	<b>2,292,596.04</b>	<b>67%</b>
Net Total GENERAL FUND:	94,306.00	176,046.69	-204%	<b>16,844.86</b>	<b>655,328.87-</b>	<b>672,173.73</b>	<b>-3890%</b>
Net Grand Totals:	94,306.00	176,046.69	-204%	<b>16,844.86</b>	<b>655,328.87-</b>	<b>672,173.73</b>	<b>-3890%</b>

**CITY OF CHOWCHILLA**  
**BALANCE SHEET MARCH 31, 2016**  
**GENERAL FUND**

ASSETS		
100-0100-0000-0200-000	CASH - COMBINED FUND	( 8,312,943.08)
100-0100-0000-0201-000	PETTY CASH	800.00
100-0100-0000-0201-001	CASH DRAWER	2,400.00
100-0100-0000-0202-000	PRE-PAID POSTAGE ACCOUNT	1,744.26
100-0100-0000-0208-000	CASH IN US BANK - RESTRICT	369,738.52
100-0100-0000-0209-000	CASH IN LAIF	9,001,281.98
100-0100-0000-0224-000	A/R MODULE ONLY RECEIVALB	19,475.78
100-0100-0000-0226-000	ADVANCE TO OTHER FUNDS	557,442.34
100-0100-0000-0227-000	LIENS RECEIVABLES GENERAL	64,557.53
100-0100-0000-0228-000	PENDING CHARGES OR REFU	84.00
100-0100-0000-0229-000	A/R BUSINESS LICENSE	19,842.98
	TOTAL ASSETS	1,724,424.31
LIABILITIES AND EQUITY		
LIABILITIES		
100-0200-0000-0420-000	TRADE PAYABLES	158,838.49
100-0200-0000-0421-001	BONDS FOR WORK-REFUNDAB	4,000.00
100-0200-0000-0465-000	UNCLAIMED PROP/STALE DAT	2,186.42
	TOTAL LIABILITIES	165,024.91
FUND EQUITY		
100-0300-0000-0602-000	RESERVE FOR L/T A/R	557,442.34
UNAPPROPRIATED FUND BALA		
100-0300-0000-0601-000	FUND BALANCE	259,592.90
100-0300-0000-0601-004	RESERVE FOR CONTINGENCIE	910,223.00
100-0300-0000-0601-005	DESIGNATED FOR PREPAID IT	3,470.25
100-0300-0000-0601-006	DESIGNATED FOR DEBT SVC R	369,738.52
100-0300-0000-0601-009	PRIOR PERIOD ADJUSTMENTS	97,765.59
100-0300-0000-0601-999	FUND BALANCE RESTRICTED I	16,495.67
	REVENUE OVER EXPENDITUR	( 655,328.87)
	BALANCE - CURRENT DATE	1,001,957.06
	TOTAL FUND EQUITY	1,559,399.40
	TOTAL LIABILITIES AND EQUIT	1,724,424.31



# CITY COUNCIL STAFF REPORT

Item 3.3

[CLICK HERE  
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THE AGENDA](#)

April 26, 2016

**AGENDA SECTION:** Consent

**SUBJECT:** Adopt a Resolution Implementing the City of Chowchilla Water Department Drought Contingency Plan Water Conservation Level II Measures

**PREPARED BY:** Craig Locke, City Engineer/Public Works Director

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

**RECOMMENDATION:**

Adopt the Resolution implementing the City of Chowchilla Water Department Drought Contingency Plan Water Conservation Level II Measures

**HISTORY / BACKGROUND:**

The California State Water Resources Control Board regulations became law on July 28, 2014. The City of Chowchilla City Council satisfied the first requirement, approving water conservation ordinance 13.04.210 & 13.04.215 (10/14/14), and the second by adopting the City's water shortage contingency plan, titled Drought Contingency Plan for the City of Chowchilla Water Department was adopted by City Council on June 23, 2015 (44-15). This plan incorporated the essence of Chowchilla Municipal Code Ordinances.

The Drought Contingency Plan for the City of Chowchilla defines Level 2 Water Conservation Measures as follows:

**LEVEL 2 – WATER CONSERVATION MEASURES**

All prohibitions and restrictions in level I shall apply, and in addition:

1. Customers shall water outdoor landscaping no more than two days per week. The council may designate dates and times for outdoor landscaping watering by adopting rules or regulations through a resolution.\*
2. Hotels, restaurants, and bars are encouraged to only provide drinking water to customers upon request
3. Landscape watering for municipal parks will be reduced to three days or less per week, unless otherwise directed by rules or regulations adopted pursuant to Chowchilla Municipal Code Section 13.04.160.

\* The watering schedule has been defined as even addresses irrigate on Tuesdays and Saturdays, odd addresses irrigate Wednesdays and Saturdays

The City of Chowchilla is currently operating at a Level III Water Conservation Measure, which allows watering only one day a month

**FINANCIAL IMPACT:**

No Impact

**ATTACHMENTS:**

Resolution

**SPECIAL INSTRUCTIONS:**

None

**COUNCIL RESOLUTION # -16**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA,  
IMPLEMENTING THE CITY OF CHOWCHILLA WATER DEPARTMENT DROUGHT CONTINGENCY PLAN  
WATER CONSERVATION LEVEL II MEASURES**

---

**WHEREAS**, the City of Chowchilla and the State of California have recently experienced two years with extremely low rainfall; and

**WHEREAS**, the Governor on January 17, 2014 issued a Proclamation of a State of Emergency due to drought conditions; and

**WHEREAS**, Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years; and

**WHEREAS**, On July 15, 2014, the State Water Board adopted an emergency regulation to support water conservation (Resolution No. 2014-0038), and that regulation became effective July 28, 2014 upon approval by the Office of Administrative Law (OAL); and

**WHEREAS**, Resolution No. 44-15 adopted by Council to approve the Drought Contingency Plan for the City of Chowchilla Water Department authorizing the City Council to adopt the appropriate Water Conservation Measures at any time; and

**WHEREAS**, due to the current snowpack being at its historic long term average and local reservoirs also near average year capacity, relief from Level III restrictions is justified;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Chowchilla hereby finds and determines the following:

1. The recitals above are true and correct.
2. The City Administrator is hereby authorized to enact Level 2 Water Conservation Measures within the City of Chowchilla
3. This Resolution is effective immediately upon adoption.

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla this 26th day of April, 2016 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

APPROVED:

\_\_\_\_\_  
Waseem Ahmed, Mayor

ATTEST:

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk



# CITY COUNCIL STAFF REPORT

Item 3.4

[CLICK HERE  
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THE AGENDA](#)

April 26, 2016

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**AGENDA SECTION:** Consent

**SUBJECT:** Consideration of Resolution Authorizing Federal Funding Under FTA Section 5311 with the California Department of Transportation and Designating Authorized Signatory

**PREPARED BY:** D. Martin Piepenbrok, Community Relations Manager

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

---

**RECOMMENDATION:**

The recommendation is to authorize the City Administrator, or designee, as signatory for documents submitted to the California Department of Transportation, e.g. applications, certifications and assurances, payment requests and other related documents, to receive Federal Transit Administration (FTA) Section 5311 funds to operate the Chowchilla transit system.

**HISTORY / BACKGROUND:**

The U. S. Department of Transportation annually allocates Federal funding to states through the Federal Transit Administration to support capital/operating assistance projects for non-urbanized public transportation systems under Section 5311 of the Federal Transit Act. The California Department of Transportation has been designated by the Governor to administer Section 5311 grants for transportation projects for the general public for the rural transit and intercity bus systems.

Applications for Section 5311 funds, as well as certifications and assurances, payment requests, and other related documents, must be signed by a duly authorized City representative designated by City Council resolution. The Federal Transit Administration requires a resolution authorizing the designation be considered and approved every three years.

The accompanying resolution authorizes the City Administrator, or designee, to file and execute applications on behalf of the City with the California Department of Transportation for Section 5311 funds, to execute and file all certification of assurances, contracts or agreements or any other required documents, to provide additional information that may be required and to submit and approve requests for reimbursement.

**FINANCIAL IMPACT:**

There is no cost to this action, but action is required to receive FTA Section 5311 funds for the Chowchilla transit system.

**ATTACHMENTS:**

Resolution

## **COUNCIL RESOLUTION # -15**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA AUTHORIZING FEDERAL FUNDING UNDER FTA SECTION 5311 WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND DESIGNATING AUTHORIZED SIGNATORY**

**WHEREAS**, the U. S. Department of Transportation is authorized to make grants to states through the Federal Transit Administration to support capital/operating assistance projects for non-urbanized public transportation systems under Section 5311 of the Federal Transit Act; and

**WHEREAS**, the California Department of Transportation has been designated by the Governor of the State of California to administer Section 5311 grants for transportation projects for the general public for the rural transit and intercity bus systems; and

**WHEREAS**, the City of Chowchilla desires to apply for said financial assistance to permit operation of service/purchase of capital equipment; and

**WHEREAS**, the City of Chowchilla has, to the maximum extent feasible, coordinated with other transportation providers and users in the region, including social service agencies.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Chowchilla hereby finds and determines the following:

1. The City Administrator, or designee, is authorized to file and execute applications on behalf of the City with the California Department of Transportation to aid in the financing of capital/operating assistance projects pursuant to Section 5311 of the Federal Transit Act, as amended.
2. The City Administrator is authorized to execute and file all certification of assurances, contracts or agreements or any other document required by the California Department of Transportation.
3. The City Administrator is authorized to provide additional information as the California Department of Transportation may require in connection with the application for the Section 5311 projects.
4. The City Administrator is authorized to submit and approve requests for reimbursement of funds from the California Department of Transportation for the Section 5311 project(s).

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla this 26<sup>th</sup> day of April, 2016 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**APPROVED:**

\_\_\_\_\_  
Waseem Ahmed, Mayor

**ATTEST:**

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk



# CITY COUNCIL STAFF REPORT

Item 4.1

[CLICK HERE  
TO RETURN TO  
THE AGENDA](#)

April 26, 2016

---

**AGENDA SECTION:** Public Hearing

**SUBJECT:** Public Hearing and Approval of a Resolution Approving Changes to the Homebuyer and Housing Rehabilitation Program Guidelines

**PREPARED BY:** Rod Pruett, Finance Director

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

---

**RECOMMENDATION:**

Staff recommends two things to the City Council related to the Homebuyer and Housing Rehabilitation Program Guidelines:

1. Open the public hearing to accept public comment on proposed changes to the Homebuyer and Housing Rehabilitation Program Guidelines; and
2. Approve a Council Resolution approving the changes to the Homebuyer and Housing Rehabilitation Program Guidelines.

**HISTORY / BACKGROUND:**

The City of Chowchilla has established Program Guidelines which govern the administration of its Homebuyer and Housing Rehabilitation Programs. The City has received funding from the State Department of Housing and Community Development (HCD) Community Development Block Grant (CDBG) Program and HOME Investment Partnerships Program to implement these programs.

CDBG Program regulations require that the City conduct a public hearing on all CDBG-related matters to provide for and encourage citizen participation, particularly by low and moderate income persons who reside in areas in which CDBG funds are used. Therefore, when the public hearing is opened, the public will be invited to comment on the proposed changes to the Guidelines. Comments may be received in writing or orally.

**DISCUSSION:**

The proposed changes to the Homebuyer and Housing Rehabilitation Program Guidelines are necessary to comply with new or revised HCD requirements of both the CDBG and HOME Programs.

**Housing Rehabilitation Program Guidelines**

Changes requested by HCD include updates and additions related to:

- Application process;
- Rehabilitation bid process and recruitment of contractors;
- Conflict of interest;
- Removal of owner-investor requirements. HCD requires separate guidelines for owner-occupant and owner-investor properties;
- Removal of sweat equity language;
- Eligibility requirements for grants; and
- Other minor changes (e.g., updates to various program limits).

## **Homebuyer Program Guidelines**

Changes requested by HCD include updates and additions related to:

- Application process;
- Conflict of interest;
- Modest housing definition; and
- Other minor changes (e.g., updates to various program limits).

### **FINANCIAL IMPACT:**

There is no fiscal impact to the City of Chowchilla.

### **CONCLUSION:**

Citizens are encouraged to make comments to the City regarding any aspect of the CDBG Program. Citizens also are invited to submit written comments. Citizens may inspect the citizen participation supporting documents on file at City Hall. Write or contact Rod Pruett, Finance Director at City Hall located at 130 S. Second Street, Chowchilla, CA 93610

### **ATTACHMENTS:**

Resolution

Public Hearing Notice (English and Spanish)

Homebuyer and Housing Rehabilitation Program Guidelines (with changes tracked)

### **SPECIAL INSTRUCTIONS:**

None

**COUNCIL RESOLUTION # -16**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA  
APPROVING CHANGES TO THE CITY'S HOMEBUYER AND HOUSING REHABILITATION  
PROGRAM GUIDELINES.**

**WHEREAS**, the City of Chowchilla, a political subdivision of the State of California, has established Program Guidelines which govern the administration of its Housing Rehabilitation Program and its Homebuyer Program; and

**WHEREAS**, the City has received funding from the State Department of Housing and Community Development (HCD) Community Development Block Grant (CDBG) Program and HOME Investment Partnerships Program to implement these programs; and

**WHEREAS**, Staff presented a report to Council and held a public hearing to allow the citizens of Chowchilla the opportunity to review and make comments on proposed changes to the Program Guidelines pursuant to the requirements of HCD; and

**WHEREAS**, the City desires to update the Homebuyer and Housing Rehabilitation Program Guidelines to comply with new or revised HCD requirements of both the CDBG and HOME Programs;

**IT IS NOW THEREFORE RESOLVED THAT**, the City Council does hereby approve the updated Homebuyer and Housing Rehabilitation Program Guidelines.

The above and foregoing resolution was approved and adopted at a regular meeting of the City Council of the City of Chowchilla, held on this 26th day of April, 2016 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

APPROVED:

\_\_\_\_\_  
Mayor Waseem Ahmed

ATTEST:

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk

# Declaration of Publication

(2015.5 C.C.P)

STATE OF CALIFORNIA )  
 ) ss.  
County of Madera )

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of the Chowchilla News, a newspaper of general circulation, printed and published in the City of Chowchilla, County of Madera, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Madera, State of California, under the date of June 10, 1918 Case Number 1943 that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof

APRIL 13, 2016

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

*Patricia Marshall*

Signature

Date: APRIL 13, 2016

## NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

4/13/16  
City of Chowchilla  
130 S. Second St.  
Chowchilla, CA 93610  
(559) 665-8615

On or about April 22, 2016, the City of Chowchilla will submit a request to the Department of Housing and Community Development (HCD) for the release of Community Development Block Grant (CDBG) funds, under Title 1 of the Housing & Community Development Act of 1974 to undertake a program known as Housing Rehabilitation Program (Rehab Program), for the purpose of providing financing for income-eligible, single-family households to rehabilitate homes within the city limits of Chowchilla.

During the program period of April 1, 2016, through March 31, 2021, the CDBG Rehab Program will utilize current and future CDBG grant funds, CDBG Program Income funds, and any other source of federal, state, and local funds as they may become available during the program term. The approximate amount of these funds may potentially reach \$5,000,000, of which the amount of CDBG funds may be an estimated maximum of \$2,500,000, to provide assistance of up to \$232,231 per unit to rehabilitate a maximum of 95 homes/units. The Area of Consideration for this program is within Chowchilla city limits with the exception of homes located in Special Flood Hazard Areas when the rehabilitation of the single-family units will cost more than 50% of the market value of the structure before rehabilitation.

The activities proposed are Categorical Excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act Requirements. An Environmental Review Record (ERR) for the area of consideration that documents the environmental determinations for these programs is on file at the City of Chowchilla, 130 S. Second St., Chowchilla, CA 93610 and may be examined or copied Monday - Thursday 8:00 A.M. to 4:00 P.M. The City of Chowchilla will use the Appendix A format to supplement this ERR with additional site-specific reviews further addressing Historic Preservation, Explosive and Flammable Operations, Airport Clear Zones, Flood Insurance, Toxic Substances and Hazardous Materials prior to approving any loan or grant under these programs.

### PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the City of Chowchilla, 130 S. Second St., Chowchilla, CA 93610. All comments received by April 21, 2016 will be considered by the City of Chowchilla prior to authorizing submission of a request for release of funds.

### ENVIRONMENTAL CERTIFICATION

The City of Chowchilla certifies to HCD that Charles Brian Haddix in his capacity as Certifying Officer consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HCD's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the City of Chowchilla to use Program funds.

### OBJECTIONS TO RELEASE OF FUNDS

HCD will accept objections to the City of Chowchilla's Request for Release of Funds and Environmental Certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if it is on one of the following bases: (a) the certification was not executed by the Certifying Officer of the City of Chowchilla; (b) the City of Chowchilla has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient or other participants in the project have committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by HCD; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and addressed to the Department of Housing and Community Development, CDBG Program, P.O. Box 952054, Sacramento, CA 94252-2054. Potential objectors should contact HCD to verify the actual last day of the objection period.

Charles Brian Haddix, City Administrator  
City of Chowchilla

Published in The Chowchilla News on April 13, 2016

### NOTIFICACION DE INTENCION DE SOLICITACION DE LIBERACION DE FONDOS

4/13/16  
Ciudad de Chowchilla  
130 S. Second St.  
Chowchilla, CA 93610  
(559) 665-8615

En o alrededor del 22 de Abril del 2016, la Ciudad de Chowchilla someterá una solicitud al Departamento de Desarrollo de Viviendas y Comunidades (Department of Housing and Community Development o HCD por sus siglas en inglés) para la liberación de fondos del Programa Community Development Block Grant (CDBG), bajo el Título 1 del Acto de Desarrollo Comunitario y de Vivienda de 1974 para comenzar un programa conocido como Programa para Rehabilitación de Viviendas (o Rehab Program en inglés), con el propósito de proveer financiamiento a casas unifamiliares de ingresos elegibles para rehabilitar hogares dentro de los límites municipales de las áreas incorporadas a la Ciudad de Chowchilla.

Durante el periodo de tiempo en el cual el programa estará vigente del 1 de diciembre del 2015 al 30 de noviembre del 2020, el Rehab Program (Programa de Rehabilitación) estará utilizando fondos de la subvención del programa CDBG (14.CDBG-9900), los futuros fondos de la subvención de CDBG, ingresos del programa CDBG, y cualquier otra fuente de fondos federales, estatales, o locales conforme se hagan disponibles durante el periodo del programa. La cantidad aproximada de estos fondos potencialmente puede llegar a \$5,000,000 de los cuales se estima que un máximo de \$2,500,000 sean fondos CDBG para proveer asistencia de hasta \$232,231 para rehabilitar a un máximo de 95 hogares/unidades. Las áreas consideradas para estos programas están dentro de los límites de la Ciudad de Chowchilla.

Las actividades propuestas son categóricamente excluidas del Acto Nacional para la Protección Ambiental (National Environmental Policy Act o NEPA por sus siglas en inglés) bajo el capítulo 24 CFR Parte 58 de las regulaciones del Departamento del Desarrollo de Viviendas y Urbanismo (o HUD por sus siglas en inglés). El documento del examen ambiental hecho en la área bajo consideración para estos programas que documenta las alineaciones ambientales está archivado con la Ciudad de Chowchilla, en la dirección 130 S. Second St., Chowchilla, CA 93610 y puede ser examinado y copiado de lunes a viernes de las 8 de la mañana a las 4:00 de la tarde. La Ciudad de Chowchilla, CA utilizará el formato del apéndice A para complementar el documento del examen ambiental con información de exámenes adicionales que serán hechos en los sitios específicos enfocándose en la preservación histórica, las operaciones de actividades explosivas e inflamables, las zonas libres para paraplueros, seguros de inundación, e información acerca de sustancias tóxicas y peligrosas, todo esto antes de aprobar cualquier préstamo o subvención bajo estos programas.

### COMENTARIOS DEL PÚBLICO

Cualquier individuo, grupo o agencia puede someter comentarios por escrito con respecto al documento del examen ambiental en la Ciudad de Chowchilla, a la dirección 130 S. Second St., Chowchilla, CA 93610. Todos los comentarios recibidos antes del 21 de Abril del 2016 serán considerados por la Ciudad de Chowchilla antes de autorizar la sumisión de la solicitud para la liberación de fondos.

### CERTIFICACION AMBIENTAL

La Ciudad de Chowchilla le certifica al Departamento de Desarrollo para Viviendas y Comunidades que Brian Haddix en su capacidad como funcionario de certificación conscientemente se somete a la jurisdicción de la corte federal si hay acción legal para hacer cumplir las obligaciones con respecto al proceso del examen ambiental y que estas obligaciones han sido cumplidas. La aprobación de la certificación por el Departamento de Desarrollo para Viviendas y Comunidades cumple sus responsabilidades debajo NEPA las leyes y autoridades asociadas y le permite a la Ciudad de Chowchilla utilizar los fondos de estos programas.

### PROTESTAS A LA LIBERACION DE FONDOS

El Departamento del Desarrollo para Viviendas y Comunidades aceptará protestas a la solicitud de liberación de fondos y certificación ambiental de la Ciudad de Chowchilla por un periodo de 15 días siguientes a la fecha anticipada de sumisión o la fecha actual que se reciba la solicitud (la que sea más tarde) solamente si la protesta es basada en una de las siguientes razones: (a) la certificación no fue ejecutada por el funcionario de certificación de la Ciudad de Chowchilla; (b) La Ciudad de Chowchilla ha omitido un paso o no tomó una decisión o llegó a una conclusión requerida por las regulaciones de HUD en el capítulo 24 del Código de Regulaciones Federales (CFR) Parte 58; (c) el recipiente de la subvención u otro participante en el proyecto ha comprometido fondos o ha incurrido costos que no son autorizados por el capítulo 24 de CFR Parte 58 antes de la aprobación de la liberación de fondos por HCD; o (d) alguna otra agencia federal actuando en conformidad con el capítulo 40 de CFR Parte 1504 ha sometido una determinación escrita en la cual explica que el proyecto es insatisfactorio desde el punto de vista de calidad ambiental. Las protestas deben ser preparadas y sometidas de acuerdo con los procesos requeridos (vea el capítulo 24 de CFR Parte 58; Sección 58.76) y deberán ser dirigidas al Departamento del Desarrollo de Viviendas y Comunidades, Programa CDBG, P.O. Box 952054, Sacramento, CA 94252-2054. Obietores potenciales deberían comunicarse con HCD para verificar el último día del periodo de protesta.

Charles Brian Haddix,  
Ciudad de Chowchilla

Publicado en el Chowchilla News el 13 de abril del 2016  
CN- 2380804 4/13

# Declaration of Publication

(2015.5 C.C.P)

STATE OF CALIFORNIA )  
 ) ss.  
County of Madera )

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of the Chowchilla News, a newspaper of general circulation, printed and published in the City of Chowchilla, County of Madera, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Madera, State of California, under the date of June 10, 1918 Case Number 1943 that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof

APRIL 13, 2016

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

*Patty Marshall*

Signature

Date: APRIL 13, 2016

### City of Chowchilla PUBLIC NOTICE

To provide an opportunity for citizen participation, the City of Chowchilla will hold a Public Hearing to review proposed changes to the Homebuyer and Housing Rehabilitation Program Guidelines.

#### PUBLIC HEARING

DATE: April 26, 2016  
TIME: 7:00 p.m.  
PLACE: 130 S. Second Street  
Chowchilla, CA 93610

The Guidelines contain policies and procedures for implementation of the City's Housing Rehabilitation and Homebuyer Programs, including eligibility requirements and the types and terms of financing available.

The purpose of this public hearing is to give citizens an opportunity to make their comments known regarding the proposed changes to the Homebuyer and Housing Rehabilitation Program Guidelines.

If you require special accommodations

to participate in the public hearing, please contact Rod Prueft at (559) 665-8615 ext. 700 or TTY at 1-800-735-2929 for English or 1-800-855-3000 for Spanish to arrange for those accommodations to be made.

If you are unable to attend the public hearing, you may direct written comments to Rod Prueft, Finance Director, City of Chowchilla, 130 S. Second St., Chowchilla, CA 93610; or you may telephone (559) 665-8615 ext. 700. In addition, information is available for review at the above address between the hours of 8:00 a.m. and 4:00 p.m. on Monday - Thursday.

The City of Chowchilla promotes fair housing and makes all its programs available to low and moderate income families regardless of age, race, color, religion, sex, national origin, sexual preference, marital status or handicap.

Published: April 13, 2016 in the Chowchilla News

#### Ciudad de Chowchilla AVISO PÚBLICO

Para proveer una oportunidad de participación a los ciudadanos, la Ciudad de Chowchilla tendrá una audiencia pública para revisar los cambios propuestos a las guías del Programa de Compradores de Viviendas y Rehabilitación de Viviendas.

#### AUDIENCIA PÚBLICA

FECHA: 26 de abril de 2016  
HORA: 7:00 p.m.

LUGAR: 130 S. Second Street  
Chowchilla, CA 93610

Las Guías del Programa contienen pólizas y procedes para la implementación del Programa de Rehabilitación de Viviendas y Compradores de Viviendas dentro de la Ciudad incluyendo requisitos de elegibilidad, y la clase y términos de financiamiento.

El propósito de esta audiencia pública es dar a los ciudadanos la oportunidad de hacer sus comentarios acerca de los cambios propuestos a las guías del Programa de Compradores de Viviendas y Rehabilitación de Viviendas.

Si necesita acomodaciones especiales para participar en la audiencia pública, por favor póngase en contacto con Rod Prueft al (559) 665-8615 ext. 700 o TTY al 1-800-735-2929 para inglés o 1-800-855-3000 para español para hacer las acomodaciones.

Si usted no puede asistir a la audiencia pública, puede dirigir sus comentarios por escrito a Rod Prueft, Director Financia, Ciudad de Chowchilla, 130 S. Second St., Chowchilla, CA 93610, o por teléfono al (559) 665-8615 ext. 700. Además, la información está disponible para su consulta en la dirección antes mencionada dentro del horario de las 8:00 am y 4:00 pm de lunes - jueves.

La Ciudad de Chowchilla promueve la vivienda justa y hace que todos los programas estén a disposición a las familias de ingresos bajos y moderados independientemente de la edad, raza, color, religión, sexo, origen nacional, preferencia sexual, estado civil o discapacidad.

Published: 13 de abril de 2016 en el Chowchilla News  
CN- 2380858 4/13

Legals & Public Notices

# City of Chowchilla

## Homebuyer Acquisition Only/ Acquisition with Rehabilitation Program Guidelines

For:

CalHome Program  
Community Development Block Grant  
(CDBG) Program and  
HOME Investment Partnerships Program

Serving the  
City of Chowchilla

Ver. 2016.1  
Pending HOME Approval

# **HOMEBUYER PROGRAM GUIDELINES**

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# CITY OF CHOWCHILLA

## HOMEBUYER PROGRAM GUIDELINES

### 1.0. GENERAL

The above-named entity, hereinafter referred to as the “Sponsor,” has entered into a contractual relationship with the California Department of Housing and Community Development (“HCD”) to administer one or more HCD-funded homebuyer Programs. The homebuyer Program described herein (the “Program”) is designed to provide assistance to eligible homebuyers in purchasing homes, also referred to herein as “housing units”, located within the Program’s eligible area, as described in Section 3.1.A. The Program provides this assistance in the form of deferred payment “silent” second priority loans as “Gap” financing toward the purchase price and closing costs of affordable housing units that will be occupied by the homebuyers as their primary residence. The Program will be administered by Self-Help Enterprises, (the “Program Operator”).

### 1.1. PROGRAM OUTREACH AND MARKETING

All outreach efforts will be done in accordance with state and federal fair lending regulations to assure nondiscriminatory treatment, outreach and access to the Program. No person shall, on the grounds of age, ancestry, color, creed, physical or mental disability or handicap, marital or familial status, medical condition, national origin, race, religion, gender or sexual orientation be excluded, denied benefits or subjected to discrimination under the Program. The Sponsor will ensure that all persons, including those qualified individuals with handicaps, have access to the Program.

- A. The Fair Housing Lender logo and Accessibility logo will be placed on all outreach materials. Fair housing marketing actions will be based upon a characteristic analysis comparison (census data may be used) of the Program’s eligible area compared to the ethnicity of the population served by the Program (includes, separately, all applications given out and those receiving assistance) and an explanation of any underserved segments of the population. This information is used to show that protected classes (age, gender, ethnicity, race, and disability) are not being excluded from the Program. Flyers or other outreach materials, in English and any other language that is the primary language of a significant portion of the area residents, will be widely distributed in the Program-eligible area and will be provided to any local social service agencies. The Program will sponsor homebuyer classes to help educate homebuyers about the home buying process and future responsibilities. Persons who have participated in local homebuyer seminars will be notified about the Program.
- B. The Program Operator will work with local real estate agents and primary lenders to explain the Program requirements for eligible housing units and homebuyers, and to review Program processes. Local real estate agents and primary lenders will also be encouraged to have their customers participate in the Program.
- C. Section 504 of the Rehabilitation Act of 1973 prohibits the exclusion of an otherwise qualified individual, solely by reason of disability, from participation under any

Program receiving Federal funds. The Program Sponsor will take appropriate steps to ensure effective communication with disabled housing applicants, residents and members of the public.

## **1.2. APPLICATION PROCESS AND SELECTION**

- A. The Sponsor maintains a waiting list of applicants. When applicants are placed on the list, they are sent a Program Brochure and Instructions to Home Buyer (Attachment G) and directed to the Program Operator's HUD and CalHome approved Homebuyer Counseling and Education program. Each applicant must participate in the Homebuyer Counseling and Education Program and receive a certificate of completion to be eligible for the Sponsor's Homebuyer Program.
- B. Once the applicant's name comes to the top of the waiting list, a phone interview is conducted to gather sufficient information concerning household size and composition, income, employment, and credit history to establish preliminary eligibility for Program participation. The potential homebuyer is advised to interview and compare lenders to start the pre-qualification process for a primary loan. Potential homebuyers are advised that funds will be available on a first-come, first-served basis upon receipt of a complete application package and pre-qualification letter from the applicant's primary lender.
- C. The Program Operator will provide an income and asset form, submission form, and lender cover letter to the potential homebuyer's primary lender for completion. In addition to these documents, the primary lender must submit a complete application package and pre-qualification letter to the Program Operator on behalf of the applicant. Completed applications are processed on a first-come, first-served basis. Applications are deemed complete only if all information is completed, the application is signed and dated, and a primary lender's pre-qualification information is included. Incomplete applications are returned to the primary lender and will not be date/time stamped until complete.
- D. Upon receipt of a complete application package, the Program Operator will confirm Program eligibility of the potential homebuyer. Upon eligibility confirmation, the Program Operator will send both the potential homebuyer and primary lender the following documents: pre-qualification letter, mortgage commitment letter with a list of conditions, Sellers Lead-Based Paint (LBP) Disclosure (Attachment E) and Notice to Seller (Attachment F). In the event the potential homebuyer is found to be ineligible, the applicant will receive a denial letter with an explanation of the reason(s) for denial and the appeal process.

If the Program Operator encounters material discrepancies and/or misrepresentations and/or there are income, asset, household composition, or other important questions that can't be resolved, the Sponsor reserves the right to deny assistance to the household. In this event, the applicant will receive a denial letter with an explanation and may re-apply after six months have elapsed from the time of written assistance denial.

- E. The potential homebuyer is given 90 days in order to find a qualified home. If during the 90-day timeframe, the potential homebuyer is unable to purchase a home, an extension may be given. However, if it appears the potential homebuyer cannot participate in the Program, the reservation of funds expires and the next person on the waiting list is given an opportunity to participate in the Program.

### **1.3. THE HOME PURCHASE PROCESS**

- A. The following is a simplified example of how a primary lender would analyze a homebuyer's finances to determine how much the homebuyer could afford to borrow from the primary lender towards homeownership.

**DEBT SERVICE  
FOR A FAMILY OF FOUR EARNING \$3,388 PER MONTH**

<b>HOUSING PAYMENTS</b>		<b>TOTAL OVERALL PAYMENTS</b>
Principal & Interest Payment	\$ 865	\$1,180 Housing
Insurance	82	<u>+200</u> Other Debt Service
Taxes	<u>233</u>	\$1,380 Total Debt Service
Total Housing Expense (PITI is 35% of \$3,388)	\$1,180	(Overall debt service per month is 41% of \$3,388)

**OTHER HOUSEHOLD DEBT SERVICE**

Car Payment	\$ 150
Credit Card Payment	<u>50</u>
Total Other Debt	\$ 200

A \$865 per month loan payment equates to borrowing \$143,000 at 5.88% for a 30 year term.

**SUBSIDY CALCULATION  
FOR A FAMILY OF FOUR EARNING \$3,388 PER MONTH**

Purchase Price of Property	\$ 280,000
Less Primary loan amount	<b>143,000</b>
Less down payment of 1%	<u>2,800</u>
 Equals "GAP"	 <b>\$ 134,200</b>
 Plus estimated allowable settlement charges	 <u>8,400</u>
 Equals <b>Total Subsidy</b>	 <b>\$ 142,600</b>

\*Primary loan amount must be the maximum amount for which the family can qualify.

B. The housing unit selection process will be conducted by the homebuyers. Prior to making an offer to purchase an eligible housing unit (see Section 3.0), homebuyer shall provide seller with a disclosure containing the following provisions:

- 1) Homebuyer has no power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement; and
- 2) Homebuyer's offer is an estimate of the fair market value of the housing unit, to be finally determined by a state licensed appraiser;
- 3) The housing unit will be subject to inspection. The housing unit must comply with local codes at the time of construction and local health and safety standards.
- 4) All housing units built prior to January 1, 1978 will require a lead paint disclosure to be signed by both the homebuyer and Seller (Attachment E);

- 5) Since the purchase would be voluntary, the seller would not be eligible for relocation payments or other relocation assistance;
  - 6) The seller understands that the housing unit must be either: currently owner-occupied, newly constructed, or vacant for three months prior to submission of the purchase offer.
  - 7) If the seller is not provided with a statement of the above six provisions prior to the purchase offer, the seller may withdraw from the agreement after this information is provided.
- C. Applicant submits executed standard form, purchase and sale agreement, and primary lender prequalification letter to Program Operator. The purchase and sale agreement will be contingent on the household and housing unit meeting Program eligibility requirements and receiving Program loan approval. Program Operator verifies applicant eligibility, housing unit and loan eligibility and amount of assistance to be provided consistent with these guidelines.
- D. Program Operator, where Program Operator is not the Sponsor, submits recommendation to the Sponsor for approval or denial, including the reasons for the recommendation. Sponsor determines Applicant's approval or denial, and instructs Program Operator to notify Applicant. Program Operator provides written notification to Applicant of approval or denial with reason and, if denied, a copy of the Program's appeal procedures.
- E. When Primary Lender requirements are met, Program funds are deposited into escrow, with required closing instructions and loan documents.
- F. At the time of escrow closing, the Sponsor shall be named as an additional loss payee on fire, flood (if required), and extended coverage insurance for the length of the loan and in an amount sufficient to cover all encumbrances or full replacement cost of the housing unit. A policy of Title Insurance naming the Sponsor as insured is also required.

#### **1.4. HOMEBUYER COSTS**

- A. Eligible households must document that they have the funds necessary for down payment and closing costs as required by the Primary Lender and the Sponsor. The Program's down payment requirement (below) is in place even if the Primary Lender has a lower down payment requirement. If the Primary Lender has a higher down payment requirement, there is no additional down payment requirement required by the Program.
- B. Homebuyer funds shall be used in the following order:
- 1) Down payment – Homebuyer must contribute a minimum down payment of one percent (1%) of the purchase price, but may contribute more, if desired.
  - 2) To the extent possible after satisfying 1), above, appraisal fee; cost of credit report; the loan origination fee; discount points; customary homebuyer closing costs; homebuyer's customary portion of the escrow fees; title insurance; and, the establishment of impound accounts for property taxes and insurance.

- 3) After 1) and 2), above, are satisfied, any balance of homebuyer funds may be applied either to the purchase price or to reduce the interest rate of the primary loan as necessary.
- C. If the items in B.2), above cannot be satisfied with homebuyer funds, the Sponsor will provide additional Program loan assistance to cover the remaining balance.
- D. Sponsor will not provide more than fifty percent (50%) of the acquisition cost (purchase price plus all closing costs). Sponsor may also provide sufficient assistance, as Program loan principal, to reduce the monthly payments for PITI to an affordable level of household income. The subsidy will write down the cost of the primary lender's loan so that the payments of PITI are within approximately 25 to 35% of the gross household income. The Program Operator will determine the level of subsidy and affordability during underwriting of the Program's loan to make sure that it conforms to the requirements of the HCD funding Program.

### **1.5. INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAM – For CDBG Only**

The Individual Development Account (IDA) Program is designed to assist participants in developing a savings pattern and eventually in purchasing a lasting asset, in the form of funds saved for Homebuyer down payments and closing costs.

- A. To receive IDA Program approval, each participant must be employed and receiving “earned income”.
- B. Following approval, Self-Help Enterprises (the “IDA Program Operator”) will open an account at the IDA approved partner bank.
- C. Enrollment in the IDA Program is considered complete once each participant completes a mandatory nine (9) hours of Financial Fitness Education. This includes a two (2) hour session with a banker which occurs during their first visit to make their initial bank deposit. Each participant must also complete eight (8) hours of Homebuyer Counseling and Education within six (6) months of enrollment.
- D. Each participant is required to make a minimum monthly deposit of twenty-five dollars (\$25) into the savings account established by the IDA Program Operator. The minimum length of participation in the IDA Program is six (6) months and the participant may not miss more than three (3) deposits within a twelve (12) month period.
- E. Each participant will receive a 3:1 match up to the first \$1,000 of their savings. There is a maximum of three thousand dollars (\$3,000) match per participant and six thousand dollars (\$6,000) match per household. The maximum three thousand dollars (\$3,000) match funds are made up of one thousand five hundred dollars (\$1,500) in Federal Funds from California Coalition of Rural Housing (CCRH) and one thousand five hundred dollars (\$1,500) Non-Federal Funds from Sponsor.

- F. Participants will receive quarterly account updates showing the amount of matching funds earned.
- G. Matching funds, that are not CDBG funds, will remain in the project reserve account until a property has been located, escrow is opened, and a withdrawal request has been approved; at which time, funds will be sent directly to escrow on behalf of the participant.
- H. All match funds must be used to purchase a home. Any unused match funds will be applied as a principal reduction. If a participant terminates their IDA involvement prior to purchasing a home, the participant will only have access to the funds they have deposited. If a participant closes the savings account established by the IDA Program Operator, IDA Program involvement will be considered terminated.

## **1.6. HOMEBUYER EDUCATION**

Buying a home can be one of the most confusing and complicated transactions anyone can make. Providing the future homebuyer with informative homebuyer education training, can bring success to the Sponsor, Program Operator, the Program and most importantly, the homebuyer. It has been documented that first-time homebuyers that have had homebuyer education have the ability to handle problems that occur with homeownership. All Program participants are required to attend a Sponsor-approved homebuyer education class. The homebuyer education class will cover such topics as the following: preparing for homeownership; available financing; credit analysis; loan closing; homeownership responsibilities; home maintenance; impact of refinancing and loan servicing. Methods of homebuyer counseling and education may include, but are not limited to: online education, one-on-one counseling between homebuyer, counselor and family/individual and/or group workshops and informational sessions. Tools of instruction may include fliers, brochures, power point presentations, worksheets, etc.

## **1.7. CONFLICT OF INTEREST REQUIREMENTS**

When the Sponsor's Program contains Federal funds, the applicable Conflict of Interest requirements of 24 CFR Section 570.611 shall be followed for CDBG assistance, and for CalHome-funded programs, the applicable Conflict of Interest requirements of Public Contract Code sections 10410, 10411, and 10430 (e) shall be followed.

For HOME assistance, Section 92.356 of the HOME Final Rule shall be followed, as follows:

- (a) Conflicts prohibited. No persons described in paragraph (b) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including

stepparent), child (including stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild and in-laws of a covered person.

(b) Persons covered. The conflict of interest provisions of paragraph (a) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(c) Exceptions: Threshold requirements. Upon the written request of the participating jurisdiction to HCD, HUD may grant an exception to the provisions of paragraph (a) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. See 24 CFR 92.356(d)(1-6) for details on the documentation needed in order to submit an exception request to HUD.

## **1.8. NON-DISCRIMINATION REQUIREMENTS**

The Program will be implemented in ways consistent with the Sponsor's commitment to non-discrimination. No person shall be excluded from participation in, denied the benefit of, or be subject to discrimination under any Program or activity funded in whole or in part with State funds on the basis of his or her religion or religious affiliation, age, race, color, creed, gender, sexual orientation, marital status, familial status (children), physical or mental disability, national origin, or ancestry, or other arbitrary cause.

## **2.0. APPLICANT QUALIFICATIONS**

### **2.1. CURRENT INCOME LIMITS FOR THE AREA, BY HOUSEHOLD SIZE**

All applicants must certify that they meet the household income eligibility requirements for the applicable HCD Program(s) and have their household income documented. The income limits in place at the time of loan approval will apply when determining applicant income eligibility. All applicants must have incomes at or below 80% of the County's area median income (AMI), adjusted for household size, as published by HCD each year. (Attachment C)

The link to the official HCD maintained income limits is:

<http://www.hcd.ca.gov/hrc/rep/state/incNote.html>

**Household:** Means one or more persons who will occupy a housing unit. For HOME and CDBG, unborn children count in family size determination. For CalHome, unborn children are not counted.

**Annual Income:** Generally, the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period.

### **2.2. INCOME QUALIFICATION CRITERIA**

Projected annual gross income of the applicant household will be used to determine whether they are above or below the published HCD income limits. Income qualification criteria, as shown in the most recent HCD Program-specific guidance at <http://www.hcd.ca.gov/fa/cdbg/GuideFedPrograms.html>, will be followed to

independently determine and certify the household's annual gross income. The Program Operator should compare this annual gross income to the income the Primary Lender used when qualifying the household. The Primary Lender is usually underwriting to FHA or conventional guidelines and may not calculate the household income or assets in the same way as required by the Program. Income will be verified by reviewing and documenting tax returns, copies of wage receipts, subsidy checks, bank statements and third-party verification of employment forms sent to employers. All documentation shall be dated within six months prior to loan closing and kept in the applicant file and held in strict confidence.

#### A. HOUSEHOLD INCOME DEFINITION:

Household income is the annual gross income of all adult household members that is projected to be received during the coming 12-month period, and will be used to determine Program eligibility. Refer to Income Inclusions and Exclusions for further guidance to the types of incomes to be included or excluded when calculating gross annual income. **See Attachment A for HOME and CDBG. See Attachment A-1 for CalHome.** For those types of income counted, gross amounts (before any deductions have been taken) are used. Two types of income that are not considered would be income of minors and live-in aides. Certain other household members living apart from the household also require special consideration. The household's projected ability to pay must be used, rather than past earnings, when calculating income.

For HOME and CDBG, the link to Annual Income Inclusions and Exclusions is:  
[http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixB\\_AnnualIncomeInclusionsExclusions.doc](http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixB_AnnualIncomeInclusionsExclusions.doc)

#### B. ASSETS:

There is no asset limitation for participation in the Program. Income from assets, however, is recognized as part of annual income under the Part 5 definition. An asset is a cash or non-cash item that can be converted to cash. The value of necessary items such as furniture and automobiles are not included. (*Note: it is the income earned – e.g. interest on a savings account – not the asset value, which is counted in annual income.*) **See Attachment B.**

An asset's cash value is the market value less reasonable expenses required to convert the asset to cash, including, for example, penalties or fees for converting financial holdings and costs for selling real property. For HOME and CDBG, the cash value (rather than the market value) of an item is counted as an asset. For CalHome, the market value of an item is counted as an asset.

For HOME and CDBG, the Link to Asset Inclusions and Exclusions is:  
[http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixC\\_AnnualIncomeAssetInclusionsExclusions.doc](http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixC_AnnualIncomeAssetInclusionsExclusions.doc)

### 2.3. DEFINITION OF AN ELIGIBLE HOMEBUYER

An eligible homebuyer means an individual or individuals or an individual and his or her spouse who meets the income eligibility requirements and is/are not currently on title to real property. Persons may be on title of a manufactured home unit, who are planning to sell the unit as part of buying a home located on real property. Documentation of homebuyer status will be required for all homebuyers. CDBG-funded Programs may assist eligible homebuyers who are not “first-time” homebuyers.

HOME and CalHome-funded Programs are required to use the following definition of an eligible homebuyer, which is a “first-time homebuyer” from 8201(l) Title 25 California Code of Regulations:

“First-time homebuyer” means an individual or individuals or an individual and his or her spouse who have not owned a home during the three-year period before the purchase of a home with subsidy assistance, except that the following individual or individuals may not be excluded from consideration as a first-time homebuyer under this definition:

1. a displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family;
2. a single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant; or
3. an individual or individuals who owns or owned, as a principal residence during the three-year period before the purchase of a home with assistance, a dwelling unit whose structure is:
  - a. not permanently affixed to a permanent foundation in accordance with local or state regulations; or
  - b. not in compliance with state, local, or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

### **3.0. HOUSING UNIT ELIGIBILITY**

#### **3.1. LOCATION AND CHARACTERISTICS**

- A. Housing units to be purchased must be located within the eligible area. The eligible area is described as follows: “Within the Chowchilla City limits.”
- B. Housing unit types eligible for the Homebuyer Program are new or previously owned single-family residences, condominiums, or manufactured homes in mobile home parks, in common-interest developments or on a single-family lot and placed on a permanent foundation system. HOME does not allow manufactured homes unless on a permanent foundation system.
- C. For HOME-funded Programs, housing must be “modest”, having no more than three

bedrooms, two bathrooms, and a two-car garage. Larger homes are acceptable if necessary for the following reasons:

- The family size necessitates additional bedroom(s)/bathroom(s), or;
- A reasonable accommodation is necessary due to the family's disability (e.g. an extra bedroom for an aide).

Exceptions must be approved by the Loan Review Committee and must be documented for monitoring purposes. For all funding sources, the number of bedrooms will be determined by the appraisal. In addition, in-ground pools may not be eligible if the cost of pool maintenance and operation (utilities) causes the housing ratio to exceed 40%..

- D. All housing units must be in compliance with State and local codes and ordinances.
- E. Housing units located within a 100-year flood zone will be required to provide proof of flood insurance with an endorsement naming the Sponsor as additional insured in order to close escrow.

### 3.2. CONDITIONS

- A. Construction Inspection and Determining Need for Repairs.

Once the participating homebuyer has executed a purchase agreement for a housing unit, and prior to a commitment of Program funds, the following steps must be taken for the housing unit to be eligible for purchase under the Program:

- 1) The Program Operator, a certified housing inspector, or a Sponsor representative will walk through the housing unit, determine if it is structurally sound, and identify any code related and health and safety deficiencies that need to be corrected. A list of code related repair items will be given to the homebuyers and their Realtor to be negotiated with the seller.

If there are one or more health and safety deficiencies, and/or violations of applicable building codes noted in the written report, the Sponsor will approve the subsidy only if:

- i. Repair prior to close of escrow. The buyer and seller agree to make necessary repairs to the dwelling unit prior to transfer of property ownership at their own expense; or,
- ii. HOME acquisition and rehabilitation loan. If HOME funds are available, the buyer may use up to \$10,000 of the Sponsor's First-Time Homebuyer loan to make necessary repairs. All health and safety hazards and code violations must be eliminated under this option. Examples of allowable expenses include, but are not limited to: foundation repair, electrical repair or rewiring, plumbing or sewer repair, roof repair or replacement, heating system installation or repair, and repair of structurally-significant damaged

wood. General property improvements are not eligible unless required to bring the dwelling unit into compliance with local health and safety standards or applicable building codes. For example, sidewalk repair would not be an eligible use of funds. However, if a sidewalk must be removed to correct a sewer problem, funds may be used to replace the portion of the sidewalk removed for the work. Buyers should note that the use of any Program funds for rehabilitation on a home built before 1978 may incur additional lead-based paint testing. Hiring of a contractor and completion of repairs will be conducted in accordance with the section entitled “Acquisition with Rehabilitation Process”, Section 3.3 below.

- 2) New homes must comply with current local health and safety standards and all applicable federal, state, and local building codes as evidenced by a building permit finalized by the City Building Division.
  - 3) When the Sponsor’s Program utilizes Federal funds and if the housing unit was constructed prior to 1978 then the lead-based paint requirements of Section 3.2.C. will apply.
  - 4) A clear pest inspection report will be required for each housing unit. Smoke detectors will be installed if there are none in place. The Program Operator will encourage each homebuyer to secure a homeowner’s warranty policy as part of the purchase of a resale housing unit.
  - 5) With the exception of 1) ii. above, upon completion of all work required by the Program Operator, Sponsor, appraiser, pest inspector and/or certified housing inspector, a final inspection will be conducted prior to close of escrow. The inspector will sign off on all required construction work assuring that each housing unit receiving Program assistance is in compliance with local codes and health and safety requirements at the time of purchase and prior to occupancy.
- B. Per Section 8208 of the State HOME regulations, no additional HOME assistance, including rehabilitation funds, may be provided during the period starting one year following the filing of the Project Completion Report through the end of the affordability period. Note – This does not apply to CDBG and CalHome assistance.

The HOME Affordability Period is as follows (amount does not include Activity Delivery Costs paid to the State Recipient by HCD):

<b>Amount of HOME Assistance</b>	<b>Period of Affordability in Years</b>
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

- C. Lead-Based Paint Hazards: All housing units built prior to 1978 for which HOME or CDBG funding is anticipated are subject to the requirements of this section 3.2.C. Such homes must undergo a visual assessment by a person who has taken HUD’s online Visual Assessment course. Deteriorated paint must be stabilized using work

safe methods. Clearance must be obtained after paint stabilization by a DHS certified LBP Risk Assessor/Inspector. HOME and CDBG general administrative and activity delivery funds may be used to pay for lead-based paint visual assessments, and if lead mitigation and clearance costs are incurred, these Programs may incorporate the costs into the calculation of Program assistance.

The following requirements must be met:

- 1) **Notification:** a) Prior to homebuyer's obligation to purchase a pre-1978 home, the Buyer will be given the most recent copy of and asked to read the EPA pamphlet "*Protect Your Family From Lead in Your Home*". (EPA 747-K-94-001). A signed receipt of the pamphlet will be kept in the Sponsor's homebuyer file; b) A notice to residents is required following a risk assessment/inspection using form DHS 8552, which is provided by the DHS-certified Risk Assessor/Inspector; c) a notice to residents is required following lead-based paint mitigation work using Visual Assessment and Lead-based Paint Notice of Presumption and Hazard Reduction form, LBP – 1 (Attachment H).
  - 2) **Disclosure:** Prior to the homebuyer's obligation to purchase a pre-1978 housing unit, the HUD disclosure (Attachment E), "Seller's Lead-based Paint Disclosure" notice must be provided by the seller to the homebuyer.
  - 3) **Inspections:** The Inspector shall conduct a "Visual Assessment" of all the dwelling unit's painted surfaces in order to identify deteriorated paint. All deteriorated paint will be stabilized in accordance with CFR 35.1330 (a) and (b); and a Clearance shall be made in accordance with CFR 35.1340.
  - 4) **Mitigation:** If stabilization is required, the contractor performing the mitigation work must use appropriately trained workers. Prior to the contractor starting mitigation work the Program Operator shall obtain copies of the contractor's and workers' appropriate proof of LBP training, as applicable to the job in order to assure that only qualified contractors and workers are allowed to perform the mitigation.
- D. The Program Operator will: 1) confirm that the housing unit is within the eligible area, 2) will review each proposed housing unit to ensure that it meets all eligibility criteria before funding, and 3) ensure a completed Lead Compliance Document Checklist is placed in each purchaser's file (See Attachment I).

### 3.3. ACQUISITION WITH REHABILITATION PROCESS – HOME-funded jobs only

As noted above, when HOME funding is available for First-Time Homebuyer assistance, up to \$10,000 (from all sources) may be used to bring the unit into compliance with health and safety standards, and/or to correct code violations. If such repairs are required, a portion of this money may be used to make accessibility modifications for a household member with a disability. General property improvements are not allowed, but weatherization improvements are allowed, in conjunction with health and safety and/or code violation repairs when funding is available.

No later than six (6) months following close of escrow, repairs to the housing unit must

address ALL health and safety and code issues, to be in compliance with HOME regulations; otherwise, the loan becomes due and payable.

If a portion of the Program loan is used for acquisition with rehabilitation, the following process will be followed:

- A. The buyer will be responsible for obtaining three (3) bids from qualified licensed contractors. The Sponsor's Program Operator has a list of qualified contractors, or the applicant may solicit bids from other licensed contractors if they meet the standards described below.
- B. Any funds used for rehabilitation on homes built prior to 1978 will require testing for lead based paint. If the total rehabilitation funds are equal to or less than \$5,000, all surfaces disturbed during rehabilitation and lead hazard reduction must be repaired using safe work practices. If total rehabilitation is between \$5,000 and \$10,000, lead based paint must either be presumed to be present or testing and risk assessment are required. Lead hazard reduction activities must be conducted using safe work practices. The Sponsor will provide a grant to cover all expenses incurred as a result of lead-based paint as noted in Section 3.2.C above, but total rehabilitation, including this grant, may not exceed \$10,000.
- C. Contractors must hold a current and valid State of California General Contractor's license if the work consists of correction of health and safety issues or code violations. For accessibility modifications, the Sponsor may exercise discretion regarding contractors' requirements. The contractor may not be on the State or Federal debarred contractor lists. The contractor must have current and valid general liability and workmen's compensation insurance if applicable. The contractor must provide a one-year warranty for the work per State regulations.
- D. The buyer will review the bids with the Program Operator and the Sponsor to ensure that the scope of work will correct any deficiencies, that it only includes allowable expenses and that the bids are reasonable, competitive and complete.
- E. The applicant will select a contractor from one of the Sponsor's/Program Operator's approved bids. All bidding contractors will be notified of the status of their proposals.
- F. The applicant will enter into a contract with the contractor selected (see Attachment J).
- G. The contractor will be responsible for securing all required permits for the scope of work.
- H. Work may not commence until the close of the acquisition loan.
- I. As work progresses, the contractor shall provide the buyer with a completed Payment and Construction Approval form (Attachment K) to request progress payments as outlined in the contract terms. The form must be signed by the contractor, the buyer, and the Program Operator before a payment may be issued to the contractor.

- J. Final payment of a 10% retention will be released to contractor once the contractor submits the following to the Program Operator: (1) lien releases from any subcontractors, material suppliers, and laborers; (2) final or signed off Building Inspection card for contracted work (if applicable); and (3) Notice of Completion.

### **3.4. ANTI-DISPLACEMENT POLICY AND RELOCATION ASSISTANCE**

Eligible homes will be those that are currently owner-occupied or have been vacant for three months prior to the acceptance of a contract to purchase. A unit is ineligible if its purchase would result in the displacement of a tenant. It is not anticipated that the implementation of the Program will result in the displacement of any persons, households, or families. However, if tenant-occupied homes are included in the Program and relocation becomes necessary, the activity will be carried out in compliance with Sponsor's relocation plan, which describes how those permanently displaced will be relocated and paid benefits in accordance with the following Federal laws.

#### **A. Uniform Relocation Assistance (URA) and Real Property Acquisition Policies Act of 1970**

The federal URA and Real Property Acquisition Policies, as amended by the URA Amendments of 1987, contains requirements for carrying out real property acquisition or the displacement of a person, regardless of income status, for a project or Program for which HUD financial assistance (including CDBG and HOME) is provided. Requirements governing real property acquisition are described in Chapter VIII. The implementing regulations, 49 CFR Part 24, require developers and owners to take certain steps in regard to tenants of housing to be acquired, rehabbed or demolished, including tenants who will not be relocated even temporarily.

#### **B. Section 104(d) of the Housing and Community Development Act of 1974**

Section 104(d) requires each contractor (CHDO or State Recipient), as a condition of receiving assistance under HOME or CDBG, to certify that it is following a residential anti-displacement plan and relocation assistance plan. Section 104(d) also requires relocation benefits to be provided to low-income persons who are physically displaced or economically displaced as the result of a HOME or CDBG assisted project, and requires the replacement of low-income housing, which is demolished or converted. The implementing regulations for Section 104(d) can be found in 24 CFR Part 570(a).

### **3.5. PROPER NOTIFICATION AND DISCLOSURES**

- A. Upon selection of a housing unit, a qualified seller and homebuyer will be given the necessary disclosures for the Program. The homebuyer must have read and signed all Program disclosure forms. Any and all property disclosures must be reviewed and signed by the homebuyer and seller.
- B. All owners who wish to sell their housing units must receive an acquisition notice (Attachment F) prior to submission of the homebuyer's original offer. This notice will be included in the contract and must be signed by all owners on title. The

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disclosure must contain the items listed in 1.3.B. (required for federally-funded Programs).

#### **4.0. PURCHASE PRICE LIMITS**

The purchase price limits and appraised value after any rehabilitation for this Program shall not exceed the Maximum HOME Program Purchase Price/After-Rehab Value Limit for Sponsor's County as updated by HCD or HUD.

*Note: For HOME- and CalHome-funded Programs the home purchase price of owner-occupied and homebuyer properties must be limited as follows: For CalHome-funded Programs, the maximum allowable sales price or the maximum after-rehab value of a home shall be set at 100% of the current median sales price of a single family home in the county in which the CalHome Program is located; for HOME-funded Programs the value (with or without rehabilitation) cannot exceed 95 percent of the area median purchase price as established by HCD and HUD.*

**Attachment C: MAXIMUM PURCHASE PRICE/AFTER-REHAB VALUE LIMITS** \*Sponsor will update these limits annually as HCD provides new information.

#### **5.0. THE PRIMARY LOAN**

Prior to obtaining a loan from the Sponsor, a homebuyer must provide evidence of financing for the maximum amount the Primary Lender is willing to loan (the "primary loan").

#### **5.1. QUALIFYING RATIOS**

The front-end (housing) debt-to-income ratio shall be between 25% and 35% and is the percentage of a borrower's gross monthly income (before deductions) that would cover the cost of the loan principal and interest payment, property taxes, property insurance, mortgage insurance, and HOA dues, if any.

The back-end (total) debt-to-income ratio shall be between 25% and 42% and is the percentage of a borrower's gross monthly income that would cover the cost of housing as described in the paragraph above, plus any other monthly debt payments like car or personal loans and credit card debt, as well as child support and alimony payments.

*Note: Qualifying ratio guidelines can be somewhat flexible depending on the loan-to-value ratios. The higher the LTV, the more conservative the ratios should be. A qualifying ratio higher than the guidelines may be acceptable if there are compensating factors. Some examples of compensating factors are: 1) the prospective homebuyer has successfully demonstrated that over a minimum 12-month period the ability to pay housing costs equal to or greater than the proposed monthly housing costs for the home to be purchased; 2) the prospective homebuyer is a limited user of credit and they show a history of being able to save money; 3) there will be no more than a 5% increase in the prospective homebuyer's housing expense. These exceptions will be approved by the Sponsor's loan committee and documented for the file.*

#### **5.2. INTEREST RATE**

The primary loan must have a fixed interest rate that does not exceed the current market rate, as established by an index identified in the most recent NOFA. No temporary interest rate buy-downs are permitted.

### **5.3. LOAN TYPE AND TERM**

The primary loan shall be fully amortized and have a term “all due and payable” in no fewer than 30 years. There shall not be a balloon payment due before the maturity date of the Program loan.

### **5.4. IMPOUND ACCOUNT**

All households will be required to have impound accounts for the payment of taxes and insurance to ensure they remain current.

### **6.0. THE PROGRAM LOAN**

#### **6.1. MAXIMUM AMOUNT OF PROGRAM ASSISTANCE**

The amount of Program assistance to a homebuyer toward purchase of a home shall not exceed the maximum HOME subsidy limit for Sponsor’s County per bedroom as designated by Section 221(d)(3) and shall never exceed more than 49% of the total indebtedness, regardless of source of funds. The amount of the HOME loan may not exceed the amount of the primary mortgage. **See Attachment C.** Any approved “grant” amount for lead-based paint evaluation and reduction activities or for relocation assistance (for HOME-funded jobs only), as well as activity delivery, shall be included in this amount, but will not be a part of the loan. For Programs funded with CalHome funds from 2008 or later, the maximum assistance to a homebuyer toward purchase of a home will not exceed \$60,000, which includes activity delivery.

#### **6.2. NON-RECURRING CLOSING COSTS**

Non-recurring costs such as credit report, escrow, closing and recording fees, title report and title insurance, title updates and/or related costs may be included in the Program loan.

#### **6.3. AFFORDABILITY PARAMETERS FOR HOMEBUYERS**

The actual amount of a buyer’s Program subsidy shall be computed according to the housing ratio parameters specified in Section 5.1. Each borrower shall receive only the subsidy needed to allow them to become homeowners (“the Gap”) while keeping their housing costs affordable. The Program Operator will use the “front-end ratio” of housing-expense-to-income to determine if the amount of the proposed primary loan is acceptable and, ultimately, the Program subsidy amount required, bridging the gap between the acquisition cost (purchase price plus non-recurring closing costs) less down payment, and the amount of the primary loan.

#### **6.4. RATE AND TERMS FOR PROGRAM LOANS**

All Program assistance to individual households shall be made in the form of deferred payment (interest and principal) loan (DPL).

For HOME and CDBG, the Program loan's term shall be for as long as the primary loan, plus 15 years. For CalHome, the Program loan's term shall be for 30 years. The interest rate shall be 0% simple interest. All Program loan payments shall be deferred because the borrowers will have their repayment ability fully utilized under the primary loan. For HOME and CDBG, loan principal shall not be forgiven (unless allowed by statute, for CalHome), and the loan period cannot be extended except for loans that are resubordinated when a rate and term refinance is approved, per Attachment D.

**Note – If it is determined by the Sponsor that repayment of a CalHome Program loan at the maturity date causes a hardship to the homeowner, the Sponsor may opt the following:**

- A. Amend the note and deed of trust to defer repayment of the amount due at maturity, that is balance of the original principal plus the accrued interest, for up to an additional 30 years (at 0% additional interest). This may be offered one time, or;
- B. Convert the debt at loan maturity; that is the balance of the original principal plus any accrued interest, to an amortized loan, repayable in 15 years at 0% additional interest.

**6.5. COMBINED LOAN-TO-VALUE RATIO**

For CalHome, the loan-to-value ratio for a Program loan, when combined with all other indebtedness to be secured by the property, shall not exceed 100 percent of the sales price, plus a maximum of up to 5 percent of the sales price, to cover actual, non-recurring closing costs.

For HOME and CDBG, the loan-to-value ratio for a Program loan, when combined with all other indebtedness to be secured by the property, shall not exceed 100 percent of the appraised value of the property, plus a maximum of up to 5 percent of the sales price, to cover actual, non-recurring closing costs.

**7.0. PROGRAM LOAN REPAYMENT**

**7.1. PAYMENTS ARE VOLUNTARY**

Borrowers may begin making voluntary payments at any time, without penalty.

**7.2. RECEIVING LOAN PAYMENTS**

A. Program loan payments will be made to:

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Chowchilla, CA 93610

B. The Sponsor will be the receiver of loan payments or recaptured funds and will maintain a financial record-keeping system to record payments and file statements on payment status. Payments shall be deposited and accounted for in the Sponsor's

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Program Income Account, as required by HCD Programs. The Program lender will accept loan payments from borrowers prepaying deferred loans, and from borrowers making payments in full upon sale or transfer of the property. All loan payments are payable to the Sponsor. The Sponsor may at its discretion, enter into an agreement with a third party to collect and distribute payments and/or complete all loan servicing aspects of the Program.

### **7.3. DUE UPON SALE OR TRANSFER**

In the event that an owner sells, transfers title, or discontinues residency in the purchased property for any reason, the principal balance of the DPL is due and payable, except:

- A. For CalHome, loans are not assumable. The following transfers of interest shall not require the repayment of the CalHome Program loan:
  - 1) transfer to a surviving joint tenant by devise, descent, or operation of law on the death of a joint tenant;
  - 2) a transfer, in which the transferee is a person who occupies or will occupy the property, which is:
    - a) a transfer where the spouse becomes an owner of the property;
    - b) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property; or
    - c) a transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property.
- B. For HOME and CDBG, if the owner of the property dies, and the heir to the property meets income requirements, the First-Time Homebuyer definition, and intends to occupy the home as a principal residence, the heir may be permitted, upon approval of the Sponsor, to assume the loan at the rate and terms the heir qualifies for under the current participation guidelines. If the property owner dies and the heir does not meet eligibility requirements, the loan is due and payable.
- C. If an owner wants to convert the property to a rental unit, or any commercial or non-residential use, the loan is due and payable.
- D. The loan will be in default if the borrower fails to maintain required fire or flood insurance or fails to pay property taxes. See Attachment D on loan defaults for further information on property restrictions.

### **7.4. LOAN SERVICING POLICIES AND PROCEDURES**

See Attachment D for local loan servicing policies and procedures. While the attached policy outlines a system that can accommodate a crisis that restricts borrower repayment ability, it should in no way be misunderstood: The loan must be repaid. All legal means to ensure the repayment of a delinquent loan as outlined in the Loan Servicing Policies and Procedures will be pursued.

### **7.5. LOAN MONITORING PROCEDURES**

Sponsor or their designated Loan Servicing Agent will annually monitor and certify in the loan file that the Borrower and their housing unit are adhering to Program requirements including, but not limited to, the following:

- A. Owner-occupancy
- B. Property tax payment
- C. Hazard insurance coverage
- D. Good standing on Primary loans
- E. General upkeep of housing units

## **8.0. PROGRAM LOAN PROCESSING AND APPROVAL**

### **A. Loan Processing**

All homebuyers or their representatives will be sent out an eligibility packet with all the necessary forms, disclosures, information, and application. They should submit a complete application packet with all the Sponsor's Program loan documents executed as well as all the information from the Primary Lender. The Primary Lender should submit: 1) accepted property sales contract with proper seller notification; 2) mortgage application with good faith estimates and first mortgage disclosures; 3) full mortgage credit report and rent verification; 4) current third party income verifications and verifications of assets; 5) homeownership education certificate, if applicable; and 6) signed underwriting transmittal summary and final signed loan application, both from primary lender. Staff will work with local lenders to ensure qualified participants receive only the benefit from the Sponsor's Program needed to purchase the housing unit and that leveraged funds will be used when possible, for example, in many cases the Primary Lender will not require mortgage insurance with the Sponsor's second in place which will save on the homebuyer's monthly payment.

### **B. Creditworthiness**

Qualifying ratios are only a rough guideline in determining a potential borrower's creditworthiness. Many factors such as excellent or poor credit history, amount of down payment, and size of loan will influence the decision to approve or disapprove a particular loan. The borrower's credit history will be reviewed by the Sponsor and documentation of such maintained in the loan file. The Sponsor may elect to obtain a credit report or rely on a current copy obtained by the primary lender.

### **C. Documents from Primary Lender**

After initial review of the qualified homebuyer's application packet, the Program Operator will request any additional documents needed. Documents may be faxed, but originals shall be received through the mail before Program funds are committed to escrow. Based on receipt and review of the final documents, the Program Operator will do an income certification (using most recent HCD Program's guidance on income calculation and determination), and homebuyer certification (review of credit report and income taxes). Documentation of affordability will then be verified and subsidy requirement determined.

### **D. Disclosure of Program and Loan Information to Homebuyers**

The Program's application and disclosure forms will contain a summary of the loan

qualifications of the borrower with and without Program assistance. Housing ratios with and without Program assistance are also outlined in these guidelines. Information on the Program's application will be documented with third party verifications in the file. For example, the sales contract will provide the final purchase price and outline how much of the closing costs are to be paid by the seller, etc. The appraisal, termite and title report will provide information to substantiate the information in the sales contract and guide the construction inspection. The Program loan application will provide current debt and housing information and will be documented by the credit report and income/asset verifications. The Primary Lender's approval letter and estimated closing cost statement should reflect all the information in the loan package and show any contingencies of loan funding. Reviewing the Primary Lender's loan underwriting documentation will provide basic information about the qualification of the applicant and substantiate the affordability provided by the Program loan. By reviewing and crosschecking all the Primary Lender information, the final Program loan amount approved will fall within the affordability parameters of the Program.

### **8.1. COMPLETION OF UNDERWRITING AND APPROVAL OF PROGRAM LOAN**

Once the loan approval package has been completed the Program Operator will submit it to the Sponsor for approval. Sponsor will review the request and may approve it with or without conditions. Upon approval, a final closing date for escrow is set and Program funds are accessed for the homebuyer.

### **8.2. PRIMARY AND PROGRAM LOAN DOCUMENT SIGNING**

The homebuyer(s) sign promissory notes, loan agreements, deeds of trust, and statutory lending notices (Truth In Lending (TIL), etc.); the Deeds of Trust are recorded with the County Clerk/Recorder at the same time, and the request(s) for copy of Notice of Default are also recorded with the County Clerk/Recorder.

### **8.3. ESCROW PROCEDURES**

The escrow/title company shall review the escrow instruction provided by the Program lender and shall issue a California Land Title Association (CLTA) and the American Land Title Association (ALTA) after closing. The CLTA policy is issued to the homebuyer and protects them against failure of title based on public records and against such unrecorded risks as forgery of a deed. The ALTA is issued to each lender providing additional coverage for the physical aspects of the property as well as the homebuyer's title failure. These aspects include anything which can be determined by only physical inspection, such as correct survey lines; encroachments; mechanics liens; mining claims and water rights. The Program lender instructs the escrow/title company in the escrow instructions as to what may show on the policy; the amount of insurance on the policy (all liens should be covered) and the loss payee (each lender should be listed as a loss payee and receive an original ALTA).

### **9.0. SUBORDINATE FINANCING**

With today's high costs, in order for a low-income household to obtain a home, several funding sources might be required. Subordinate loans may be used to cover mortgage subsidy costs that exceed the Program maximum loan amount. All subordinate liens must have the payments deferred and the term must be for at least as long as the term of

the Program loan.

## **10.0. EXCEPTIONS AND SPECIAL CIRCUMSTANCES**

The Sponsor may make amendments to these Participation Guidelines. Any changes shall be made in accordance with regulations and approved by the Sponsor's Loan Committee and/or governing body. Changes shall then be sent to HCD for approval.

### **10.1. DEFINITION OF EXCEPTION**

Any case to which a standard policy or procedure, as stated in the guidelines, does not apply or an applicant treated differently from others of the same class would be an exception.

### **10.2. PROCEDURES FOR EXCEPTIONAL CIRCUMSTANCES**

- A. The Sponsor or its agent may initiate consideration of an exception and prepare a report. This report shall contain a narrative, including the Sponsor's recommended course of action and any written or verbal information supplied by the applicant.
- B. The Sponsor shall make a determination of the exception based on the recommendation of the Program Operator. The request can be presented to the Sponsor's loan committee and/or governing body for a decision.

## **11.0. DISPUTE RESOLUTION AND APPEALS PROCEDURE**

Any applicant denied assistance from the Program has the right to appeal. Complaints concerning the Program should be made to the Program Operator first. If unresolved in this manner, the complaint or appeal must be made in writing and filed with the Sponsor. The Sponsor will then schedule a meeting with the Loan Review Committee. Their written response will be made within thirty (30) working days. If the applicant is not satisfied with the Committee's decision, a request for an appeal may be filed with the Sponsor's governing body. Final appeal must be filed in writing with HCD within one year after denial.

## ATTACHMENT A

### 24 CFR Part 5 ANNUAL INCOME INCLUSIONS AND EXCLUSIONS-FOR HOME & CDBG

#### Part 5 Inclusions

This table presents the Part 5 income inclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

General Category	(Last Modified: January 2005)
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment (except for certain exclusions, listed in Income Exclusions, number 14).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except for certain exclusions, listed in Income Exclusions, number 3).
6. Welfare Assistance	<p>Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income:</p> <ul style="list-style-type: none"> <li>• Qualify as assistance under the TANF program definition at 45 CFR 260.31; and</li> <li>• Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c).</li> </ul> <p>If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:</p> <ul style="list-style-type: none"> <li>• the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; <b>plus:</b></li> <li>• the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage.</li> </ul>
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special day, and allowances of a member of the Armed Forces (except as provided in number 8 of Income Exclusions).

## Part 5 exclusions

This table presents the Part 5 income exclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

General Category	(Last Modified: January 2005)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (except for certain exclusions, listed in Income Inclusions, number 5).
4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in Aides	Income of a live-in aide (as defined in 24 CFR 5.403).
6. Income from a Disabled Member	Certain increase in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671 (a)).
7. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.
8. "Hostile Fire" Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9. Self-Sufficiency Program Income	<ul style="list-style-type: none"> <li>a. Amounts received under training programs funded by HUD.</li> <li>b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).</li> <li>c. Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program.</li> <li>d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time.</li> <li>e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment-training program.</li> </ul>
10. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
11. Reparation Payments	Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
12. Income from Full-time Students	Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse).
13. Adoption Assistance Payments	Adoption assistance payments in excess of \$480 per adopted child.
14. Social Security & SSI Income	Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17. Other Federal Exclusions	Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that

qualify for that exclusion:

- ▶ The value of the allotment provided to an eligible household under the Food Stamp Act of 1977;
- ▶ Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through AmeriCorps, VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
- ▶ Payments received under the Alaskan Native Claims Settlement Act;
- ▶ Income derived from the disposition of funds to the Grand River Band of Ottawa Indians;
- ▶ Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;
- ▶ Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program.
- ▶ Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- ▶ The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands;
- ▶ Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs;
- ▶ Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, Older American Community Service Employment Program);
- ▶ Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- ▶ Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;
- ▶ The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990;
- ▶ Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps).
- ▶ Payments by the Indians Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;
- ▶ Allowances, earnings, and payments to AmeriCorps participants under the National and Community Services Act of 1990;
- ▶ Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;
- ▶ Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and
- ▶ Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.

## ATTACHMENT A-1

### **Title 25 Section 6914 Gross Income Inclusions – For CalHome activities**

“Gross income” shall mean the anticipated income of a person or family for the twelve-month period following the date of determination of income.

“Income” shall consist of the following:

(a) Except as provided in subdivision (b), “Exclusions”, all payments from all sources received by the family head (even if temporarily absent) and each additional member of the family household who is not a minor shall be included in the annual income of a family. Income shall include, but not be limited to:

- (1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses;
- (2) The net income from operation of a business or profession or from rental or real or personal property (for this purpose, expenditures for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business);
- (3) Interest and dividends;
- (4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
- (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation and severance pay;
- (6) Public Assistance. If the public assistance payment includes any amount specifically designated for shelter and utilities which is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:
  - (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus
  - (B) The maximum amount which the public assistance agency could in fact allow for the family for shelter and utilities,
- (7) Periodic and determinable allowances such as alimony and child support payments, and regular contributions or gifts from persons not residing in the dwelling;

All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the family or spouse.

## Title 25 Section 6914 Gross Income Exclusions

- (b) The following items shall not be considered as income:
- (1) Casual, sporadic or irregular gift items;
  - (2) Amounts which are specifically for or in reimbursement of the cost of medical expenses;
  - (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;
  - (4) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans not used for the above purposes of which are available for subsistence are to be included in income;
  - (5) The special pay to a serviceman head of a family away from home and exposed to hostile fire;
  - (6) Relocation payments made pursuant to federal, state, or local relocation law;
  - (7) Foster child care payments;
  - (8) The value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is an excess of the amount actually charged the eligible household;
  - (9) Payments received pursuant to participation of the following volunteer programs under the ACTION Agency:
    - (A) National Volunteer Antipoverty Programs which include VISTA, Service Learning Programs and Special Volunteer Programs.
    - (B) National Older American Volunteer Program for persons aged 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, older American Community Services Program, and National Volunteer Program to Assist Small Business Experience, Service Corps of Retired Executive (SCORE) and Active Corps of Executives (ACE).

## **ATTACHMENT B**

### **PART 5 ANNUAL INCOME NET FAMILY ASSET INCLUSIONS AND EXCLUSIONS**

This table presents the Part 5 asset inclusions and exclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

Statements from 24 CFR Part 5 – Last Modified: January 2005

#### **Inclusions**

1. Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average 6-month balance. Assets held in foreign countries are considered assets.
2. Cash value of revocable trusts available to the applicant.
3. Equity in rental property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g., broker fees) that would be incurred in selling the asset. Under HOME, equity in the family's primary residence is not considered in the calculation of assets for owner-occupied rehabilitation projects.
4. Cash value of stocks, bonds, Treasury bills, certificates of deposit and money market accounts.
5. Individual retirement, 401(K), and Keogh accounts (even though withdrawal would result in a penalty).
6. Retirement and pension funds.
7. Cash value of life insurance policies available to the individual before death (e.g., surrender value of a whole life or universal life policy).
8. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
9. Lump sum or one-time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements and other amounts not intended as periodic payments.
10. Mortgages or deeds of trust held by an applicant.

#### **Exclusions**

1. Necessary personal property, except as noted in number 8 of Inclusions, such as clothing, furniture, cars and vehicles specially equipped for persons with disabilities.
2. Interest in Indian trust lands.
3. Assets not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household and that other person is responsible for income taxes incurred on income generated by the asset.
4. Equity in cooperatives in which the family lives.
5. Assets not accessible to and that provide no income for the applicant.
6. Term life insurance policies (i.e., where there is no cash value).
7. Assets that are part of an active business. "Business" does not include rental of properties that are held as an investment and not a main occupation.

## ATTACHMENT C

### HOME MAXIMUM PURCHASE PRICE / AFTER-REHAB VALUE LIMIT HOME Program Limits as of 4/13/15

COUNTY NAME	Existing	Newly Constructed (less than 12 months old)
<b>MADERA</b>	\$181,000	\$200,000

### CALHOME MAXIMUM SALES PRICE / VALUE LIMIT

For homes assisted with a CalHome Program loan, the maximum allowable sales price or the maximum after-rehab value of a home shall be set at 100% of the current median sales price of a single family home in the County in which the CalHome Program is located. The source of the data for the maximum sales price/value limits that will be used will be the FHA 203(b) one-family limits.

### HOME SUBSIDY LIMITS PER UNIT – SECTION 221(d)(3) (Limits are effective as of 11/18/15)

COUNTY NAME	0 Bedroom	1-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom
<b>Madera County</b>	\$140,107	\$160,615	\$195,305	\$252,662	\$277,344

### CURRENT INCOME LIMITS FOR THE AREA (FOR HOME/CDBG) (Limits are effective as of 6/1/15)

<i>Number of Persons in Household</i>								
	1	2	3	4	5	6	7	8
<b>80% of AMI</b>	\$31,850	\$36,400	\$40,950	\$45,500	\$49,150	\$52,800	\$56,450	\$60,100

\*Sponsor will insert the limits for the county in which the Program is located, and will update the income limits annually as HCD provides new information. The link to the official, HCD-maintained, income limits is:

<http://www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html>

## ATTACHMENT D

### LOAN SERVICING POLICIES AND PROCEDURES FOR THE CITY OF CHOWCHILLA

The City of Chowchilla, hereafter called “Sponsor,” has adopted these policies and procedures in order to preserve its financial interest in properties whose “Borrowers” have been assisted with public funds. The Sponsor will, to the greatest extent possible, follow these policies and procedures, but each loan will be evaluated and handled on a case-by-case basis. The Sponsor has formulated this document to comply with state and federal regulations regarding the use of these public funds and any property restrictions that are associated with them.

The Sponsor may, at its discretion, enter into an agreement with a third party to collect and distribute payments and/or complete all loan servicing aspects of the Program. For CalHome, the Sponsor must obtain prior approval from HCD and must provide HCD a copy of the contract.

The policies and procedures are broken down into the following areas: 1) making required monthly payments or voluntary payments on a loan’s principal and interest; 2) required payment of property taxes and insurance; 3) required Request for Notice of Default on all second mortgages; 4) loans with annual occupancy restrictions and certifications 5) required noticing and limitations on any changes in title or use of property; 6) required noticing and process for requesting a subordination during a refinance; 7) processing of foreclosure in case of default on the loan; 8) the Sponsor as Senior Lienholder; and 9) processing of demands and payoffs.

#### 1. Loan Repayments:

The Sponsor will collect monthly payments from those borrowers who are obligated to do so under Notes that are amortized promissory notes. Late fees will be charged for payments received after the assigned monthly due date.

For Notes that are deferred payment loans, the Sponsor must accept voluntary payments on the loan. Loan payments will be credited to principal. The borrower may repay the loan balance at any time with no penalty.

At time of completion, the funds expended on a housing unit will be compared to the Note amount. Any funds not expended at completion will be considered a “principal reduction” and will be applied to the principal loan balance thereby lowering the amount owed by the borrower. Borrowers will receive a closeout letter after the 30-day retention period indicating the amount of their Note, the credit, and the ending balance on their loan. A copy of this credit along with the final cost break-down will be retained in the borrowers file.

The State HOME Program “HOME” has selected the Recapture option of ensuring the affordability of housing acquired by HOME-assisted homebuyers.

There is no affordability period in the Sponsor’s Housing Rehabilitation Program; therefore, all payments and payoffs received are Program Income.

Recaptured funds and Program Income do not have to be expended on the same type of activity as that from which the funds were generated, but they are required to be expended on other HOME activities before any new HOME funds can be drawn down from the Treasury (24 CFR 504(c)(viii)).

Per Section 8208 of the State HOME regulations, no additional HOME assistance, including rehabilitation funds, may be provided during the period starting one year following the filing of the Project Completion Report through the end of the affordability period. Note – This does not apply to CDBG and CalHome assistance.

For HOME-assisted loans approved by the Sponsor under the First-Time Homebuyer Program, the HOME Affordability Period is as follows (amount does not include Activity Delivery Costs paid to the State Recipient by HCD):

<b>Amount of HOME Assistance</b>	<b>Period of Affordability in Years</b>
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

2. Payment of Property Taxes and Insurance:

As part of keeping the loan from going into default, borrower must maintain property insurance coverage naming the Sponsor as loss payee in first position or additional insured if the loan is a junior lien. If borrower fails to maintain the necessary insurance, the Sponsor may take out force placed insurance to cover the property while the Borrower puts a new insurance policy in place. All costs for installing the necessary insurance will be added to the loan balance at time of installation of Borrower’s new insurance.

When a property is located in a 100-year flood plain, the Borrower will be required to carry the necessary flood insurance. A certificate of insurance for flood and for standard property insurance naming the Sponsor as additional insured will be required at close of escrow. The Sponsor must verify the insurance on an annual basis.

Property taxes must be kept current during the term of the loan. If the Borrower fails to maintain payment of property taxes, the Sponsor may pay the taxes current and add the balance of the tax payment plus any penalties to the balance of the loan. Wherever possible, the Sponsor encourages Borrower to have impound accounts set up with their first mortgagee wherein they pay their taxes and insurance as part of their monthly mortgage payment.

3. Required Request for Notice of Default:

When the Borrower’s loan is in second position behind an existing first mortgage, it is the Sponsor's policy to prepare and record a "Request for Notice of Default" for each senior lien in front of Sponsor’s loan. This document requires any senior lienholder listed in the notice to notify the Sponsor of initiation of a foreclosure action. The Sponsor will then have time to contact the Borrower and assist them in bringing the first loan current, if possible. The Sponsor can also monitor the foreclosure process and go through the necessary analysis to determine if the loan can be made whole or preserved. When the Sponsor is in a third position and receives

notification of foreclosure from only one senior lienholder, it is in their best interest to contact any other senior lienholders regarding the status of their loans.

4. Annual Occupancy Restrictions and Certifications:

On some owner-occupant loans, the Sponsor will require that Borrowers submit utility bills and/or other documentation annually to prove occupancy during the term of the loan. Other loans may have income and housing cost evaluations, which require a household to document that they are not able to make repayments, typically every five years. These loan terms are incorporated in the original Note and Deed of Trust.

Continued residency is monitored annually for the term of the loan. Occupancy will be verified, reviewed and certified by the submission of the following:

- A. Proof of occupancy in the form of a copy of a current utility bill; and
- B. Statement of unit's continued use as primary residence of the owner.
- C. Declaration that other title holders do not reside on the premises;
- D. Verification that Property Taxes are current; and
- E. Verification of current required insurance policies.

5. Required Noticing and Restrictions on Any Changes of Title or Occupancy:

In all cases where there is a change in title or occupancy or use, the Borrower must notify the Sponsor in writing of any change. Sponsor, or its designated Loan Servicing Agent, and borrower will work together to ensure the property is kept in compliance with the original Program terms and conditions such that it remains available as an affordable home for low-income families. These types of changes are typical when Borrowers do estate planning (adding a relative to title) or if a Borrower dies and property is transferred to heirs or when the property is sold or transferred as part of a business transaction. In some cases the Borrower may move and turn the property into a rental unit without notifying the Sponsor. Changes in title or occupancy must be in keeping with the objective of benefit to low-income households (below 80 percent of AMI). Note – CalHome loans are not assumable.

Change from owner-occupant to owner-occupant occurs at a sale. When a new owner-occupant is not low-income, the loan is not assumable and the loan balance is immediately due and payable. If the new owner-occupant qualifies as low-income, the purchaser may either pay the loan in full or assume all loan repayment obligations of the original owner-occupant, subject to the approval of the Sponsor's Loan Committee (depends on the HCD Program). Note – CalHome loans are not assumable.

If a transfer of the property occurs through inheritance, the heir (as owner-occupant) may be provided the opportunity to assume the loan at an interest rate based on household size and household income, provided the heir is income eligible. If the heir intends to occupy the property

and is not low-income, the balance of the loan is due and payable. If the heir intends to act as an owner-investor, and the loan was funded with CDBG funds, the balance of the loan may be converted to an owner/investor interest rate and loan term and a rent limitation agreement is signed and recorded on title. All such changes are subject to the review and approval of the Sponsor's Loan Committee. Note – CalHome loans are not assumable.

Change from owner-occupant to owner-investor occurs when an owner-occupant decides to move out and rent the assisted property, or if the property is sold to an investor. If the owner converts any assisted unit from owner-occupied to rental, the loan is due in full.

Conversion to use other than residential use is not allowable where the full use of the property is changed from residential to commercial or other. In some cases, Borrowers may request that the Sponsor allow for a partial conversion where some of the residence is used for a business but the household still resides in the property. Partial conversions can be allowed if it is reviewed and approved by any and all agencies required by local statute. If the use of the property is converted to a fully non-residential use, the loan balance is due and payable.

For CalHome, the following transfers of interest shall not require the repayment of the CalHome Program loan:

- A. transfer to a surviving joint tenant by devise, descent, or operation of law on the death of a joint tenant;
- B. a transfer, in which the transferee is a person who occupies or will occupy the property, which is:
  - 1) a transfer where the spouse becomes an owner of the property;
  - 2) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property; or
  - 3) a transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property.

6. Requests for Subordinations:

When a Borrower wishes to refinance their existing first mortgage, they must submit a subordination request to the Sponsor. The Sponsor will subordinate their loan only when there is no "cash out" as part of the refinance. No cash out means there are no additional charges on the transaction above loan and escrow closing fees. There can be no third-party debt payoffs or additional encumbrances on the property above traditional refinance transaction costs. The refinance should lower the existing housing cost of the household. The total indebtedness on the property should not exceed the current market value except when the borrower is obtaining a HARP II or other similar federally approved refinance loan. If the HARP II or other similar financing is approved and meets all other requirements, combined Loan-To-Value will not be considered when reviewing the subordination request.

Also, the loan must:

- A. be fully amortized and have a fixed interest rate that does not exceed the current market rate, as established by an index identified in the most recent NOFA;

- B. not have a temporary interest rate buy-down;
- C. have a term “all due and payable” that matures prior to or concurrently with the maturity date of the Promissory Note. Therefore, the maturity date of the existing Promissory Note should be modified to coincide with the maturity date of the new first mortgage; and,
- D. not have a balloon payment due before the maturity date of the Program loan.

Upon receiving the proper documentation from the refinance lender, the request will be considered by the loan committee for review and approval. Upon approval, the escrow company will provide the proper subordination document for execution and recordation by the Sponsor.

#### 7. Process for Loan Foreclosure:

Upon any condition of loan default: 1) non-payment; 2) lack of insurance or property tax payment; 3) change in title or use without approval; or 4) default on senior loans; the Sponsor, or its designated Loan Servicing Agent, will send out a letter to the Borrower notifying them of the default situation. If the default situation continues, the Sponsor may start a formal process of foreclosure.

When a senior lienholder starts a foreclosure process and the Sponsor is notified via a Request for Notice of Default, the Sponsor, who is the junior lienholder, may cancel the foreclosure proceedings by "reinstating" the senior lienholder. The reinstatement amount or payoff amount must be obtained by contacting the senior lienholder. This amount will include all delinquent payments, late charges and fees to date. Sponsor must confer with Borrower to determine if, upon paying the senior lienholder current, the Borrower can provide future payments. If this is the case, then the Sponsor may cure the foreclosure and add the costs to the balance of the loan with a Notice of Additional Advance on the existing note.

If the Sponsor determines, based on information on the reinstatement amount and status of borrower, that bringing the loan current will not preserve the loan, then staff must determine if it is cost effective to protect their position by paying off the senior lienholder in total and restructure the debt such that the unit is made affordable to the Borrower. If the Sponsor does not have sufficient funds to pay the senior lienholder in full, then they may choose to cure the senior lienholder and foreclose on the property themselves. As long as there is sufficient value in the property, the Sponsor can afford to pay for the foreclosure process and pay off the senior lienholder and retain some or all of their investment.

If the Sponsor decides to reinstate, the senior lienholder will accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." This "foreclosure sale date" usually occurs about four (4) to six (6) months from the date of recording of the "Notice of Default." If the Sponsor fails to reinstate the senior lienholder before five (5) days prior to the foreclosure sale date, the senior lienholder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If the Sponsor determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lienholder to complete foreclosure, the Sponsor's lien may be eliminated due to insufficient sales proceeds.

#### 8. Sponsor as Senior Lienholder

When the Sponsor is first position as a senior lienholder, active collection efforts will begin on any loan that is 31 or more days in arrears. Attempts will be made to assist the homeowner in bringing and keeping the loan current. These attempts will be conveyed in an increasingly urgent manner until loan payments have reached 90 days in arrears, at which time the Sponsor may consider foreclosure. Sponsor's staff will consider the following factors before initiating foreclosure:

- A) Can the loan be cured and can the rates and terms be adjusted to allow for affordable payments such that foreclosure is not necessary?
- B) Can the Borrower refinance with a private lender and pay off the Sponsor?
- C) Can the Borrower sell the property and pay off the Sponsor?
- D) Does the balance warrant foreclosure? (If the balance is under \$5,000, the expense to foreclose may not be worth pursuing.)
- E) Will the sales price of home "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure, and marketing costs?

If the balance is substantial and all of the above factors have been considered, the Sponsor may opt to initiate foreclosure. The Borrower must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the Sponsor to prevent foreclosure (such as, funds to bring a delinquent BMIR current or pay off a DPL).

At the end of thirty days, the Sponsor should contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the owner and junior lienholders. The service will advise the Sponsor of all required documentation to initiate foreclosure (Note and Deed of Trust usually) and funds required from the owner to cancel foreclosure proceedings. The service will keep the Sponsor informed of the progress of the foreclosure proceedings.

When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, the Sponsor could sell the home themselves under a homebuyer Program or use it for an affordable rental property managed by a local housing authority or use it for transitional housing facility or other eligible use. The Sponsor could contract with a local real estate broker to list and sell the home and use those funds for Program income-eligible uses.

#### 9. Process Demands and Payoffs:

Requests for demands and payoffs will be processed within the timeframe allowed by law. Sponsor or its designated Loan Servicing Agent is proficient in performing the related calculations. Reconveyance and lien releases would be prepared for processing by a qualified Title Company.

**ATTACHMENT E**  
**SELLERS LEAD-BASED PAINT DISCLOSURE**  
**Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards**  
**Lead Warning Statement**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**Seller's Disclosure**

- (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
  - (i)  Known lead-based paint and/or lead-based paint hazards are present in the housing (explain). \_\_\_\_\_
  - (ii)  Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to the seller (check (i) or (ii) below):
  - (i)  Seller has provided the purchaser with all available records and reports pertaining to Lead-based paint and/or lead-based paint hazards in the housing (list documents below). \_\_\_\_\_
  - (ii)  Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Purchaser's Acknowledgment (initial)**

- (c)  Purchaser has received copies of all information listed above.
- (d)  Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.
- (e)  Purchaser has received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Agent's Acknowledgment (initial)**

- (f)  Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller	Date	Seller	Date
Purchaser	Date	Purchaser	Date
Agent	Date	Agent	Date

**ATTACHMENT F**

**Disclosure to Seller with Voluntary, Arm's Length Purchase Offer**

**DECLARATION**

This is to inform you that \_\_\_\_\_ would like to purchase the property, located at \_\_\_\_\_, if a satisfactory agreement can be reached. We are prepared to pay \$\_\_\_\_\_ for a clear title to the property under conditions described in the attached proposed contract of sale.

Because Federal funds may be used in the purchase, however, we are required to disclose to you the following information:

1. The sale is voluntary. If you do not wish to sell, the buyer, \_\_\_\_\_, thru the agency, \_\_\_\_\_ will not acquire your property. The buyer does not have the power of eminent domain to acquire your property by condemnation (i.e. eminent domain) and the agency/Sponsor \_\_\_\_\_ will not use the power of eminent domain to acquire the property.
2. The estimated fair market value of the property is \$\_\_\_\_\_ and was estimated by \_\_\_\_\_, to be finally determined by a professional appraiser prior to close of escrow.

Since the purchase would be a voluntary, arm's length, transaction you would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation. Also, as indicated in the contract of sale, this offer is made on the condition that no tenant will be permitted to occupy the property before the sale is completed.

Again, please understand that if you do not wish to sell your property, we will take no further action to acquire it. If you are willing to sell the property under the conditions described in the attached contract of sale, please sign the contract and return it to us at:

\_\_\_\_\_. If you have any questions about this matter, please contact \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Title

\_\_\_\_\_  
*Buyer*

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Buyer*

\_\_\_\_\_  
Date

Form continues on next page with Seller's Acknowledgment

**Disclosure to Seller with Voluntary, Arm's Length Purchase Offer (Page 2)**

**Acknowledgement**

As the Seller I/we understand that the \_\_\_\_\_ will inspect the property for health and safety deficiencies. I/we also understand that public funds may be involved in this transaction and, as such, if the property was built before 1978, a lead-based paint disclosure must be signed by both the buyer and seller, and that a Visual Assessment will be conducted to determine the presence of deteriorated paint.

As the Seller, I/we understand that under the Sponsor's Program, the property must be currently owner-occupied, vacant for three months at the time of submission of purchase offer, new (never occupied), or renter purchasing the unit. I/we hereby certify that the property is:

Vacant at least 3 months;  Owner-occupied;  New; or  Being Purchased by Occupant

*I/we hereby certify that I have read and understand this "Declaration" and  a copy of said Notice was given to me prior to the offer to purchase. If received after presentation of the purchase offer, I/We choose  to withdraw or  not to withdraw, from the Purchase Agreement.*

\_\_\_\_\_  
*Seller*

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Seller*

\_\_\_\_\_  
Date

## ATTACHMENT G

### CITY OF CHOWCHILLA INSTRUCTIONS TO HOMEBUYER

1. Persons interested in purchasing a home should contact the Program Operator's Homebuyer Counseling and Education (HCE) Department at 559-802-1672 to enroll in education classes, and if needed or required by the Program, also enroll in an individual counseling session. Upon completion of eight (8) hours of homebuyer education, the HCE Department will issue certificates of completion to the participants.
2. Participant should contact the Program Operator's First-Time Homebuyer Loan Processor at 559-802-1649 to verify funding availability. The participant's name is added to Sponsor's interest list if there is no funding available, or will be moved directly into the workload.
3. Participant will select a Mortgage Company (primary lender) of his or her choice to determine financing eligibility. Upon successful prequalification with a primary lender, primary lender will submit a complete loan application package to Program Operator for review. This package must be submitted along with a completed Submission Form and Lender Cover Letter, provided by the Program Operator via the Program Operator's website. Items to be included are proof of income, credit history, and household size.
4. During the financing and Program eligibility review by Program Operator, household size, income, and Sponsor loan amount are determined. Prior to issuance of the prequalification letter to the family, the following must occur:
  - a. Application package must be reviewed and signed by Program Operator
  - b. Application package must be reviewed and signed by Sponsor

Upon completion by all parties, Program Operator will issue a prequalification letter to the participant and primary lender on behalf of the Sponsor. Program Operator will contact or meet with qualified applicant to provide information relative to Program requirements and the lending process. In addition, Program Operator will issue a condition list to both parties requesting additional income and asset documentation, including verification of employment and all income sources.

5. Participant works with Licensed Real Estate broker to find a property. Properties are subject to the following requirements:
  - a. HOME Properties must meet the modest housing standard of 3 bedrooms/2 bathrooms, unless extenuating circumstances justify more to be approved
  - b. Properties must be located within the Sponsor's eligible area (Program Operator will verify)
  - c. Properties must meet maximum sales price limits, as applicable
  - d. Properties must be owner-occupied or vacant for at least three (3) months

Upon approval of the individual properties by the Sponsor, applicant will submit an offer and, once accepted, forward copies to Program Operator for review.

6. Applicant will work with primary lender to provide Program Operator all terms on the conditions list. The items include, but are not limited to:
  - a. Income documentation (paystubs, tax returns, child support, etc.)
  - b. Asset documents (bank statements, 401K, etc.)
  - c. Property information (appraisal with photos, preliminary title report, termite report and clearance, etc.)
  - d. Real Estate Sales Contract (contingent upon receiving Program loan approval)
  - e. Residential loan application and credit report, paystubs, tax returns and W-2's, and all verifications of employment and rent
  - f. Disclosure statement
7. Program Operator, upon receipt of appraisal, will order a home inspection to be completed by the Program Operator, a certified housing inspector, or a Sponsor representative. Home inspections will document health & safety and code compliance as well as conduct Lead-Based Paint Inspections. Seller must correct all deficiencies prior to the close of escrow.
8. Upon receipt of all conditions, Program Operator will prepare participant file for final loan approval with Sponsor. The primary lender should request the date of loan approval one week prior to the date of anticipated loan signing. At loan approval, Program Operator will present the application to Sponsor for review. Following loan approval, Program Operator will give loan documents to Sponsor for signatures. Loan documents are then forwarded to escrow company to coordinate loan signing.
9. Signed documents are returned to Program Operator for review. Upon review and confirmation of all conditions of final funding, Program Operator will wire funds to escrow.
10. Once loan is funded and recorded, escrow company provides a copy of all documents to Program Operator. Program Operator then closes out the loan file.

**ATTACHMENT H  
LEAD-BASED PAINT  
VISUAL ASSESSMENT, NOTICE OF PRESUMPTION, AND HAZARD REDUCTION  
FORM**

<b>Section 1: Background Information</b>			
Property Address:			No LBP found or LBP exempt <input type="checkbox"/>
Select one:	Visual Assessment <input type="checkbox"/>	Presumption <input type="checkbox"/>	Hazard Reduction <input type="checkbox"/>

<b>Section 2: Visual Assessment.</b> Fill out Sections 1, 2, and 6. If paint stabilization is performed, also fill out Sections 4 and 5 after the work is completed.	
Visual Assessment Date:	Report Date:
Check if no deteriorated paint found <input type="checkbox"/>	
Attachment A: Summary where deteriorated paint was found.	

<b>Section 3: Notice of Presumption.</b> Fill out Sections 1, 3, 5, and 6. Provide to occupant w/in 15 days of presumption.	
Date of Presumption Notice:	
Lead-based paint is presumed to be present <input type="checkbox"/> and/or Lead-based paint <i>hazards</i> are presumed to be present <input type="checkbox"/>	
Attachment B: Summary of Presumption:	

<b>Section 4: Notice of Lead-Based Paint Hazard Reduction Activity.</b> Fill out Sections 1, 4, 5, and 6. Provide to occupant w/in 15 days of after work completed.	
Date of Hazard Reduction Notice:	
Initial Hazard Reduction Notice? Yes <input type="checkbox"/> No <input type="checkbox"/>	Start & Completion Dates:
If "No", dates of previous Hazard Reduction Activity Notices:	
Attachment C: Activity locations and types.	
Attachment D: Location of building components with <u>lead-based paint remaining</u> in the rooms, spaces or areas where activities were conducted.	
Attachment E: Attach clearance report(s), using DHS form 8552 (and 8551 for abatement activities)	

<b>Section 5: Resident Receipt of Notice for Presumption or Lead-Based Paint Hazard Reduction Activity</b>		
Printed Name:	Signature:	Date:

<b>Section 6: Contact Information</b>	Organization:	
Contact Name:	Contact Signature:	
Date:	Address:	Phone:

## ATTACHMENT I

### Homebuyer Program Lead Compliance Document Checklist

The following documents should be in each Homebuyer unit file to document compliance with the lead requirements:

<b>Document Name</b>	<b>Purpose</b>	✓
Lead Safe Housing Rule Screening Sheet	Documents exemptions	
Physical inspection form (HQS or equivalent)	Documents visual assessment results	
Seller Certification	Seller certifies that paint was stabilized by qualified workers and that safe work practices were followed during paint stabilization	
Clearance Report and Clearance Review Worksheet	Documents that unit passed clearance	
Disclosure Form	Documents that buyer received disclosure and pamphlet.	
Lead Hazard Reduction Notice	Documents that buyer received required lead hazard reduction notification.	

This was taken from the HUD Website at:

[http://portal.hud.gov/hudportal/documents/huddoc?id=20264\\_leadcompliance.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=20264_leadcompliance.doc)

## ATTACHMENT J

### ACQUISITION WITH REHABILITATION CONSTRUCTION CONTRACT

#### Home Improvement Construction Contract

This Home Improvement Construction Contract is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the following parties: (Owner(s) Name): \_\_\_\_\_ and (Contractor's Name and Address): \_\_\_\_\_

(Notice of Cancellation, see paragraph 28, may be sent to Contractor at the above address).

The parties agree as follows:

1. Work to be Performed: Contractor agrees to provide a Schedule of Work, in accordance with the Work Write-up (Attachment 1) and furnish all supervision, technical personnel, labor, materials, tools and equipment necessary to complete the work described in the work write-up attached hereto at the real property commonly described as: \_\_\_\_\_. Contractor will be responsible for all construction means, methods, techniques, sequences and procedures and for the coordination of all portions of the work under the Contract. All materials shall be new, unless otherwise specified, and of good quality. Owner has a right to require the Contractor to have a performance and payment bond; the expense of the bond may be borne by the Owner.
2. Contract Price: Owner agrees to pay Contractor the sum of \$\_\_\_\_\_ for the work to be performed.
3. Completion Time:
  - a. Approximate Start Date: The Contractor agrees to file a complete permit application within ten (10) days after receipt of written Notice to Proceed from the Owner. Owner and Contractor agree that the Start Date of construction shall be the date the permits are issued by the Sponsor. In no event shall the Contractor commence work or place any materials on the site thereof prior to receipt of Notice to Proceed from the Owner.
  - b. Approximate Completion Date: Contractor shall prosecute the work diligently and continuously to completion. The work shall be completed within \_\_\_\_\_ days after the Start Date, subject to such delays as are permissible under paragraph 7 herein below.
4. Payment:
  - a. Price will be paid to Contractor in installments based on completion of work tasks and individual item prices on the Work Write-up attached, and any Change Orders.
  - b. Contractor shall submit all required payment forms to Owner for approval of payment. Prior to authorization of payment, the Contractor shall provide lien releases for claims by subcontractors, laborers, and material suppliers involved in the work and/or represented by Contractor's invoices. Owner may also request written guarantees and warranties.

- c. After approval by Owner, Contractor shall submit payment request forms to Self-Help Enterprises, hereinafter referred to as "SHE." SHE shall then make payment to the Contractor. SHE may, at its option, inspect the work to ensure that it has been satisfactorily completed in accordance with the Contract requirements. Should SHE determine that work has not been performed in accordance with the Contract, SHE may, in its sole discretion, withhold or reduce payment in accordance with the terms of the agreement between Owner and SHE.
  - d. At the time the work is completed, the Contractor shall submit the final pay request along with the recorded Notice of Completion, final building inspection report, insulation certificate, any warranties and guarantees, conditional lien releases, and Section 3 report (for contracts over \$100,000).
  - e. An amount equal to ten percent of the total Contract price, including any Change Orders, will be withheld by Owner and shall be paid to Contractor 35 days after notice of completion has been recorded, final inspection by the jurisdiction's building official and approval by Owner, provided that Contractor is not in default under this Contract. Final payment will be subject to withholding any amounts due to Owner for actual costs due to unexcused delays.
  - f. The payment of any progress payment shall not constitute acceptance of defective work or improper material, nor is it a waiver of the warranties or any other remedies to which the Owner may be entitled under the terms of this Contract.
5. Relationship of the Parties to SHE: Work to be performed under this Contract is financed by funds from the Sponsor and administered by SHE. Owner is solely responsible for monitoring all work performed under this Contract and enforcing the terms of this Contract. SHE shall inspect all work for the purposes of monitoring loan disbursements in accordance with terms of this Contract and enforcing the terms of the loan agreement. Inspections performed by SHE are solely for the protection of the lender and solely for the purpose of assuring that the construction is progressing reasonably and that the lender's collateral interest is adequately protected. Owner acknowledges that SHE's inspections are not for the purpose of assuring Contractor's compliance with applicable building codes. SHE shall not be liable under any circumstances for its failure to discover or require correction by Contractor of work that fails to comply with applicable building codes or for its failure to discover or require correction of any dangerous condition or defective work by contractor or by any subcontractor.
- SHE shall not, under any circumstances, have any liability either to the Owner or to the Contractor for any disbursement or refusal to approve of any disbursement requested by Contractor.
6. Failure to Commence Work: Failure by the Contractor without lawful excuse to substantially commence work within 20 days from the date specified in the Notice to Proceed is a violation of the Contractors' License Law.
7. Excusable Delays: Contractor shall not be charged with delay in the completion of the work due to: any acts of Owner which cause delay; general strikes; acts of God or the public enemy; unavailability of materials, or casualty beyond Contractor's control, provided, however, that Contractor promptly (within 14 days) notifies Owner, in writing, of the cause of the delay. If the facts show the delays to be excusable under the terms of the Contract,

the time for completion shall be extended for a period equal to the amount of time due to such delay.

8. Unexcused Delays: The parties agree that the Owner would incur additional expenses as a result of Contractor's unexcused delays in the completion of the work. "Additional expenses" shall include but not be limited to housing and storage costs incurred by the owner due to the inability to fully occupy the property.
9. Provisions for the Owner: While this Contract is in force, Owner shall permit Contractor the use of existing utilities including light, heat, power, and water, without charge, in order to carry out and complete the work. Owner may continue to occupy the premises during the rehabilitation but shall cooperate with Contractor to facilitate the performance of the work including the abandonment of limited areas as may be essential to the conduct of the work.
10. Compliance with the Law: By signing this contract, the Contractor certifies that it is licensed and in good standing in California, and not listed on the Federal Consolidated List of Debarred, Suspended and Ineligible Contractors. Contractors are regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826. All work shall be completed in strict compliance with the laws, ordinances, rules, regulations and Codes of the State, County, and local governments, whether such applicable laws, ordinances, rules, regulations and codes are mentioned in this Contract or not. Contractor shall obtain, pay for, and provide permits and licenses, as required to complete all work outlined under this Contract.

Where applicable, Contractor agrees to the following provisions:

- a) Standard Contract Language, All Contracts and Subcontracts, pertaining to civil rights, HCD, age discrimination, rehabilitation acts assurance, etc. (see Attachment 2).
- b) By the statement below, Contractor hereby furnishes Owner with Contractor Notice in compliance with California Business and Professions Code Section 7159:

**INFORMATION ABOUT THE CONTRACTORS' STATE LICENSE BOARD  
(CSLB)**

**CSLB is the state consumer protection agency that licenses and regulates construction contractors.**

**Contact CSLB for information about the licensed contractor you are considering including information about disclosable complaints, disciplinary actions and civil judgments that are reported to CSLB.**

**Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor's employees.**

**For more information:**

Visit CSLB's Web site at <http://www.cslb.ca.gov>

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P. O. Box 26000, Sacramento, CA 95826

c) The contractor hereby agrees to abide by the requirements of Executive Order 11246 and all implementing regulations of the Department of Labor.

11. Notice to Owner (see Attachment 3).

12. Required Insurance: Contractor shall obtain and keep in effect during the life of this contract, insurance in the following minimum amounts:

Worker's Compensation and Employer's Liability Insurance meeting the statutory requirements of the State of California.

Comprehensive General Liability and Property Damage Insurance with Combined Single Limits of at least \$1,000,000. This insurance shall be on an occurrence basis and shall protect the Contractor against liability arising from: Contractor's operations, operations by subcontractors, products, completed operations or professional liability where applicable and contractual liability assumed under the indemnity provisions above insured. Any Excavation, Collapse and Underground exclusions must be deleted when applicable to operations performed by the Contractor or his subcontractors.

An original certificate of such insurance shall be filed with SHE. Said certificate shall evidence coverage through the life of this Contract.

13. Safety to Public and Property: Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and Programs in connection with the work. In such, Contractor shall provide reasonable protection to prevent damage, injury, and loss to: all employees on the work, all work and materials and equipment to be incorporated therein and other property at the site or adjacent thereto, including trees, shrubs, lawns, pavements, structures, and utilities not designated for removal or replacement under the terms of this Contract.

14. Hold Harmless: With the exception that this Section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify and save harmless Owner and

City of Chowchilla  
Homebuyer Program Guidelines  
City Council Approved 4/26/16

SHE, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys fees, losses or liability, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Contractor's operations to be performed under this Agreement for, but not limited to:

- a. Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to any employees or agents of Owner, SHE, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose act Contractor may be liable regardless of whether such injury or damage is caused by a party indemnified hereunder.
- b. Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of Contractor.
- c. Infringement of any patent rights which may be brought against SHE or Owner arising out of Contractor's work.
- d. Claims and liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to SHE or Owner from such claims or liens.
- e. Contractor's failure to fulfill the covenants set forth in collective bargaining agreement, wage order or any other agreement or regulation concerning labor relations.
- f. Failure of Contractor to provide Casualty Insurance.
- g. Any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of SHE's or other's equipment, hoist, elevators, or scaffolds. The indemnification provisions of (a) through (g) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Owner or SHE or their agents or employees. Contractor, however, shall not be obligated under this Agreement to indemnify Owner or SHE for Claims arising from the sole negligence or willful misconduct of Owner or SHE or their agents, employees or independent contractors who are directly responsible to Owner or SHE, or for defects in design furnished by such persons.
- h. Contractor shall:
  - 1) At Contractor's own costs, expense and risk, defend any claims that may be brought or instituted by third persons, including but not limited to, governmental agencies or employees of Contractor, against SHE or Owner or their agents or employees or any of them;
  - 2) Pay and satisfy any judgment or decree that may be rendered against SHE or Owner or their agents or employees, or by any of them, arising out of any such Claim; and/or
  - 3) Reimburse SHE or Owner or their agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section.
- i. All work covered by this Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Contractor exclusively until the completed work is accepted by SHE.

- j. The indemnities set forth in this Section shall not be limited by any insurance requirements set forth elsewhere within this agreement.
15. Assignment: Contractor shall not assign or transfer any right or obligation under this Contract without first obtaining the written consent of Owner. Any attempted assignment by Contractor shall be void.
16. Changes in Work to be Performed: No changes shall be made in the work, Contract price or Contract time for completion of work, except by written change order. The change order shall bear the signatures of the parties to this Contract and approved (by signature) as to propriety with funding requirements by SHE. No claim for an adjustment of Contract work, price or time will be valid unless so ordered. Payment for change orders that bear additional cost shall be made in accordance with paragraph 4, above.
17. Guarantees and Material Warranties: All labor, materials and installation shall be guaranteed for a period of one year from the date of final acceptance by Owner, when subjected to normal use and care, and provided Owner has complied, in full, with the terms and payments and other conditions of this Contract. Upon written notice from Owner, Contractor shall repair or remedy any defect in materials and workmanship within the one-year period specified. Contractor shall furnish Owner with and assign to Owner all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under this Contract.
18. Surplus Materials and Clean-up of Premises: All materials and equipment removed and not reused as a condition of this Contract shall remain or become the property of Owner, unless otherwise so stated in writing. All surplus materials as well as all rubbish and construction debris resulting from construction activities shall be removed promptly from the job site by Contractor. Upon completion of the work, Contractor shall leave the building and premises in a "broom-clean" condition.
19. Divisibility: It is intended that each paragraph of this agreement shall be viewed as separate and divisible, and in the event that any paragraph shall be held to be invalid, the remaining paragraphs shall continue to be in full force and effect.
20. Materials Restriction: Lead base paint hazards specified in the work write-up shall be mitigated in accordance with Federal Lead Based Paint regulations listed at 24 CFR 35. All new paint used must be a non-lead based paint.
21. Arbitration:
- a. Should any controversy arise out of or related to this Contract or the breach thereof, that falls within the provisions of 7085 et seq. of the California Business and Professions Code, other than a controversy based upon your failure to comply with a notice to return to the project under paragraph 23, the parties shall agree to submit the issue to Contractors State License Board (CSLB) arbitration. The decision of the arbitrator is final and binding on both parties. CSLB will pay for the hearing, the arbitrator, and the services of one Board-appointed expert witness per complaint. The parties are responsible for their own attorney fees, if any, and additional expert witnesses, if any.

- b. Any controversy arising out of or relating to this Contract, or the breach thereof, that does not qualify for CSLB arbitration, or the parties do not agree to CSLB arbitration, shall be submitted to binding arbitration in accordance with the provisions of the California Arbitration Law, Code of Civil Procedure 1280 et seq., and the Rules of the American Arbitration Association. The arbitrator shall have the final authority to order work performed, to order the payment from one party to another, and to order whom shall bear the costs of arbitration. Costs to initiate arbitration shall be paid by the party seeking arbitration. Notwithstanding, the party prevailing in any arbitration proceeding and in any litigation arising out of or relating to this contract shall be entitled to recover from the other all attorneys' fees and costs of arbitration.
22. Mechanics Liens: Contractor shall pay promptly all valid bills and charges for materials, labor or otherwise, in connection with or arising out of the rehabilitation of said property and will hold Owner free and harmless against all of them, filed against the property or any part thereof, and from and against all expense and liability in connection therewith, including but not limited to, court costs and attorneys' fees resulting or arising therefrom. Should any liens or claim of liens be filed for record against the property, or should Owner receive notice of any unpaid bill or charge in connection with the Contract, Contractor shall forthwith pay and discharge the same and cause the same to be released of record. Contractor authorizes SHE to issue joint checks as part of any disbursement otherwise payable to Contractor whenever SHE, in its sole discretion, determines that payment in this fashion is necessary in order to protect the interests of the Lender or the Owner. (See also, Notice to Owner, Attachment 3).
23. Termination of Contract: Should Contractor commit any of the acts specified in this paragraph, the Owner may, give 72 hours' notice in writing thereof to Contractor, to commence and continue thereafter to diligently prosecute the correction thereof, and if contractor fails to do so, then without prejudice to any other rights or remedies given Owner by law or by this contract, Owner may terminate the services of Contractor under this contract; take possession of said project and the premises on which it is located; take possession of all materials, located on such premises; and, complete said project by whatever method Owner may deem expedient. Contractor shall be deemed to have committed an act specified in this paragraph if contractor shall:
- refuse or fail to supply enough properly skilled workers or proper materials to complete said project in the time specified in this contract and in the approved time schedule.
  - fail to make prompt payment to subcontractors, laborers, or material men for labor performed on or materials furnished to said project;
  - fail to comply with the time schedule for completion of the project;

The preceding notwithstanding, the following actions by the Contractor shall be deemed to be material breaches of the contract which are not subject to cure. Should Contractor commit any of the acts specified in this paragraph, the Owner may, by giving 72 hours' notice in writing thereof to Contractor, without prejudice to any other rights or remedies given Owner by law or by this contract, terminate the services of Contractor under this contract; take possession of said project and the premises on which it is located; take possession of all materials, located on such premises; and complete said project by whatever method owner may deem expedient:

- d. Commence with any proceedings of bankruptcy;
  - e. make a general assignment for the benefit of contractors;
  - f. persist in disregarding any law or ordinance relating to said project or the completion thereof;
  - g. suffer the revocation or suspension of its contractor's license.
24. Rights on Termination by Owner: Should Owner terminate the service of Contractor under this contract and complete said project pursuant to Paragraph 10 of this contract, the Contractor shall not be entitled to receive any further payment under this contract until said project is fully completed. On completion of said project by Owner, if the unpaid balance of the contract price exceeds the expenses incurred by Owner in completing said project, including any compensation paid by Owner for managerial, administrative, or supervisory services in completing said project, such excess shall be paid by Owner to Contractor. If the expense incurred by Owner in completion of said project exceeds the unpaid balance of the purchase price, Contractor shall pay such excess to Owner with thirty days following written demand by Owner.
25. Force Majeure: Neither Owner nor Contractor shall be deemed to be in default if performance of the improvements required by this contract is delayed or becomes impossible because of any act of God, war, earthquake, fire, civil commotion, epidemic, act of government, its agencies or officers, court order, or any other legitimate cause beyond the control of the party and not caused by the negligent, unreasonable or intentional acts of the party.
26. Availability of Funds: In the event the loan or grant of funds upon which this Contract is contingent is not approved, this Contract shall be considered null and void, and shall not create any liability to either Owner or Contractor.
27. Contract Nullity: This entire Contract shall be considered null and void if either of the following shall occur:
- a. Owner is not approved for funding to finance the Contract Price;
  - b. Owner chooses not to proceed with the project before construction begins.
28. **Three-Day Right to Cancel**: **“You, the Owner, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the Contractor at the Contractor’s place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of this contract including this notice.**

**If you cancel, the Contractor must return any moneys paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the Contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the Contractor’s instructions on how to return the goods at the Contractor’s expense and risk. If you do make the goods available to the Contractor, and the Contractor does**

not pick them up within 20 days of the date of your notice of cancellation, you make keep them without any further obligation. If you fail to make the goods available to the Contractor, or if you agree to return the goods to the Contractor and fail to do so, then you remain liable for performance of all obligations under this Contract.”

29. “You, the Owner, are entitled to a completely filled in copy of this Contract, signed by both you and the Contractor, before any work may be started.”

THE OWNER AND THE CONTRACTOR ACKNOWLEDGE THAT THEY HAVE READ, UNDERSTAND AND AGREE TO ALL PROVISIONS OF THIS CONTRACT INCLUDING ALL ADDITIONAL CONTRACT DOCUMENTS.

OWNER(S): \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

By: \_\_\_\_\_  
Business Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
License Number: \_\_\_\_\_  
Tax ID or Soc. Sec. # \_\_\_\_\_

Attachments:

- 1 – Work Write-up
- 2 – Standard Contract Language
- 3 – Notice to Owner

STANDARD CONTRACT LANGUAGE:  
ALL CONTRACTS AND SUBCONTRACTS

1. The Civil Rights, HCD, and Age Discrimination Acts Assurances:

During the performance of this Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied Program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any Program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations.

2. Rehabilitation Act of 1973 and the “504 Coordinator”

The Grantee further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR Part 8, including, but not limited to, for Grantees with 15 or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the “504 Coordinator”.

3. The Training, Employment and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance:

a) The grant activity to be performed under this Agreement is on a project assisted under a Program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C 1701u. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in 24 CFR 135.34(a)(2).

b) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

c) The Grantee will include these Section 3 clauses in every contract and subcontract for Work in connection with the grant activity and will, at the direction of the State, take appropriate action pursuant to the contract or subcontract upon a finding that the Grantee or any contractor or subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and, will not let any contract unless the Grantee or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

d) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement shall be a condition of the federal financial assistance provided to the project, binding upon the Grantee, its successors and assigns. Failure to fulfill these requirements shall subject the Grantee, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

4. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or more

The Grantee hereby agrees to place in every contract and subcontract for construction exceeding \$10,000 the Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246), the Standard Equal Employment Opportunity, and the Construction Contract Specifications. The Grantee furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts.

5. State Nondiscrimination Clause:

a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40) marital status, and denial of family care leave. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractors and subcontractors shall comply with the provisions of the Housing Act (Government Code, Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7258 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Regulations, are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

6. Labor Standards –Federal Labor Standards Provisions

The Grantee shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of:

Davis-Bacon Act (40 USC 276a-276a-5) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor and are issued in the form of Federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.

Copeland “Anti-Kickback” Act (47 USC 276(c)) requires that workers be paid at least once a week without any deductions or rebates except permissible deductions.

Contract Work Hours and Safety Standards Act – CWHSSA (40USC 327-333) requires that workers receive “overtime” compensation at a rate of 1-1/2 times their regular hourly wage after they have worked 40 hours in one week.

Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

## NOTICE TO OWNER

"Under the California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's subcontractors, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a "Preliminary Notice." Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanics' lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics' lien against your property is 90 days after substantial completion of your project.

**TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:**

1. Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.
2. Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.
3. Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property; therefore, you need to protect yourself. This will help to insure that all person due are actually paid.
4. Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases

**City of Chowchilla  
Homebuyer Program Guidelines  
City Council Approved 4/26/16**

from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence or a duplex owned by the individuals, the person signing these releases lose the right to file a mechanics' lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanics' lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics' Lien" signed by the person or entity that filed the mechanics' lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property."

**Read and acknowledged:**

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Signature

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Dated

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Signature

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Dated

**ATTACHMENT K  
SELF-HELP ENTERPRISES  
CONSTRUCTION PAYMENT REQUEST #**

Date \_\_\_\_\_

Participant \_\_\_\_\_ Project \_\_\_\_\_ Job # \_\_\_\_\_

Project Address \_\_\_\_\_

Total Contract Amount \$ \_\_\_\_\_ Payment Amount \$ \_\_\_\_\_

Contractor: \_\_\_\_\_ Construction Supervisor: \_\_\_\_\_

Items Completed:

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I request payment for work in progress on the above property. I certify that the work itemized above has been completed as of this date.

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Date

*NOTE: Ten percent (10%) of the total contract amount (including all change orders) will be retained by Self-Help Enterprises until 35 days after Notice of Completion is recorded.*

The items listed above have been completed satisfactorily. \_\_\_\_\_  
Please release payment to Contractor as requested (or amended).      OWNER'S SIGNATURE      DATE

APPROVED FOR PAYMENT:

\_\_\_\_\_  
SELF-HELP ENTERPRISES

DATE     Mail     Pick-up

NOTES:

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Distribution: **WHITE:** Self-Help Enterprises

**YELLOW:** Owner

**PINK:** Contractor

**GOLDENROD:** Supervisor

**City of Chowchilla  
Homebuyer Program Guidelines  
City Council Approved 4/26/16**

**CITY OF CHOWCHILLA**

**Housing Rehabilitation  
Program Guidelines**

For:

**CalHome Program  
Community Development Block Grant  
(CDBG) Program and  
HOME Investment Partnerships Program**

**Serving the  
City of Chowchilla**

**Ver. 2016.1  
Pending HOME Approval**

**CITY OF CHOWCHILLA  
OWNER-OCUPIED HOUSING REHABILITATION  
PROGRAM GUIDELINES**

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**CITY OF CHOWCHILLA****OWNER–OCCUPIED HOUSING REHABILITATION  
PROGRAM GUIDELINES****1.0. GENERAL**

The above-named entity, hereinafter referred to as the “Sponsor”, has entered into a contractual relationship with the California Department of Housing and Community Development (“HCD”) to administer one or more HCD-funded housing rehabilitation Programs. The rehabilitation Program described herein and hereinafter referred to as the “Program” is designed to provide assistance to eligible homeowners for correction of health and safety items, as well as code violations, located within the Program’s eligible area, as described in Section 3.1.B. The Program provides this assistance in the form of deferred payment loans used to finance the cost of necessary repairs that will provide the homeowner with a healthy, safe, sanitary and code compliant home, referred to herein as “housing unit”. The Program will be administered by Self-Help Enterprises, hereinafter referred to as the “Program Operator”.

**1.1. PROGRAM OUTREACH AND MARKETING**

All outreach efforts will be done in accordance with state and federal fair lending regulations to assure nondiscriminatory treatment, outreach and access to the Program. No person shall, on the grounds of age, ancestry, color, creed, physical or mental disability or handicap, marital or familial status, medical condition, national origin, race, religion, gender or sexual orientation, be excluded, denied benefits or subjected to discrimination under the Program. The Sponsor will ensure that all persons, including those qualified individuals with handicaps have access to the Program.

- A. The Fair Housing Lender logo and Accessibility logo will be placed on all outreach materials. Fair housing marketing actions will be based upon a characteristic analysis comparison (census data may be used) of the Program’s eligible area compared to the ethnicity of the population served by the Program (includes, separately, all applications given out and those receiving assistance) and an explanation of any underserved segments of the population. This information is used to show that protected classes (age, gender, ethnicity, race, and disability) are not being excluded from the Program. A Fair Housing Marketing Plan can be found as Attachment D. Flyers or other outreach materials, in English and any other language that is the primary language of a significant portion of the area residents, will be widely distributed in the Program-eligible area and will be provided to any local social service agencies. The Program may sponsor homeownership education classes to help educate homeowners about credit, budgeting, predatory lending, foreclosure prevention and home maintenance, as well as future responsibilities.
- B. Section 504 of the Rehabilitation Act of 1973 prohibits the exclusion of an otherwise qualified individual, solely by reason of disability, from participation under any Program receiving Federal funds. The Program Sponsor will take appropriate steps to ensure effective communication with disabled housing applicants, residents and members of the public.

## 1.2. APPLICATION PROCESS AND SELECTION

### A. Waiting List/Homeowner Contact

The Sponsor will utilize a waiting list. In response to a homeowner's request, the homeowner is placed on the waiting list. Homeowners are offered the opportunity to qualify for assistance by waiting list priority (a first-come, first served basis). For CDBG, a separate waiting list will be kept for homeowners in need of assistance related to a domestic water well only. Assistance will be provided to eligible homeowners on a first-come, first served basis. Homeowners who need housing rehabilitation assistance in addition to assistance related to a domestic water well will be placed on both lists.

The Program Operator will contact homeowners by mail and/or by telephone to advise them of funding availability. The homeowner has 30 days to complete and return the loan application and supporting documentation. Should a homeowner fail to respond to the initial contact for assistance or to provide any of the required documentation within the 30-day period, the homeowner's name will be removed from the waiting list. If the homeowner desires assistance at a later time, he/she will be placed on the waiting list at that time.

Should the waiting list be exhausted, the Program will be marketed in accordance with the Sponsor's Marketing Plan. **See Attachment D.**

### B. Application/Interview

An application packet is provided to the homeowner for completion and submittal to the Program Operator, along with supporting documentation. An interview is scheduled with the applicant. The Program is fully explained; application forms and documentation are reviewed. Verifications are obtained for income, assets, employment, benefits, and mortgage. Title report and property values are also obtained.

If the Program Operator encounters material discrepancies and/or misrepresentations, and/or there are income, asset, household composition, or other important questions that can't be resolved, the Sponsor reserves the right to deny assistance to the household. In this case, the applicant may re-apply after six months have elapsed from the time of written assistance denial.

### C. Household Selection

Households selected for participation in the Sponsor's Housing Rehabilitation Program are those determined eligible upon completion of processes described in A. and B. above.

### D. Initial Inspection/Work Write-Up/Estimate

Prospective units are inspected by the Program Operator, a certified housing inspector, or a Sponsor representative to determine eligibility and acceptability of properties for participation in the Program.

If the home is a pre-1978 unit, the initial inspection will also include paint testing by

a certified Lead-Based Paint (LBP) inspector/assessor or presumption of LBP. Code deficiencies will be corrected and if presumption is used or lead hazards are found they will be properly treated according to HUD regulations (Section 6.1.E & F) and cleared by a certified LBP inspector/assessor. **Note: CalHome-funded projects do not require LBP compliance. CDBG projects needing guidance shall refer to Chapter 20 of the CDBG Grant Management Manual, Lead-Based Paint Requirements.**

Measurements and observations are noted about the property, including special conditions with potential cost consequences (dilapidated outbuildings, absence of curb and gutter when required by code, etc.). A floor plan and site plan, as needed, are drawn for the home and property, including all appurtenances. **Note: HOME funds cannot be used for curb and gutter if the curb and gutter are outside the borrower's property line.**

Findings are noted on an inspection form, and later used by the Program Operator to prepare the work write-up. Estimated costs are determined by the Program Operator who has years of experience in the building industry, and in reviewing contractor bids and verifying cost with materials suppliers. The homeowner reviews the completed work write-up and cost estimate, and the approved write-up is incorporated into bid documents.

#### E. Bid Solicitation

A bid walk-through date and time are scheduled. The homeowner may choose to solicit his/her own bids or request that the Program Operator solicit bids on his/her behalf. In an effort to obtain three reasonable bids, invitations to bid are sent to eligible contractors located in the Sponsor's County and selected by the homeowner from the Active Contractor List provided by the Program Operator. Homeowners are required to select a minimum of six contractors from the Active Contractor List and may add to the list as long as the contractor meets the requirements outlined in the Housing Rehabilitation/Reconstruction Program Contractor Guidelines and Information Sheet (see Attachment K). Contractors will be notified via telephone and/or in writing (email, fax, etc.) at least one week prior to each bid tour. Bid results will be provided to participating contractors.

Contractors must be licensed and bonded by the State of California Contractors Licensing Board. Contractors must also provide Program Operator with evidence of Workers' Compensation Insurance and Comprehensive General Liability and Property Damage Insurance with Combined Single Limits of at least \$1,000,000.

Recruitment for eligible contractors is done on an ongoing basis, via local advertising, website notification, and program marketing. It is the goal of the Program Operator to maintain an Active Contractor List of eligible, interested contractors located in the Sponsor's County. Applications are available for those seeking to participate by calling the Program Operator or visiting the Program Operator's website. The Program Operator will send notices to contractors on the Active Contractor List annually, which will request each contractor contact the Program Operator to confirm his or her interest in remaining on the Active Contractor List. Contractors who do not respond will be moved to the Inactive Contractor List

Cost reasonableness is determined by comparing the bids received with the cost estimate prepared by the Program Operator. Bids should be within 10% of the

Program Operator's cost estimate, otherwise an explanation must be provided to the file for any bid selected exceeding 10% of the estimate. The homeowner is encouraged to accept the lowest reasonable bid.

The Program Operator determines eligibility of the contractor by contacting the State Contractors License Board and checking the Federal List of Debarred Contractors. The contractor is also required to provide a self-certification stating that he/she is not on the Federal debarred list. Once determined eligible, the contractor is then notified of provisional award of bid (pending loan approval). Notices of non-award are mailed to participating contractors.

#### F. Pre-Construction Conference

A pre-construction conference is scheduled with homeowner, contractor, and Program Operator. The Program Operator reviews the Owner-Contractor Construction Contract, including the work write-up, anticipated start date, pay schedule, and anticipated date of completion, with the homeowner and contractor.

#### G. Loan Request/Approval

A report and loan request are prepared on behalf of the homeowner by the Program Operator. The loan request includes the cost of construction, a contingency fund, and other project costs (listed in Section 6.3.). Note – For HOME, the project costs listed in Section 6.3 are considered activity delivery costs to be paid by the Sponsor and may not be charged to the homeowner's loan. A Loan Review Committee meeting is scheduled to hear the loan request. Section 1.3. provides additional information on the loan approval process. Once approved, loan documents are executed and the loan is funded.

#### H. Start-Up/Field Inspections

Following loan approval, the construction contract and Notice to Proceed are executed. The Program Operator monitors date of start-up and performs field inspections on a regular basis. The Program Operator will visit the job site regularly in order to check the scope of work, inspect materials, and to confirm the job is on schedule and within budget. The Program Operator works with the Sponsor's Building Inspector to ensure the work meets building codes, while not exceeding funding limits.

The Program Operator reviews the work status with the homeowner and with the contractor in order to remedy any developing problems quickly and to ensure that both are satisfied with the construction process. At the completion of each phase, the Program Operator inspects the work and the homeowner authorizes contractor payments.

The Program Operator will refer back to original plans and specifications to verify the work was completed as contracted.

#### I. Change Orders

Written change orders are required when the homeowner requests any changes in the write-up, such as eliminating an item completely, eliminating one item and

substituting another, or adding items. The change order will state the change and dollar value for the change. The change order must be signed by both the contractor and the homeowner, and submitted to the Program Operator for approval. If the change order exceeds the approved financing, the homeowner will be asked to provide additional funds or a report and request for additional funds may be presented to the Sponsor's Loan Review Committee for approval prior to Program Operator signing-off on the change order.

#### J. Progress Payments

Ninety percent (90%) of the contract amount is distributed to the contractor in the form of progress payments during construction. The final ten-percent (10%) of the contract amount is set aside as a retention payment. The contractor requests a progress payment from the homeowner and notifies the Program Operator that he/she has done so. Upon favorable inspection by the homeowner, Program Operator, and Sponsor or Sponsor's Building Inspector, the payment authorization is signed by the homeowner and submitted for payment.

#### K. Final Inspections/Notice of Completion/Final Payment

When the project is completed, the Program Operator inspects the work item by item with the homeowner, the contractor, and/or the Sponsor. The Sponsor's Building Inspector performs a final inspection. Any corrections or deficiencies are noted and corrected by the contractor. Upon favorable final inspections, a Notice of Completion is prepared, signed by the homeowner, and then recorded. The final ten-percent (10%) retention payment is released 35 days after the recording of the Notice of Completion.

### 1.3. LOAN PROCESS

The Sponsor's Loan Review Committee must approve all loans and grants. The Loan Review Committee may approve assistance with financing exceeding 100 percent of after-rehabilitation value as needed in cases where no other financial resources are available to cover the cost of the improvements and where clear and convincing documentation exists, justifying why the exception is needed. However, if the project is CalHome funded, the total financing cannot be more than 105 percent of the after-rehabilitation value. For HOME-funded loans, the amount of assistance provided will not exceed the Sponsor's County maximum HOME subsidy limit per bedroom as defined by Section 221 (d)(3) and the total financing cannot exceed the Maximum After-Rehabilitation Value. **See Attachment C.**

In order to obtain financing, applicants must meet all property and eligibility guidelines in effect at the time the application is considered. Homeowners will be provided written notification of approval or denial. Any reason for denial will be provided to the applicant in writing.

### 1.4. CONFLICT OF INTEREST REQUIREMENTS

When the Sponsor's Program contains Federal funds, the applicable Conflict of Interest requirements of 24 CFR Section 570.611 shall be followed for CDBG assistance, and

Section 92.356 of the HOME Final Rule shall be followed for HOME assistance. For CalHome funded Programs, the applicable Conflict of Interest requirements of Public Contract Code sections 10410, 10411, and 10430 (e) shall be followed.

For HOME assistance, Section 92.356 of the HOME Final Rule shall be followed, as follows:

(a) Conflicts prohibited. No persons described in paragraph (b) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including stepparent), child (including stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild and in-laws of a covered person.

(b) Persons covered. The conflict of interest provisions of paragraph (a) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(c) Exceptions: Threshold requirements. Upon the written request of the participating jurisdiction to HCD, HUD may grant an exception to the provisions of paragraph (a) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. See 24 CFR 92.356(d)(1-6) for details on the documentation needed in order to submit an exception request to HUD.

A contractor with a vested interest in the property cannot bid on a rehabilitation job. Such a contractor may act as owner/builder, subject to standard construction procedures. Owner/builders are reimbursed for materials purchased which are verified by invoice/receipt and used on the job. Reimbursement occurs after the installation is verified by the Program Operator to be part of the scope of work. Owner/builders are not reimbursed for labor.

## **2.0. APPLICANT QUALIFICATIONS**

### **2.1. INCOME LIMITS**

All homeowners must certify that they meet the household income eligibility requirements for the applicable HCD Program(s) and have their household income documented. The income limits in place at the time of loan approval will apply when determining applicant income eligibility. All applicants must have incomes at or below 80% of the County's area median income (AMI), adjusted for household size, as published by HCD each year. **See Attachment C.**

The link to the official HCD-maintained income limits is:

<http://www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html>

**Household:** means one or more persons who will occupy a housing unit. For HOME and CDBG, unborn children count in family size determination. For CalHome, unborn children are not counted.

**Annual Income:** Generally, the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period.

## 2.2. INCOME QUALIFICATION CRITERIA

Projected annual gross income of the applicant household will be used to determine whether they are above or below the published HCD income limits. Income qualification criteria for HOME and CDBG, as shown in the most recent HCD Program-specific guidance at <http://www.hcd.ca.gov/fa/cdbg/GuideFedPrograms.html>, will be followed to independently determine and certify the household's annual gross income. Income will be verified by reviewing and documenting tax returns, copies of wage receipts, subsidy checks, bank statements and third-party verification of employment forms sent to employers. All documentation shall be dated within six months prior to loan closing, kept in the applicant file and held in strict confidence.

### A. HOUSEHOLD INCOME DEFINITION:

Household income is the annual gross income of all adult household members that is projected to be received during the coming 12-month period, and will be used to determine Program eligibility. Refer to Income Inclusions and Exclusions for further guidance to the types of incomes to be included or excluded when calculating gross annual income. For those types of income counted, gross amounts (before any deductions have been taken) are used; and the types of income that are not considered would be income of minors or live-in aides. Certain other household members living apart from the household also require special consideration. The household's projected income must be used, rather than past earnings, when calculating income.

Housing and/or debt ratios are not considered as the funding provided creates no additional monthly financial obligation. If a homeowner has a mortgage, creditworthiness is verified by ensuring that all payments are current and that no late payments have been received in the past twelve months

The link to Annual Income Inclusions and Exclusions is:

[http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixB\\_AnnualIncomeInclusionsExclusions.doc](http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixB_AnnualIncomeInclusionsExclusions.doc)

**Attachment A: HOME and CDBG 24 CFR Part 5 Annual Income Inclusions and Exclusions**

**Attachment A-1: CalHome Title 25 Section 6914 Annual Income inclusions and Exclusions (State)**

### B. ASSETS:

There is no asset limitation for participation in the Program. Income from assets is, however, recognized as part of annual income under the Part 5 definition. An asset is

a cash or non-cash item that can be converted to cash. The value of necessary items such as furniture and automobiles are not included. (*Note: it is the income earned – e.g. interest on a savings account – not the asset value, which is counted in annual income.*)

An asset's cash value is the market value less reasonable expenses required to convert the asset to cash, including: Penalties or fees for converting financial holdings and costs for selling real property. For HOME and CDBG, the cash value (rather than the market value) of an item is counted as an asset. For CalHome, the market value of an item is counted as an asset.

For HOME and CDBG, the Link to Asset Inclusions and Exclusions is:

[http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixC\\_AnnualIncomeAssetInclusionsExclusions.doc](http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixC_AnnualIncomeAssetInclusionsExclusions.doc)

**Attachment B: Part 5 Annual Income Net Family Asset Inclusions and Exclusions**

### 2.3. HOMEOWNER ELIGIBILITY AND RESIDENCY REQUIREMENTS

The Sponsor's Housing Rehabilitation Program allows for owner-occupied properties to participate in the Program. Owner-occupied units must be the owner's principal place of residence. A photocopy of a recent utility bill will verify proof of occupancy. No unit to be rehabilitated will receive financial assistance if it is currently occupied by an over-income household or does not meet the eligibility standards outlined in these guidelines.

- A. Continued residency is monitored annually for the term of the loan. Occupancy will be verified, reviewed, and certified by the submission of the following:
  - 1. Proof of occupancy in the form of a copy of a current utility bill; and
  - 2. Statement of unit's continued use as primary residence of the owner.
- B. In the event that an homeowner sells, transfers title, or discontinues residence in the rehabilitated property for any reason, the loan becomes due and payable, unless the following conditions are met:

The homeowner who received the loan dies and the heir to the property meets income requirements and intends to occupy the home as his/her principal residence. Upon approval of the Sponsor, the heir may be permitted to assume the loan at the rate and terms the heir qualifies for under current participation guidelines. If the heir does not meet applicable eligibility requirements, the loan is due and payable. **Note: Loans provided by CalHome are not assumable.**

- C. If a homeowner converts the property to a rental unit, or any commercial or non-residential use, the loan is due and payable.

If the loan is funded with CalHome funds, it is not transferable except under the following limited circumstances:

1. The transfer of the Property to the surviving joint tenant by devise, descent or operation of the law, on the death of a joint tenant;
2. A transfer of the Property where the spouse becomes an owner of the property;
3. A transfer of the Property resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes an owner of the Property; or,
4. A transfer to an inter vivos trust in which the Borrower is and remains the beneficiary and occupant of the property.

### **3.0. PROPERTY ELIGIBILITY**

#### **3.1. CONDITIONS**

- A. No unit will be eligible if a household's income exceeds the prescribed income limits listed in Attachment C.
- B. Units to be rehabilitated must be located within the incorporated areas of the Sponsor's jurisdiction.
- C. Property must contain a legal residential structure intended for continued residential occupancy.
- D. All repair work will meet Local Building Code standards. At a minimum, health and safety hazards must be eliminated. For CDBG the priority will be the elimination of health and safety hazards. Sponsor may also require elimination of code deficiencies. When HOME funds are used for housing rehabilitation, the property must meet all applicable current codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. However, if certain components of the house are sound and were built to code prescribed at the time of installation, no repair or alteration will be made to those components. Section 8 Housing Quality Standards may be required on rentals by Sponsor when CDBG funds are used.

#### **3.2. ANTI-DISPLACEMENT POLICY AND RELOCATION ASSISTANCE**

Tenants will be informed of their eligibility for temporary relocation benefits if occupancy during rehabilitation constitutes a danger to health and safety of occupants or public danger or is otherwise undesirable because of the nature of the project. Relocated persons will receive increased housing costs, payment for moving and related expenses and appropriate advisory services, as detailed in the Sponsor's "Residential Anti-displacement and Relocation Assistance Plan" (**Attachment E**).

Owner-occupants are not eligible for temporary relocation benefits, unless health and safety threats are determined to exist by the Program Operator. In cases where relocation is determined to be necessary by the Sponsor/Program Operator, assistance may be provided for actual costs incurred from the applicant's loan proceeds or as a grant (**see**

**Section 4.4. for allowable grants).** HOME-funded projects will only provide relocation assistance in the form of a grant, which shall be included in the maximum assistance amount.

**Note: Relocation benefits are not a requirement under CalHome, but are acceptable and may be covered by loan proceeds.**

### **3.3.NOTIFICATION AND DISCLOSURES - Not required by CalHome**

- A. Occupants of units constructed prior to 1978 will receive proper notification of Lead-Based Paint (LBP) hazards as follows:

The Lead Hazard Information Pamphlet published by the EPA/HUD/Consumer Product Safety Commission will be given to all owners regardless of the cost of rehabilitation or paint test findings. If lead-based paint is found through testing or if presumed, a Notice of Lead Hazard Evaluation or Presumption will also be supplied. When Lead hazards are present, a Notice of Lead Hazard Reduction Activity and a Lead Hazard Evaluation Report will also be provided (**Attachment I**).

- B. Tenants located in properties that will receive housing rehabilitation will be provided a notice outlining their relocation rights and benefits (**Attachment E**).

## **4.0. THE PROGRAM LOAN**

### **4.1. MAXIMUM AMOUNT OF PROGRAM ASSISTANCE**

An eligible homeowner may qualify for the full cost of rehabilitation/reconstruction work needed to comply with State and local codes and ordinances. Maximum assistance shall not exceed the Sponsor's County maximum HOME Subsidy Limit per bedroom as designated by Section 221(d)(3). Any approved "grant" amount for lead-based paint evaluation and reduction activities, relocation assistance, and allowable activity delivery shall be included in the maximum assistance amount, but will not be a part of the loan. **See Attachment C. For CDBG funded Programs the maximum assistance for rehabilitation/reconstruction will not exceed \$190,430. For Programs funded with CalHome funds from 2008 or later, the maximum assistance for rehabilitation/reconstruction will not exceed \$60,000, which includes activity delivery.**

### **4.2. AFFORDABILITY PARAMETERS FOR HOMEOWNERS**

- A. Total indebtedness against property shall not exceed 100 percent of after-rehabilitation value as determined by "Estimates of value" or an appraisal, for CDBG or HOME projects. NOTE – All HOME and CDBG reconstruction projects require a full appraisal. An estimate of after-rehab value will be made prior to making a commitment of funds using the method outlined in Section 4.5. Note – This does not apply to CalHome projects.
- B. HOME funded units' after-rehabilitation value shall not exceed the HOME Program Purchase Price/Value Limit for Sponsor's County as updated by HUD and published on the HCD Website. **See Attachment C.**

For CalHome-funded Programs, the maximum after-rehab value of a home shall be set at 100% of the current median sales price of a single family home in the county in which the CalHome Program is located.

- C. Total indebtedness against property shall not exceed 105 percent of the after-rehabilitation value as determined by an appraisal for CalHome projects. An estimate of After-Rehab Value will be made prior to making a commitment of funds using the method outlined in Section 4.5. Note – This does not apply to HOME or CDBG projects.
- D. Any bid within 10% of the Program Operator’s estimate may be selected, otherwise an explanation must be provided to the file for a bid selected exceeding 10% of the estimate.

#### 4.3. RATES AND TERMS

- A. Homeowners are eligible for Deferred Payment Loans (DPL), at zero interest, evidenced by a Promissory Note and secured by a Deed of Trust, with no payback required for 30 years unless the borrower sells or transfers title or discontinues residence in the dwelling. Payments may be made voluntarily on a DPL, without penalty. **Note: If it is determined by the Sponsor that repayment of a CalHome or CDBG Program loan at the maturity date causes a hardship to the homeowner, the Sponsor may opt the following:**
  - 1. Amend the note and deed of trust to defer repayment of the amount due at maturity, that is balance of the original principal plus the accrued interest, for up to an additional 30 years (at 0% additional interest). This may be offered one time; or,
  - 2. Convert the debt at loan maturity; that is the balance of the original principal plus any accrued interest, to an amortized loan, repayable in 15 years at 0% additional interest.
- B. In the event that a homeowner sells, transfers title, or discontinues residence in the rehabilitated property for any reason, the loan shall become all due and payable.
- C. If the homeowner dies, and if the heir(s) to the property live(s) in the house and is/are income eligible, the heir(s) may be permitted, upon approval of the Sponsor, to assume the loan at the rate and terms the heir(s) qualifies for under current participation guidelines. Note: CalHome loans are not assumable.
- D. If the homeowner dies and the heir(s) is/are not income eligible, the loan becomes all due and payable. Note – CalHome loans are not assumable.
- E. If a homeowner converts the rehabilitated property to any residential-rental, commercial or non-residential use, the loan becomes all due and payable.
- F. As specified in the Rehabilitation Loan Agreement, all applicants who participate in the Program must maintain the property at post-rehabilitation conditions for the term of the loan. Should the property not be maintained accordingly, the loan shall be considered in default and becomes all due and payable, and if necessary, foreclosure proceedings will be initiated. A method of inspection will be established by the Sponsor.

- G. For CalHome, loans are not assumable. The following transfers of interest shall not require the repayment of the CalHome Program loan:
- 1) transfer to a surviving joint tenant by devise, descent, or operation of law on the death of a joint tenant;
  - 2) a transfer, in which the transferee is a person who occupies or will occupy the property, which is:
    - (i) a transfer where the spouse becomes an owner of the property;
    - (ii) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property; or
    - (iii) a transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property.

#### **4.4. GRANTS**

A. CDBG funded Programs may provide grants as follows:

1. Grants are available for any of the following qualifying factors, up to a maximum of \$15,000:
  - (a) Senior Citizen - at least 62 years old; or
  - (b) Handicapped - only for handicap modifications to a house with one or more physically handicapped occupants who would function more independently if such modifications were installed; or
  - (c) Lowest HUD Low/Mod individual – with gross annual income less than 50 percent of County median income; or
  - (d) Curb, gutter and sidewalk – when curb, gutter and/or sidewalk are required by City code; or
  - (e) Building permit and/or school fees; or
  - (f) Emergencies – failure of a major household component that would require the participant to live without basic plumbing, electrical, heating, cooling, or security. (These funds are not for use during a normal rehabilitation, they are for true emergency situations, such as a failed sewer line or water heater, blown electrical panel, etc).
2. Grants of up to \$10,000 are available for Fire Sprinkler installation and associated costs – for reconstruction projects, as required by CCR, Title 24, Part 2.5 of the 2010 California Residential Code.
3. Grants are available for the repair, replacement, or abandonment of domestic water wells and/or associated costs (such as water pump lowering) based on invoices from contracted well drillers and/or water pump installers. The Program Operator must approve a total cost estimate from a contracted well driller and/or water pump installer prior to financing approval to ensure cost reasonableness.

4. Grants of up to \$25,000 are available for Equity maintenance, if financing rehabilitation entirely with a loan would cause indebtedness to exceed 100% of after-rehabilitation value.
  5. Grants of up to \$7,500 are available for Asbestos containment and/or removal.
- B. HOME funded programs may provide grants to cover the costs of financing in excess of 100% equity. Equity will be determined by subtracting the total indebtedness from the after-rehabilitation value. Grants provided may be up to 25 percent of the applicable HUD per unit subsidy limit established pursuant to 24 CFR 92.250 (a). This grant amount is in addition to any grant funds provided pursuant to Section 4.4.C. and 4.4.D.
- C. HOME and CDBG provide grants for all actual costs of lead-based paint evaluation and reduction activities.
- D. HOME and CDBG provide grants for relocation assistance. See Relocation Assistance Plan, **Attachment E**.
1. Owner-Occupant – Limit of \$5,000.
- E. **Grants are not available in CalHome-funded Programs.**

#### 4.5. APPRAISAL

- A. The After-Rehab Value for rehabilitation projects is determined using the “Estimates of value” method. The Sponsor or Program Operator determines estimates of value based on the sale prices of at least three (3) comparable properties, sold within the last six months (within one year of the assistance date, which is the date the promissory note is signed), and located within one mile of the subject property. The participants’ file will include the estimate of value and document the basis for the value estimates. The purpose of the “Estimates of value” is to determine that the After-Rehabilitation Value Limit of the housing unit will not exceed the permitted amount per HCD Program regulations (**See Attachment C**). If three comparable properties cannot be found, or if there is any question regarding the After-Rehab Value, the ARV will be determined by a licensed appraiser, as described in Section 4.5.B. below.
- B. A licensed appraiser determines the After-Rehab Value for rehabilitation projects, when the “Estimates of value” method cannot be used. For rehabilitation projects the appraiser determines the value of the unit with the rehabilitation building plans and specifications included. For CDBG and CalHome, the cost of the appraisal will be included in the Borrower’s loan. For HOME, the cost of the appraisal will be paid by the Sponsor, not by the Borrower. The purpose of the appraisal is to determine that the After-Rehabilitation Value Limit of the housing unit will not exceed the permitted amount per HCD Program regulations (**See Attachment C**).
- C. The After-Rehab Value for reconstruction projects is determined by a licensed appraiser. The After-Rehab Value for reconstruction projects is determined by an appraisal completed off the building plans and specifications for the new home. For CDBG and CalHome, the cost of the appraisal will be included in the Borrower’s loan. For HOME, the cost of the appraisal will be paid by the Sponsor, not by the Borrower. The purpose of the appraisal is to determine that the After-Rehabilitation

Value Limit of the housing unit will not exceed the permitted amount per HCD Program regulations (**See Attachment C**).

#### 4.6. INSURANCE

##### 4.6.1. FIRE INSURANCE

The homeowner shall maintain fire insurance on the property for the duration of the Program loan(s). This insurance must be an amount adequate to cover all encumbrances on the property. The insurer must identify the Sponsor as Loss Payee for the amount of the Program loan(s). A binder shall be provided to the Sponsor.

In the event the applicant fails to make the fire insurance premium payments in a timely fashion, the Sponsor at their option, may make such payments for a period not to exceed 60 days. The Sponsor may, in its discretion and upon the showing of special circumstances, make such premium payments for a longer period of time. Should the Sponsor make any payments, it may, in its sole discretion, add such payments to the principal amount that the applicant is obligated to repay the Sponsor under this Program. The premium may be paid by the Program loan for one year. **Note: HOME funds cannot be used to pay insurance cost beyond those identified as initial loan costs. Note: CalHome funds cannot be used to pay insurance at any time.**

##### 4.6.2. FLOOD INSURANCE

For homes in a 100-year flood zone, the owner is required to maintain flood insurance in an amount adequate to secure the Program loan and all other encumbrances. This policy must designate the Sponsor as Loss Payee and a binder shall be provided to the Sponsor and maintained in the borrowers file. The premium may be paid by the Program loan for one year. **Note: HOME funds cannot be used to pay insurance cost beyond those identified as initial loan costs. Note: CalHome funds cannot be used to pay insurance at any time.**

#### 4.7. LOAN SECURITY

- A. Loan security for all owner-occupied rehabilitation stick-built homes will be secured by the real property and improvements, and will also include a Deed of Trust, Promissory Note and Loan Agreement in favor of the Sponsor.
- B. A manufactured home in a mobile home park or on leased land that is not on a permanent foundation will be secured by an HCD 480.7 or an HCD 484 Statement of Lien, and will also include a Promissory Note and Loan Agreement.
- C. Entering a subordinate lien is acceptable. However, the Sponsor will not subordinate a first lien position once established.

#### 5.0. PROGRAM LOAN SERVICING AND MAINTENANCE

##### 5.1. PAYMENTS ARE VOLUNTARY

Borrowers may begin making voluntary payments at any time, without penalty.

## 5.2. RECEIVING LOAN REPAYMENTS

A. Program loan payments will be made to:

*The City of Chowchilla  
130 South Second Street  
Chowchilla, CA 93610*

B. The Sponsor will be the receiver of loan payments or recapture funds and will maintain a financial record-keeping system to record payments and file statements on payment status. Payments shall be deposited and accounted for in the Sponsor's appropriate Program Income Account, as required by all three HCD Programs. The Program Sponsor will accept loan payments from borrowers prepaying deferred loans, from borrowers making payments in full upon sale or transfer of the property, and homeowners of tenant occupied units. All loan payments are payable to the Sponsor. The Sponsor may at its discretion, enter into an agreement with a third party to collect and distribute payments and/or complete all loan servicing aspects of the Program.

## 5.3. LOAN SERVICING POLICIES AND PROCEDURES

See **Attachment F** for local loan servicing policies and procedures. While the attached policy outlines a system that can accommodate a crisis that restricts borrower repayment ability, it should in no way be misunderstood: The loan must be repaid. All legal means to ensure the repayment of a delinquent loan as outlined in the Loan Servicing Policies and Procedures will be pursued.

## 5.4. LOAN MONITORING PROCEDURES

Homeowners will be required to submit each of the following to the Sponsor, annually, for the term of the loan, which will be reviewed and certified by the Sponsor or its designated Loan Servicing Agent:

- A. Proof of occupancy in the form of a copy of a current utility bill;
- B. Statement of unit's continued use as a residence;
- C. Declaration that other title holders do not reside on the premises;
- D. Verification that Property Taxes are current; and
- E. Verification of current required insurance policies

## 5.5. DEFAULT AND FORECLOSURE

If an owner defaults on a loan, and foreclosure procedures are instituted, they shall be

carried out according to the Program Foreclosure Policy adopted by the Sponsor, and attached to these guidelines as **Attachment G**.

## **5.6. SUBORDINATIONS**

The Sponsor may approve a request to subordinate a loan, in order for the owner to refinance the property, under the following conditions:

- A. The lien position of the Sponsor loan will remain the same or be advanced.
- B. The new primary loan is no greater than the balance of the loan being refinanced, except the costs of refinancing the loan may be added to the principal balance.
- C. The purpose of the new primary loan is to reduce the interest rate being paid and/or reduce the owner's payment.
- D. The refinanced loan must have an impound account for taxes and insurances.
- E. The refinancing terms must be acceptable to the Sponsor.
- F. Only CDBG allows refinancing with CDBG funds in conjunction with rehabilitation of the unit

## **6.0. CONSTRUCTION**

### **6.1. STANDARDS**

- A. All repair work will meet Local Building Code standards. For CDBG and CalHome, the priority will be the elimination of health and safety hazards. Sponsor may also require elimination of code deficiencies. When HOME funds are used for housing rehabilitation, all health and safety hazards must be eliminated and the property must meet all applicable current codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. However, if certain components of the house are sound and were built to code prescribed at the time of installation, no repair or alteration will be made to those components.
- B. Contracting Process
  1. Contracting will be done on a competitive basis.
  2. The homeowner will be the responsible agent, but the Sponsor and/or its Program Operator will prepare the work write-up, prepare and advertise the bid package, and assist the owner in negotiating the construction contract.
  3. The Sponsor does not warrant any construction work, or provide insurance coverage.
- C. Approved Contractors
  1. Contractors are required to be licensed with the State of California, and be active and in good standing with the Contractors' License Board and the Sponsor.
  2. Contractors will be checked against HUD's list of federally debarred contractors. No award will be granted to a contractor on this list.

3. Contractors must have public liability and property damage insurance, and worker's compensation, unemployment and disability insurance, to the extent required by State law.
4. Contractor must agree to comply with all federal and state regulations.

#### D. Sweat Equity Labor

The Sponsor does not allow sweat equity participation

- E. Occupants of units constructed prior to 1978 will receive proper notification of Lead-Based Paint (LBP) hazards as identified in Section 3.3.A. **Note: Units funded solely with CalHome funds are not required to comply with LBP regulations.**
- F. Units constructed prior to 1978 will also be inspected according to the following HUD regulations. **Note: Units funded solely with CalHome funds are not required to comply with LBP regulations.** For CDBG funded Programs needing guidance, please refer to Chapter 20 in the CDBG Grant Management Manual, Lead-Based Paint Requirements.
  1. If the total amount of Federal assistance or the total amount of rehabilitation hard cost is up to and including \$5,000, the following is required:
    - (a) Paint testing or presume LBP;
    - (b) Clearance of disturbed work areas; and
    - (c) Notifications listed in Section 3.3.A.
  1. If the amount of Federal assistance or the total amount of rehabilitation hard cost is more than \$5,000 up to and including \$25,000, the following is required:
    - (a) Paint testing or presume LBP;
    - (b) Risk assessment; and
    - (c) Clearance of unit.

If LBP hazards are identified, interim controls will be implemented. This level will also require a notice of "Abatement of Lead Hazards Notification" at least five days prior to starting work.

2. If the amount of Federal assistance or the total amount of rehabilitation hard cost is more than \$25,000, the following is required:
  - (a) Items (a), (b), and (c) of 2. above;
  - (b) Abatement of all LBP hazards identified or produced;
  - (c) Use of interim controls on exterior surfaces not disrupted by rehab; and all notices listed above in Sections 3.3.A. and 6.1.F.2.
3. All paint tests that result in a negative finding of lead-based paint are exempt from any and all additional requirements. If defective paint surfaces are found, they will be properly treated or abated. A State-certified Inspector/Assessor will perform all paint testing, risk assessments, and clearances. A trained supervisor may oversee interim controls; however, a certified supervisor and workers will perform all abatement.

## 6.2. ELIGIBLE CONSTRUCTION COSTS

“Rehabilitation” means, in addition to the definition in Section 50096 of the Health and Safety Code, repairs and improvements to a manufactured home necessary to correct any condition causing the home to be substandard pursuant to Section 1704 of Title 25, California Code of Regulations. Rehabilitation also includes room additions to alleviate overcrowding. Rehabilitation also means repairs and improvements where necessary to meet any locally-adopted standards used in local rehabilitation Programs. Rehabilitation does not include replacement of personal property.

Rehabilitation includes reconstruction. Federal law and policy allows the use of HOME funds to demolish and reconstruct owner-occupied residential structures. Reconstruction is defined as the demolition and construction of a structure. The Sponsor and/or Program Operator must document that the reconstruction costs are less than the cost to rehabilitate the existing substandard housing. This will be done using the State’s Test for Reconstruction (see Attachment J).

Additionally, for HOME- and CalHome-funded projects the Sponsor must determine that the project’s value after reconstruction (housing and land combined) is less than the Maximum After-Rehabilitation Value for the Sponsor (see Attachment C).

The residential structure to be reconstructed must be a structure with cooking, eating, sleeping, and sanitation facilities which has been legally occupied as a residence within the preceding 12 months. Fifth wheels or recreational vehicles, for example, are not considered dwellings and therefore are not eligible under this Program.

For HOME, like for like requires that the structure being demolished must be replaced with a like structure (replace manufactured housing with manufactured housing, for example). However, additions may be approved by the HCD Program when required by Codes/Ordinances or to alleviate overcrowding. **(See Attachment C)**

Temporary relocation benefits must be planned for and budgeted into the total allowable subsidy for the project, but if required would be in the form of a grant.

Depending on the outcome of the Statutory Worksheet (Environmental test), a reconstructed project may require Authority from the state before funds are committed to the project.

Allowable rehabilitation\reconstruction costs include:

- A. Cost of building permits and other related government fees.
- B. Cost of architectural, engineering, and other consultant services which are directly related to the rehabilitation of the property.
- C. For CDBG and CalHome, costs associated with the repair, replacement, or abandonment of domestic water wells and/or associated costs (such as water pump lowering)

- D. Rehabilitation or Replacement of a manufactured home not on a permanent foundation. Rehabilitation of a manufactured home may include the replacement of the unit with a used manufactured home and the cost to repair it, as long as the unit has been occupied and not used as a demonstration model. Should the unit meet the criteria for reconstruction a new manufactured home can be used for replacement and all cost associated with the purchase and transportation can be added to the loan. For CalHome and CDBG, manufactured housing on permanent foundations may be replaced by stick built structures.

CalHome requires the following for manufactured housing/mobile home to stick built replacements:

1. Verification that the owner of the mobile home is also the landowner. The registration certificate and a preliminary title report must be submitted with the borrower summary package. Any past due registration fees must be paid.
  2. Provide written justification as to why the mobile home is being replaced and not repaired.
  3. Ensure the new structure is “reasonable” for the size of the current household.
- E. Owner-occupied rehabilitation activity delivery fees, pursuant to Section 7733(f), as reimbursement to the Sponsor for the actual costs of services rendered to the homeowner that are incidentally but directly related to the rehabilitation work (e.g. planning, engineering, construction management, including inspections and work write-ups). Activity delivery fees are considered part of the total financing; however, are not part of the loan to the borrower.
- F. Rehabilitation will address the following issues in the order listed. Eligible costs are included for each item.
1. Health and Safety Issues

Eligible costs include, but are not limited to, energy-related improvements, lead-based paint hazard evaluation and reduction activities, improvements for handicapped accessibility, repair or replacement of major housing systems. A driveway may be considered part of rehabilitation if it is determined to be a health and safety issue. Note – CalHome energy-related improvements must be done in conjunction with a related and CalHome eligible repair.

2. Code and Regulation Compliance

Eligible costs include, but are not limited to, additional work required to rehabilitate and modernize a home, and bring it into compliance with current building codes and regulations. Painting and weatherization are included.

3. Demolition

Eligible costs include, but are not limited to, the tear down and disposal of dilapidated structures when they are a part of the reconstruction of an affordable housing unit. If a garage or carport is detached, it may not be rehabilitated but

may be demolished, if it is determined to be a health and safety issue.

#### 4. Upgrades

Eligible costs include additional bedrooms and bathrooms if the need can be demonstrated per HUD's or Sponsor's overcrowding guidelines. **(See Attachment C)**. The Program will not fund additions to a home for a den or family room, or for any luxury items.

#### 5. General Property Improvements

General property improvements may include replacement of a stove, oven, refrigerator, dishwasher, and/or garbage disposal; and repair or installation of fencing. Items such as refrigerators, stoves, and dishwashers that are not built in may be replaced due to incipient failure, or documented medical condition of the homeowner, and must be of moderate quality. Luxury items (i.e., granite countertops) and certain free standing appliances (i.e., washers and dryers) are not allowed.

For HOME and CalHome, replacement of a refrigerator is not allowed. For CalHome, repair or installation of fencing is not allowed.

All improvements must be physically attached to the property and permanent in nature. Non-code property improvements (fencing, landscaping, driveway, etc.) will be *limited to 15 percent* of the rehabilitation financing amount. (Note – CalHome funds generally may not be used for non-code property improvements.) Any cash contribution by the property owner will be considered a general property improvement and be included in this percentage.

#### 6. Rehabilitation Standards

All repair work related to health and safety conditions will meet Local Building Code standards. The priority will be the elimination of health and safety hazards and code compliance.

### 6.3. ELIGIBLE PROJECT COSTS/ACTIVITY DELIVERY COSTS

Examples of eligible project related costs for all expenses related to the paperwork for processing and insuring a loan application are listed below. For HOME, these costs are considered activity delivery costs and may not be charged to the homeowner's loan.

- Appraisal
- Property Report/Title Insurance
- Building Plan
- Termite Report
- Land Survey
- Grading Plan
- Recording Fees

- Flood Insurance, as applicable (not allowed with CalHome or HOME funds)

Costs are based on charges currently incurred by the Sponsor, or the Program Operator, for these products and/or services. For CDBG and CalHome, any cost increases charged to the Sponsor/Program Operator for these products and/or services will be passed on to the homeowner and included in the loan. All fees are subject to change and are driven by the market.

#### **6.4. REPAIR CALLBACKS**

Contractors will comply with State law regarding all labor and material warranties. All labor and material shall meet FHA minimum specifications.

#### **7.0. EXCEPTIONS AND SPECIAL CIRCUMSTANCES**

##### **7.1. AMENDMENTS**

The Sponsor may make amendments to these Participant Guidelines. Any changes made shall be in accordance with federal and state regulations, shall be approved by the Sponsor's Loan Committee and/or local governing body and submitted to HCD for approval.

##### **7.2. EXCEPTIONS**

Any case to which a standard policy or procedure, as stated in the guidelines, does not apply or an applicant treated differently from others of the same class would be an exception.

##### **7.2.1 PROCEDURES FOR EXCEPTIONAL CIRCUMSTANCES**

- A. The Sponsor or its Program Operator may initiate consideration of an exception and prepare a report. This report shall contain a narrative, including the Sponsor's/Program Operator's recommended course of action and any written or verbal information supplied by the applicant.
- B. The Sponsor shall make a determination of the exception based on the recommendation of the Program Operator. The request can be presented to the Sponsor's loan committee and/or governing body for decision.

#### **8.0. DISPUTE RESOLUTION AND APPEALS PROCEDURES**

##### **8.1. PROGRAM COMPLAINT AND APPEAL PROCEDURE**

Complaints concerning the Sponsor's Rehabilitation Program should be made to the Program Operator first. If unresolved in this manner, the complaint or appeal shall be made in writing and filed with the Sponsor. The Sponsor will then schedule a meeting with the Sponsor's Loan Review Committee. Their written response will be made within thirty (30) working days. If the applicant is not satisfied with the committee's decision, a request for an appeal may be filed with the local governing body. Final appeal may be filed in writing with HCD within one year after denial or the filing of the Project Notice of Completion.

**8.2. GRIEVANCES BETWEEN PARTICIPANTS AND CONSTRUCTION CONTRACTOR**

Contracts signed by the contractor and the participant include the following clause, which provides a procedure for resolution of grievances:

Any controversy arising out of or relating to this Contract, or the breach thereof, shall be submitted to binding arbitration in accordance with the provisions of the California Arbitration Law, Code of Civil Procedure 1280 et seq., and the Rules of the American Arbitration Association. The arbitrator shall have the final authority to order work performed, to order the payment from one party to another, and to order who shall bear the costs of arbitration. Costs to initiate arbitration shall be paid by the party seeking arbitration. Notwithstanding, the party prevailing in any arbitration proceeding shall be entitled to recover from the other all attorney's fees and costs of arbitration.

**ATTACHMENT A**

**24 CFR Part 5 ANNUAL INCOME INCLUSIONS AND EXCLUSIONS – FOR HOME & CDBG**

**Part 5 Inclusions**

This table presents the Part 5 income inclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

General Category	(Last Modified: January 2005)
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment (except for certain exclusions, listed in Income Exclusions, number 14).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except for certain exclusions, listed in Income Exclusions, number 3).
6. Welfare Assistance	Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income: <ul style="list-style-type: none"> <li>• Qualify as assistance under the TANF program definition at 45 CFR 260.31; and</li> <li>• Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c).</li> </ul> If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of: <ul style="list-style-type: none"> <li>• the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; <b>plus:</b></li> <li>• the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage.</li> </ul>
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special day, and allowances of a member of the Armed Forces (except as provided in number 8 of Income Exclusions).

## Part 5 exclusions

This table presents the Part 5 income exclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

General Category	(Last Modified: January 2005)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (except for certain exclusions, listed in Income Inclusions, number 5).
4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in Aides	Income of a live-in aide (as defined in 24 CFR 5.403).
6. Income from a Disabled Member	Certain increase in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671 (a)).
7. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.
8. "Hostile Fire" Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9. Self-Sufficiency Program Income	<ul style="list-style-type: none"> <li>a. Amounts received under training programs funded by HUD.</li> <li>b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).</li> <li>c. Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program.</li> <li>d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time.</li> <li>e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment-training program.</li> </ul>
10. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
11. Reparation Payments	Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
12. Income from Full-time Students	Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse).
13. Adoption Assistance Payments	Adoption assistance payments in excess of \$480 per adopted child.
14. Social Security & SSI Income	Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.

<p>17. Other Federal Exclusions</p>	<p>Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:</p> <ul style="list-style-type: none"> <li>▶ The value of the allotment provided to an eligible household under the Food Stamp Act of 1977;</li> <li>▶ Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through AmeriCorps, VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);</li> <li>▶ Payments received under the Alaskan Native Claims Settlement Act;</li> <li>▶ Income derived from the disposition of funds to the Grand River Band of Ottawa Indians;</li> <li>▶ Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;</li> <li>▶ Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program.</li> <li>▶ Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);</li> <li>▶ The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands;</li> <li>▶ Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs;</li> <li>▶ Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, Older American Community Service Employment Program);</li> <li>▶ Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the <u>In Re Agent Orange</u> product liability litigation, M.D.L. No. 381 (E.D.N.Y.);</li> <li>▶ Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;</li> <li>▶ The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990;</li> <li>▶ Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps).</li> <li>▶ Payments by the Indians Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;</li> <li>▶ Allowances, earnings, and payments to AmeriCorps participants under the National and Community Services Act of 1990;</li> <li>▶ Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;</li> <li>▶ Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and</li> <li>▶ Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.</li> </ul>
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**ATTACHMENT A-1****Title 25 Section 6914 Gross Income Inclusions – For CalHome activities**

“Gross income” shall mean the anticipated income of a person or family for the twelve-month period following the date of determination of income.

“Income” shall consist of the following:

- (a) Except as provided in subdivision (b), “Exclusions”, all payments from all sources received by the family head (even if temporarily absent) and each additional member of the family household who is not a minor shall be included in the annual income of a family. Income shall include, but not be limited to:
- (1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses;
  - (2) The net income from operation of a business or profession or from rental or real or personal property (for this purpose, expenditures for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business);
  - (3) Interest and dividends;
  - (4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
  - (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation and severance pay;
  - (6) Public Assistance. If the public assistance payment includes any amount specifically designated for shelter and utilities which is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:
    - (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus
    - (B) The maximum amount which the public assistance agency could in fact allow for the family for shelter and utilities,
  - (7) Periodic and determinable allowances such as alimony and child support payments, and regular contributions or gifts from persons not residing in the dwelling;

All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the family or spouse.

**Title 25 Section 6914 Gross Income Exclusions**

- (b) The following items shall not be considered as income:
  - (1) Casual, sporadic or irregular gift items;
  - (2) Amounts which are specifically for or in reimbursement of the cost of medical expenses;
  - (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;
  - (4) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans, not used for the above purposes of which are available for subsistence are to be included in income;
  - (5) The special pay to a serviceman head of a family away from home and exposed to hostile fire;
  - (6) Relocation payments made pursuant to federal, state, or local relocation law;
  - (7) Foster child care payments;
  - (8) The value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is an excess of the amount actually charged the eligible household;
  - (9) Payments received pursuant to participation of the following volunteer programs under the ACTION Agency:
    - (A) National Volunteer Antipoverty Programs which include VISTA, Service Learning Programs and Special Volunteer Programs.
    - (B) National Older American Volunteer Program for persons aged 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, older American Community Services Program, and National Volunteer Program to Assist Small Business Experience, Service Corps of Retired Executive (SCORE) and Active Corps of Executives (ACE).

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**ATTACHMENT B**  
**PART 5 ANNUAL INCOME NET FAMILY ASSET INCLUSIONS AND EXCLUSIONS**

This table presents the Part 5 asset inclusions and exclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

Statements from 24 CFR Part 5 – Last Modified: January 2005

**Inclusions**

1. Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average 6-month balance. Assets held in foreign countries are considered assets.
2. Cash value of revocable trusts available to the applicant.
3. Equity in rental property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g., broker fees) that would be incurred in selling the asset. Under HOME, equity in the family's primary residence is not considered in the calculation of assets for owner-occupied rehabilitation projects.
4. Cash value of stocks, bonds, Treasury bills, certificates of deposit and money market accounts.
5. Individual retirement, 401(K), and Keogh accounts (even though withdrawal would result in a penalty).
6. Retirement and pension funds.
7. Cash value of life insurance policies available to the individual before death (e.g., surrender value of a whole life or universal life policy).
8. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
9. Lump sum or one-time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements and other amounts not intended as periodic payments.
10. Mortgages or deeds of trust held by an applicant.

**Exclusions**

1. Necessary personal property, except as noted in number 8 of Inclusions, such as clothing, furniture, cars and vehicles specially equipped for persons with disabilities.
2. Interest in Indian trust lands.
3. Assets not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household and that other person is responsible for income taxes incurred on income generated by the asset.
4. Equity in cooperatives in which the family lives.
5. Assets not accessible to and that provide no income for the applicant.
6. Term life insurance policies (i.e., where there is no cash value).
7. Assets that are part of an active business. "Business" does not include rental of properties that are held as an investment and not a main occupation.

**ATTACHMENT C**

**HOME MAXIMUM PURCHASE PRICE / AFTER-REHAB VALUE LIMIT  
HOME Program Limits as of 4/13/15**

COUNTY NAME	Existing
MADERA	\$181,000

**CALHOME MAXIMUM SALES PRICE / VALUE LIMIT**

For homes assisted with a CalHome Program loan, the maximum allowable sales price or the maximum after-rehab value of a home shall be set at 100% of the current median sales price of a single family home in the County in which the CalHome Program is located. The source of the data for the maximum sales price/value limits that will be used will be the FHA 203(b) one-family limits.

**HOME SUBSIDY LIMITS PER UNIT – SECTION 221(d)(3) FOR MADERA COUNTY  
(Limits are effective 11/18/15)**

COUNTY NAME	0 Bedroom	1-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom
Madera County	\$140,107	\$160,615	\$195,305	\$252,662	\$277,344

**CURRENT INCOME LIMITS FOR THE AREA (FOR HOME/CDBG)  
(Limits are effective 6/1/15)**

<i>Number of Persons in Household</i>								
	1	2	3	4	5	6	7	8
80% of AMI	\$31,850	\$36,400	\$40,950	\$45,500	\$49,150	\$52,800	\$56,450	\$60,100

**CURRENT INCOME LIMITS FOR THE AREA (FOR CALHOME)  
(Limits are effective 4/15/15)**

<i>Number of Persons in Household</i>								
	1	2	3	4	5	6	7	8
80% of AMI	\$32,450	\$37,050	\$41,700	\$46,300	\$50,050	\$53,750	\$57,450	\$61,150

\*Sponsor will insert the limits for the county in which the Program is located, and will update the income limits annually as HCD provides new information. The link to the official, HCD-maintained, income limits is:

<http://www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html>

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**SPONSOR STANDARDS FOR BEDROOM AND BATHROOM ADDITIONS TO  
ALLEVIATE OVERCROWDING**

<b>Maximum No. of Persons in the Household</b>	<b>Number of Bedrooms</b>	<b>Number of Bathrooms</b>
<b>1</b>	<b>SRO</b>	<b>1</b>
<b>1</b>	<b>0-BR</b>	<b>1</b>
<b>2</b>	<b>1-BR</b>	<b>1</b>
<b>4</b>	<b>2-BR</b>	<b>2</b>
<b>6</b>	<b>3-BR</b>	<b>2</b>
<b>8</b>	<b>4-BR</b>	<b>3</b>
<b>10</b>	<b>5-BR</b>	<b>3</b>
<b>12</b>	<b>6-BR</b>	<b>4</b>

- Opposite sex children under 6 years of age may share a bedroom, up to 2 children per bedroom.
- Opposite sex children 6 years of age and older may have their own bedroom.
- Children shall be permitted a separate bedroom from their parents.
- Same sex children of any age may share a bedroom, up to 2 children per bedroom.
- Adults not in a partner relationship may have their own bedroom.
- 4 or more people – a second bathroom may be added.
- 8 or more people – a third bathroom may be added.
- Same rules apply to mobile home units.

**The chart above is used as a guide to overcrowding.**

**ATTACHMENT D**

**HOUSING REHABILITATION MARKETING PLAN**

**SUMMARY**

The Sponsor will continue its efforts to market the Housing Rehabilitation Program in a manner that will reach all community members.

All marketing related to the Housing Rehabilitation Program is publicized in both English and Spanish. All marketing materials include information identifying the Sponsor's commitment to fair housing laws and affirmative marketing policy, and are widely distributed. Equal opportunity is emphasized in written materials and oral presentations. A record is maintained by the Sponsor identifying what marketing materials are used, and when and where they are distributed.

Forms of marketing may include fliers, brochures, newspaper ads, articles and public service announcements. Fliers and brochures are distributed at local government buildings, other public buildings and through the mail, as well as to businesses that assist those not likely to apply without special outreach. Advertisements and articles are published in newspapers that are widely circulated within the community.

Established working relationships with local lending agencies also aid in informing the public by facilitating the distribution of informational fliers to households seeking financial assistance for repairs that are unable to obtain conventional financing.

Informational meetings are offered to potential participants to explain Program requirements. Often, minimal formal outreach efforts are required as the need for assistance generally exceeds funds available. However, marketing measures are actively performed in order to maintain a healthy interest list.

Characteristics on all applicants and participants are collected and compared with the Sponsor's demographics. Should the Sponsor find that there are underserved segments of the population, a plan to better serve them will be developed and implemented.

**MARKETING FORMS**

- Fliers
- Brochures
- Newspaper Ads and Articles
- Public Service Announcements
- Public Informational Meetings

**MARKETING VENUES**

- Local Government Buildings
- Local Public Services Buildings
- Private Businesses
- Lending Agencies
- Real Estate Offices
- Newspaper
- Radio
- Mail

**ATTACHMENT E****RESIDENTIAL ANTI-DISPLACEMENT AND TEMPORARY RELOCATION PLAN  
Version 2**

The Housing and Community Development Act of 1974, as amended, and the National Affordable Housing Act of 1990, require all grantees of Community Development Block Grant (CDBG) funds or Home Investment Partnership (HOME) funds to follow a written Residential Anti-displacement and Relocation Assistance Plan (Plan) for any activities which could lead to displacement of occupants whose property is receiving funds from these or other federal funding source. Having been developed in response to both aforesaid federal legislations, this Plan is intended to inform the public of the compliance of the City of Chowchilla (Sponsor) with the requirements of federal regulations 24 CFR 570.606 under state recipient requirements and Section 104(d) of the Housing and Community Development Act of 1974 and 24 CFR 92 of the HOME federal regulations. The Plan will outline reasonable steps, which the Sponsor will take to minimize displacement and ensure compliance with all applicable federal and state relocation requirements. The Sponsor's governing body has adopted this plan via a formal resolution.

This Plan will affect rehabilitation activities funded by the U.S. Department of Housing and Urban Development (HUD) under the following Program titles: HOME, CDBG, Urban Development Action Grant (UDAG), Special Purpose Grants, Section 108 Loan Guarantee Program, and such other grants as HUD may designate as applicable, which take place within the Sponsor's jurisdiction limits.

The Sponsor will provide permanent relocation assistance to all eligible "displaced" households either owner occupied or rental occupied units which are permanently displaced by the housing rehabilitation Program (See **Section E below**). In addition, the Sponsor will replace all eligible occupied and vacant occupiable low income group dwelling units demolished or converted to a use other than low income group housing as a direct result of rehabilitation activities. This applies to all units assisted with funds provided under the Housing and Community Development Act of 1974, as amended, and as described in the Federal Regulations 24 CFR 570.496(a), Relocation, Displacement and Acquisition: Final Rule dated July 18, 1990 (Section 104(d)) and 49 CFR Part 24, Uniform Relocation Assistance (URA) and Real Property Acquisition Regulations Final Rule and Notice (URA) dated March 2, 1989.

All Sponsor Programs/projects will be implemented in ways consistent with the Sponsor's commitment to Fair Housing. Participants will not be discriminated against on the basis of race, color, religion, age, ancestry, national origin, sex, familial status, or handicap. The Sponsor will provide equal relocation assistance available 1) to each HUD Low/Mod individual household displaced by the demolition or rehabilitation of housing or by the conversion of a HUD Low/Mod individual dwelling to another use as a direct result of assisted activities; and 2) to each separate class of HUD Low/Mod individual persons temporarily relocated as a direct result of activities funded by HUD Programs.

A. Minimizing Permanent Displacement and Temporary Relocation Resulting from Housing Rehabilitation or Reconstruction Activities

Consistent with the goals and objectives of activities assisted under the Act, the Sponsor will take the following steps to minimize the displacement of persons from their homes during housing rehabilitation or reconstruction funded by HUD Programs:

1. Provide proper notices with counseling and referral services to all tenants so that they understand their relocation rights and receive the proper assistance. When necessary, assist permanently displaced persons to find alternate housing in the neighborhood.

2. Stage rehabilitation of assisted households to allow owner occupants and/or tenants to remain during minor rehabilitation.
3. Encourage owner investors to temporarily relocate tenants to other available safe and sanitary vacant units on the project site area during the course of rehabilitation or pay expenses on behalf of replaced tenants.
4. Work with area landlords, real estate brokers, and/or hotel/motel managements to locate vacancies for households facing temporary relocation.
5. When necessary, use public funds, such as CDBG funds, to pay moving costs and provide relocation/displacement payments to households permanently displaced by assisted activities.

**B. Lead Based Paint Mitigation Which Causes Temporary Relocation:**

On September 15, 2000, the Final Rule for Lead Based Paint Hazard Control went into effect. Among other things, it requires that federally-funded rehabilitation must use safe work practices so that occupants and workers can be protected from lead hazards. **At no time should the tenant-occupant(s) be present in work areas or designated adjacent areas while LHC activities are taking place in any dwelling unit interior, common area, or exterior.** As such, occupants may not be allowed to remain in their units during the time that lead-based paint hazards are being created or treated. Once work that causes lead hazards has been completed, and the unit passes clearance, the occupants can return. **The tenant-occupants may not reoccupy a work area or adjacent area until post-lead hazard reduction clearance standards have been achieved and verified with laboratory results.** The final rule allows for certain exceptions: Programs:

1. The work will not disturb lead-based paint, or create dust-lead or soil-lead hazard; or
2. The work is on exterior only and openings are sealed to prevent dust from entering the home, the work area is cleaned after the work is completed, and the residents have alternative lead free entry; or
3. The interior work will be completed in one period of less than 8-daytime hours and the work site is contained to prevent the release of dust into other areas of the home; or
4. The interior work will be completed within five (5) calendar days, the work site is contained to prevent the release of dust, the worksite and areas within 10 feet of the worksite are cleaned at the end of each day to remove any visible dust and debris, and the residents have safe access to kitchen and bath and bedrooms.

If temporary relocation assistance is not provided because the Sponsor believes that the project meets one of the above criteria, then proper documentation must be provided in the rehabilitation project file to show compliance. It is up to the Sponsor to ensure that the owner occupant or tenant in the project does not get impacted by lead paint mitigation efforts. In most cases where lead paint mitigation is taking place, occupants (tenants or owners) will be strongly encouraged to relocate even for just a few days until a final lead clearance can be issued by a certified lead based paint assessor. Occupants who are temporarily relocated because of lead based paint mitigation are entitled to the same relocation assistance as those who are relocated because of substantial rehabilitation or reconstruction

activities.

**C. Temporary Relocation of Owner Occupants:**

Owner occupants are not allowed to stay in units which are hazardous environments during lead based paint mitigation. When their home is having lead based paint mitigation work done which will not make it safe to live in, then they are eligible for temporary relocation assistance up to \$5,000, which will be provided as a grant. In the same way, a unit requiring substantial rehabilitation (with or without lead based paint mitigation) which will not allow the family to access a bath or kitchen facility, or if the unit is being demolished and reconstructed, then the family will be eligible for temporary relocation assistance up to \$5,000, which will be provided as a grant.

The housing rehabilitation loan specialist and/or the rehabilitation construction specialist will complete a temporary relocation assistance form (**See Appendix C**) to document that the owner occupant understands that they must relocate during the course of construction and what expenses they wish to be reimbursed for as part of their relocation. Relocation Assistance is a reimbursement of actual expenses and must be supported by invoices. In addition, all relocation costs must be allocable and reasonable. Multiple options related to moving expenses and rental units will be explored and the lowest cost option will be selected. Owner occupants are encouraged to seek free moving assistance. If free assistance is not available, the owner occupant's family and friends can be reimbursed as long as documentation exists in the participant file showing the cost to be less than the alternatives (i.e., moving company, moving/storage pod, etc.). Relocation for a rental unit will be based on reasonableness of accommodations and market rents.

At the time of doing the work write-up, the Sponsor and Owner occupant will estimate the cost for temporary relocation. If unforeseen circumstances make it appear that the estimated amount will not cover the cost of temporary relocation, written change orders will be required. The change order will state the change and dollar value for the change. The change order must be signed by both the contractor and the Owner occupant, and submitted to the Program Operator for approval. If the change order exceeds the approved grant amount, a report and request for additional Temporary Relocation grant funds may be presented to the Sponsor's Loan Review Committee for approval prior to the Program Operator signing-off on the change order.

**D. Temporary Relocation of Residential Tenants:**

If continued occupancy during rehabilitation is judged to constitute a substantial danger to health and safety of the tenant or the public, or is otherwise undesirable because of the nature of the project, the tenant may be required to relocate temporarily. The contract administrator or rehabilitation specialist will make determination of the need for temporary relocation. The temporary relocation period will not exceed 180 days. All conditions of temporary relocation will be reasonable. Any tenant required to relocate temporarily will be helped to find another place to live which is safe, sanitary and of comparable value and they have the first right to move back into the original unit being rehabilitated at the same rent or lower. He or she may move in with family and friends and still receive full or partial temporary assistance based on eligible cost incurred. The housing rehabilitation loan specialist and/or the rehabilitation specialist will ensure that each tenant-occupied unit under the Program will receive a General Information Notice (GIN) (as soon as possible after a loan application is received) and the tenant will receive a Notice of Non-displacement (after loan approval), and each tenant-occupied unit will have a temporary relocation assistance form completed for them. (**See Appendix C**). These notices will document that each tenant understands what their relocation rights are, and if they must

relocate during the course of construction, that they receive the proper counseling and temporary relocation assistance.

A tenant receiving temporary relocation shall receive the following:

1. Increased housing costs (e.g. rent increase, security deposits) and
2. Payment for moving and related expenses, as follows:
  - a. Transportation of the displaced persons and personal property within 50 miles, unless the grantee determines that farther relocation is justified;
  - b. Packing, crating, unpacking, and uncrating of personal property;
  - c. Storage of personal property, not to exceed 12 months, unless the grantee determines that a longer period is necessary;
  - d. Disconnection, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property;
  - e. Insurance for the replacement value of personal property in connection with the move and necessary storage;
  - f. The replacement value of property lost, stolen or damaged in the process of moving (not through the fault of the displaced person, his or her agent, or employee) where insurance covering such loss, theft or damage is not reasonably available;
  - g. Reasonable and necessary costs of security deposits required to rent the replacement dwelling;
  - h. Any costs of credit checks required to rent the replacement dwelling;
  - i. Other moving related expenses as the grantee determines to be reasonable and necessary, except the following ineligible expenses:
    - 1) Interest on a loan to cover moving expenses; or
    - 2) Personal injury; or
    - 3) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Grantee; or
    - 4) Costs for storage of personal property on real property already owned or leased by the displaced person before the initiation of negotiations.

**E. Rehabilitation Activities Requiring Permanent Displacement**

The Sponsor's rehabilitation Program will not typically trigger permanent displacement and permanent displacement activities fall outside of the scope of this plan. If a case of permanent displacement is encountered, then the staff responsible for the rehabilitation Program will consult with Sponsor's legal counsel to decide if they have the capacity to conduct the permanent displacement activity. If local staff does not have the capacity, then a professional relocation consultant will be hired to do the counseling and assistance determination and implementation. If local staff does wish to do the permanent displacement activity then they will consult and follow the HUD Relocation Handbook 1378.

**F. Rehabilitation Which Triggers Replacement Housing**

If the Sponsor's rehabilitation Program assists a property where one or more units are eliminated then under Section 104 (d) of the Housing and Community Act of 1974, as amended applies and the Sponsor is required to replace those lost units. An example of this would be a duplex unit which is converted into a single family unit. In all cases where rehabilitation activities will reduce the number of housing units in the jurisdiction, then the Sponsor must document that any lost units are replaced and any occupants of reduced units are given permanent relocation assistance. (This does not apply to reconstruction or replacement housing done under a rehabilitation Program where the existing unit(s) is demolished and replaced with a structure equal in size without the loss in number of units or bedrooms.)

Replacement housing will be provided within three years after the commencement of the demolition or conversion. Before entering into a contract committing the Sponsor to provide funds for an activity that will directly result in such demolition or conversion, the Sponsor will make this activity public (through a noticed public hearing and/or publication in a newspaper of general circulation) and submit to the California Department of Housing and Community Development or the appropriate federal authority the following information in writing:

1. A description of the proposed assisted activity;
2. The location on a map and the approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as HUD Low/Mod individual dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The location on a map and the approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of the replacement dwelling units;
6. The basis for concluding that each replacement dwelling unit will remain a HUD Low/Mod individual dwelling unit for at least 10 years from the date of initial occupancy; and,
7. Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a two-bedroom unit with two one-bedroom units) is consistent with the housing needs of HUD Low/Mod individual households in the jurisdiction.

The Program Operator for the Sponsor is responsible for tracking the replacement of housing and ensuring that it is provided within the required period. The Sponsor is responsible for ensuring requirements are met for notification and provision of relocation assistance, as described in Section 570.606, to any HUD Low/Mod individual displaced by the demolition of any dwelling unit or the conversion of a HUD Low/Mod individual dwelling unit to another use in connection with an assisted activity.

**G. Record Keeping and Relocation Disclosures/Notifications**

The Sponsor will maintain records of occupants of federally funded rehabilitated, reconstructed or demolished property from the start to completion of the project to demonstrate compliance with section

104(d), URA and applicable Program regulations. Each rehabilitation project, which dictates temporary or permanent or replacement activities, will have a project description and documentation of assistance provided. (See sample forms in HUD Relocation Handbook 1378, Chapter 1, Appendix 11, form HUD-40054)

Appropriate advisory services will include reasonable advance written notice of (a) the date and approximate duration of the temporary relocation; (b) the address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period; (c) the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling.

Notices shall be written in plain, understandable primary language of the persons involved. Persons who are unable to read and understand the notice (e.g. illiterate, foreign language, or impaired vision or other disability) will be provided with appropriate translation/communication. Each notice will indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help. The notices and process below is only for temporary relocation. If permanent relocation is involved, then other sets of notice, noticing process, and relocation assistance must be applied. (See HUD relocation handbook 1378 for those forms and procedures.) The Temporary Relocation Advisory Notices to be provided are as follows:

1. **General Information Notice:** As soon as feasible when an owner investor is applying for Federal financing for rehabilitation, reconstruction, or demolition, the tenant of a housing unit will be mailed or hand delivered a General Information Notice that the project has been proposed and that the tenant will be able to occupy his or her present house upon completion of rehabilitation. The tenant will be informed that the rent after rehabilitation will not exceed current rent or 30 percent of his or her average monthly gross household income. The tenant will be informed that if he or she is required to move temporarily so that the rehabilitation can be completed, suitable housing will be made available and he or she will be reimbursed for all reasonable extra expenses. The tenant will be cautioned that he or she will not be provided relocation assistance if he or she decides to move for personal reasons. **See Appendix A for sample notice to be delivered personally or by certified mail.**
2. **Notice of Non Displacement:** As soon as feasible when the rehabilitation application has been approved, the tenant will be informed that they will not be permanently displaced and that they are eligible for temporary relocation assistance because of lead based paint mitigation or substantial rehabilitation, or reconstruction of their unit. The tenant will also again be cautioned not to move for personal reasons during rehabilitation, or risk losing relocation assistance. **See Appendix B for sample notice to be delivered personally or by certified mail.**
3. **Disclosure to Occupants of Temporary Relocation Assistance:** This form is completed to document that the Sponsor is following its adopted temporary relocation plan for owner occupants and tenants. **See Appendix C for a copy of the disclosure form.**
4. **Other Relocation/Displacement Notices:** The above three notices are required for temporary relocation. If the Sponsor is attempting to provide permanent displacement assistance then there are a number of other forms which are required. Staff will consult HUD's Relocation Handbook 1378 and ensure that all the proper notices are provided for persons who are permanently displaced as a result of housing rehabilitation activities funded by CDBG or other federal Programs.

**APPENDIX A**

Dear \_\_\_\_\_,

On (date), (property owner) submitted an application to the \_\_\_\_\_ for financial assistance to rehabilitate the building which you occupy at (address).

This notice is to inform you that, if the assistance is provided and the building is rehabilitated, you will not be displaced. Therefore, we urge you not to move anywhere at this time. (If you do elect to move for reasons of your choice, you will not be provided relocation assistance.)

If the application is approved and Federal assistance is provided for the rehabilitation, you will be able to lease and occupy your present apartment (or another suitable, decent, safe and sanitary apartment in the same building) upon completion of the rehabilitation. Of course, you must comply with standard lease terms and conditions.

After the rehabilitation, your initial rent, including the estimated average monthly utility costs, will not exceed the greater of (a) your current rent/average utility costs, or (b) 30 percent of your gross household income. If you must move temporarily so that the rehabilitation can be completed, suitable housing will be made available to you for the temporary period, and you will be reimbursed for all reasonable extra expenses, including all moving costs and any increase in housing costs.

Again, we urge you not to move. If the project is approved, you can be sure that we will make every effort to accommodate your needs. Because Federal assistance would be involved, you would be protected by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

This letter is important and should be retained. You will be contacted soon. In the meantime, if you have any questions about our plans, please contact (name), (title), at (telephone number), (address).

Sincerely,

(name)

(title)

**APPENDIX B**

(date)

Dear \_\_\_\_\_:

On (date), we notified you that the owner of your building had applied for assistance to make extensive repairs to the building. On (date), the owner's request was approved, and the repairs will begin soon.

This is a notice of non-displacement. You will not be required to move permanently as a result of the rehabilitation. This notice guarantees you the following:

1. You will be able to lease and occupy your present apartment [or another suitable, decent, safe and sanitary apartment in the same building/complex] upon completion of the rehabilitation. Your monthly rent will remain until after construction is completed. If increased after construction is done, your new rent and estimated average utility costs will not exceed local fair market rents for your community. Of course, you must comply with all the other reasonable terms and conditions of your lease.
2. If you must move temporarily so that the repairs can be completed, you will be reimbursed for all of your extra expenses, including the cost of moving to and from the temporarily occupied unit and any additional housing costs. The temporary unit will be decent, safe and sanitary, and all other conditions of the temporary move will be reasonable.

Since you will have the opportunity to occupy a newly rehabilitated apartment, I urge you not to move. (If you do elect to move for your own reasons, you will not receive any relocation assistance.) We will make every effort to accommodate your needs. Because Federal assistance is involved, you are protected by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

If you have any questions, please contact (name), (title), at (phone #), (address). Remember; do not move before we have a chance to discuss your eligibility for assistance. This letter is important to you and should be retained.

Sincerely,

(name and title)

**APPENDIX C**

**DISCLOSURE TO OCCUPANT OF TEMPORARY RELOCATION ASSISTANCE**

*Top to be completed at time of loan application submittal or Home Visit*

Property Address: \_\_\_\_\_  
  \_\_\_ Rental Unit                   \_\_\_ Owner/Occupied Unit

The rehabilitation loan specialist working on behalf of the City/County of \_\_\_\_\_  
has explained the temporary relocation services and assistance available under the current rehabilitation Program relocation  
plan.

I/we have been advised that the City/County of \_\_\_\_\_ rehabilitation construction specialist will inform me if I need to  
be temporarily relocated and will to assist me with scheduling any necessary moves and answer any questions about assistance  
as needed.

Acknowledged:

\_\_\_\_\_  
Occupant Signature           Date                                   Occupant Signature                                   Date



*Complete this at time of acceptance of Work Write Up with initials by occupant*

The rehabilitation construction specialist for the City/County of \_\_\_\_\_  
has explained the Rehabilitation Scope of Work for our house and I/we agree that it will:  
\_\_\_ Not require I/we to be relocated. **(If initialed then STOP here and sign bottom.)**  
\_\_\_ Yes, I/we need to be temporarily relocated. **(Complete rest of form if initialed.)**

Start date and duration of relocation:  
\_\_\_ Starting on or about \_\_\_\_\_ we will move for all or part of the rehabilitation project.  
\_\_\_ Approximate length of temporary relocation: \_\_\_\_\_ Number of days.

For temporary relocation, I/We elect to (check all that apply):  
\_\_\_ Relocate with friends and family.  
\_\_\_ Relocate into a suitable temporary housing unit identified by rehab specialist.  
\_\_\_ Relocate furnishings only into a temporary storage unit.

\_\_\_ I/We have been told what our relocation assistance is and elect **Not** to be reimbursed for any eligible relocation expenses.

\_\_\_ I/We have been told what our relocation assistance is and want to be reimbursed for: \_\_\_\_\_  
\_\_\_\_\_

By signing, occupant(s) acknowledge receipt of copy of this form:

\_\_\_\_\_  
Occupant Signature                                   Date                                   Occupant Signature                                   Date

**ATTACHMENT F****LOAN SERVICING POLICIES AND PROCEDURES  
FOR THE CITY OF CHOWCHILLA**

The City of Chowchilla, hereafter called “Sponsor,” has adopted these policies and procedures in order to preserve its financial interest in properties whose “Borrowers” have been assisted with public funds. The Sponsor will, to the greatest extent possible, follow these policies and procedures, but each loan will be evaluated and handled on a case-by-case basis. The Sponsor has formulated this document to comply with state and federal regulations regarding the use of these public funds and any property restrictions that are associated with them.

The Sponsor may, at its discretion, enter into an agreement with a third party to collect and distribute payments and/or complete all loan servicing aspects of the Program. For CalHome, the Sponsor must obtain prior approval from HCD and must provide HCD a copy of the contract.

The policies and procedures are broken down into the following areas: 1) making required monthly payments or voluntary payments on a loan’s principal and interest; 2) required payment of property taxes and insurance; 3) required Request for Notice of Default on all second mortgages; 4) loans with annual occupancy restrictions and certifications 5) required noticing and limitations on any changes in title or use of property; 6) required noticing and process for requesting a subordination during a refinance; 7) processing of foreclosure in case of default on the loan; 8) the Sponsor as Senior Lienholder; and 9) processing of demands and payoffs.

**1. Loan Repayments:**

The Sponsor will collect monthly payments from those borrowers who are obligated to do so under Notes that are amortized promissory notes. Late fees will be charged for payments received after the assigned monthly due date.

For Notes that are deferred payment loans, the Sponsor must accept voluntary payments on the loan. Loan payments will be credited to principal. The borrower may repay the loan balance at any time with no penalty.

At time of completion, the funds expended on a housing unit will be compared to the Note amount. Any funds not expended at completion will be considered a “principal reduction” and will be applied to the principal loan balance thereby lowering the amount owed by the borrower. Borrowers will receive a closeout letter after the 30-day retention period indicating the amount of their Note, the credit, and the ending balance on their loan. A copy of this credit along with the final cost break-down will be retained in the borrowers file.

The State HOME Program “HOME” has selected the Recapture option of ensuring the affordability of housing acquired by HOME-assisted homebuyers.

There is no affordability period in the Sponsor’s Housing Rehabilitation Program; therefore, all payments and payoffs received are Program Income.

Recaptured funds and Program Income do not have to be expended on the same type of activity as that from which the funds were generated, but they are required to be expended on other HOME activities before any new HOME funds can be drawn down from the Treasury (24 CFR 504(c)(viii)).

Per Section 8208 of the State HOME regulations, no additional HOME assistance, including rehabilitation funds, may be provided during the period starting one year following the filing of the Project Completion Report through the end of the affordability period. Note – This does not apply to CDBG and CalHome assistance.

For HOME-assisted loans approved by the Sponsor under the First-Time Homebuyer Program, the HOME Affordability Period is as follows (amount does not include Activity Delivery Costs paid to the State Recipient by HCD):

Amount of HOME Assistance	Period of Affordability in Years
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

2. Payment of Property Taxes and Insurance:

As part of keeping the loan from going into default, borrower must maintain property insurance coverage naming the Sponsor as loss payee in first position or additional insured if the loan is a junior lien. If borrower fails to maintain the necessary insurance, the Sponsor may take out force placed insurance to cover the property while the Borrower puts a new insurance policy in place. All costs for installing the necessary insurance will be added to the loan balance at time of installation of Borrower’s new insurance.

When a property is located in a 100-year flood plain, the Borrower will be required to carry the necessary flood insurance. A certificate of insurance for flood and for standard property insurance naming the Sponsor as additional insured will be required at close of escrow. The Sponsor must verify the insurance on an annual basis.

Property taxes must be kept current during the term of the loan. If the Borrower fails to maintain payment of property taxes, the Sponsor may pay the taxes current and add the balance of the tax payment plus any penalties to the balance of the loan. Wherever possible, the Sponsor encourages Borrower to have impound accounts set up with their first mortgagee wherein they pay their taxes and insurance as part of their monthly mortgage payment.

3. Required Request for Notice of Default:

When the Borrower’s loan is in second position behind an existing first mortgage, it is the Sponsor's policy to prepare and record a "Request for Notice of Default" for each senior lien in front of Sponsor’s loan. This document requires any senior lienholder listed in the notice to notify the Sponsor of initiation of a foreclosure action. The Sponsor will then have time to contact the Borrower and assist them in bringing the first loan current, if possible. The Sponsor

can also monitor the foreclosure process and go through the necessary analysis to determine if the loan can be made whole or preserved. When the Sponsor is in a third position and receives notification of foreclosure from only one senior lienholder, it is in their best interest to contact any other senior lienholders regarding the status of their loans.

#### 4. Annual Occupancy Restrictions and Certifications:

On some owner-occupant loans, the Sponsor will require that Borrowers submit utility bills and/or other documentation annually to prove occupancy during the term of the loan. Other loans may have income and housing cost evaluations, which require a household to document that they are not able to make repayments, typically every five years. These loan terms are incorporated in the original Note and Deed of Trust.

Continued residency is monitored annually for the term of the loan. Occupancy will be verified, reviewed and certified by the submission of the following:

- Proof of occupancy in the form of a copy of a current utility bill; and
- Statement of unit's continued use as primary residence of the owner.
- Declaration that other title holders do not reside on the premises;
- Verification that Property Taxes are current; and
- Verification of current required insurance policies.

#### 5. Required Noticing and Restrictions on Any Changes of Title or Occupancy:

In all cases where there is a change in title or occupancy or use, the Borrower must notify the Sponsor in writing of any change. Sponsor, or its designated Loan Servicing Agent, and borrower will work together to ensure the property is kept in compliance with the original Program terms and conditions such that it remains available as an affordable home for low-income families. These types of changes are typical when Borrowers do estate planning (adding a relative to title) or if a Borrower dies and property is transferred to heirs or when the property is sold or transferred as part of a business transaction. In some cases the Borrower may move and turn the property into a rental unit without notifying the Sponsor. Changes in title or occupancy must be in keeping with the objective of benefit to low-income households (below 80 percent of AMI). Note – CalHome loans are not assumable.

Change from owner-occupant to owner-occupant occurs at a sale. When a new owner-occupant is not low-income, the loan is not assumable and the loan balance is immediately due and payable. If the new owner-occupant qualifies as low-income, the purchaser may either pay the loan in full or assume all loan repayment obligations of the original owner-occupant, subject to the approval of the Sponsor's Loan Committee (depends on the HCD Program). Note – CalHome loans are not assumable.

If a transfer of the property occurs through inheritance, the heir (as owner-occupant) may be provided the opportunity to assume the loan at an interest rate based on household size and household income, provided the heir is income eligible. If the heir intends to occupy the property and is not low-income, the balance of the loan is due and payable. If the heir intends to

act as an owner-investor, the balance of the loan is due and payable. All such changes are subject to the review and approval of the Sponsor's Loan Committee. Note – CalHome loans are not assumable.

Change from owner-occupant to owner-investor occurs when an owner-occupant decides to move out and rent the assisted property, or if the property is sold to an investor. If the owner converts any assisted unit from owner-occupied to rental, the loan is due in full.

Conversion to use other than residential use is not allowable where the full use of the property is changed from residential to commercial or other. In some cases, Borrowers may request that the Sponsor allow for a partial conversion where some of the residence is used for a business but the household still resides in the property. Partial conversions can be allowed if it is reviewed and approved by any and all agencies required by local statute. If the use of the property is converted to a fully non-residential use, the loan balance is due and payable.

For CalHome, the following transfers of interest shall not require the repayment of the CalHome Program loan:

- 1) transfer to a surviving joint tenant by devise, descent, or operation of law on the death of a joint tenant;
- 2) a transfer, in which the transferee is a person who occupies or will occupy the property, which is:
  - (i) a transfer where the spouse becomes an owner of the property;
  - (ii) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property; or
  - (iii) a transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property.

6. Requests for Subordinations:

When a Borrower wishes to refinance their existing first mortgage, they must submit a subordination request to the Sponsor. The Sponsor will subordinate their loan only when there is no "cash out" as part of the refinance. No cash out means there are no additional charges on the transaction above loan and escrow closing fees. There can be no third-party debt payoffs or additional encumbrances on the property above traditional refinance transaction costs. The refinance should lower the existing housing cost of the household. The total indebtedness on the property should not exceed the current market value except when the borrower is obtaining a HARP II or other similar federally approved refinance loan. If the HARP II or other similar financing is approved and meets all other requirements, combined Loan-To-Value will not be considered when reviewing the subordination request.

Also, the loan must:

- A. be fully amortized and have a fixed interest rate that does not exceed the current market rate, as established by an index identified in the most recent NOFA;
- B. not have a temporary interest rate buy-down;
- C. have a term "all due and payable" that matures prior to or concurrently with the maturity date of the Promissory Note. Therefore, the maturity date of the existing Promissory

Note should be modified to coincide with the maturity date of the new first mortgage; and,

D. not have a balloon payment due before the maturity date of the Program loan.

Upon receiving the proper documentation from the refinance lender, the request will be considered by the loan committee for review and approval. Upon approval, the escrow company will provide the proper subordination document for execution and recordation by the Sponsor.

#### 7. Process for Loan Foreclosure:

Upon any condition of loan default: 1) non-payment; 2) lack of insurance or property tax payment; 3) change in title or use without approval; or 4) default on senior loans; the Sponsor, or its designated Loan Servicing Agent, will send out a letter to the Borrower notifying them of the default situation. If the default situation continues, the Sponsor may start a formal process of foreclosure.

When a senior lienholder starts a foreclosure process and the Sponsor is notified via a Request for Notice of Default, the Sponsor, who is the junior lienholder, may cancel the foreclosure proceedings by "reinstating" the senior lienholder. The reinstatement amount or payoff amount must be obtained by contacting the senior lienholder. This amount will include all delinquent payments, late charges and fees to date. Sponsor must confer with Borrower to determine if, upon paying the senior lienholder current, the Borrower can provide future payments. If this is the case, then the Sponsor may cure the foreclosure and add the costs to the balance of the loan with a Notice of Additional Advance on the existing note.

If the Sponsor determines, based on information on the reinstatement amount and status of borrower, that bringing the loan current will not preserve the loan, then staff must determine if it is cost effective to protect their position by paying off the senior lienholder in total and restructure the debt such that the unit is made affordable to the Borrower. If the Sponsor does not have sufficient funds to pay the senior lienholder in full, then they may choose to cure the senior lienholder and foreclose on the property themselves. As long as there is sufficient value in the property, the Sponsor can afford to pay for the foreclosure process and pay off the senior lienholder and retain some or all of their investment.

If the Sponsor decides to reinstate, the senior lienholder will accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." This "foreclosure sale date" usually occurs about four (4) to six (6) months from the date of recording of the "Notice of Default." If the Sponsor fails to reinstate the senior lienholder before five (5) days prior to the foreclosure sale date, the senior lienholder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If the Sponsor determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lienholder to complete foreclosure, the Sponsor's lien may be eliminated due to insufficient sales proceeds.

#### 8. Sponsor as Senior Lienholder

When the Sponsor is first position as a senior lienholder, active collection efforts will begin on any loan that is 31 or more days in arrears. Attempts will be made to assist the homeowner in bringing and keeping the loan current. These attempts will be conveyed in an increasingly

urgent manner until loan payments have reached 90 days in arrears, at which time the Sponsor may consider foreclosure. Sponsor's staff will consider the following factors before initiating foreclosure:

- A. Can the loan be cured and can the rates and terms be adjusted to allow for affordable payments such that foreclosure is not necessary?
- B. Can the Borrower refinance with a private lender and pay off the Sponsor?
- C. Can the Borrower sell the property and pay off the Sponsor?
- D. Does the balance warrant foreclosure? (If the balance is under \$5,000, the expense to foreclose may not be worth pursuing.)
- E. Will the sales price of home "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure, and marketing costs?

If the balance is substantial and all of the above factors have been considered, the Sponsor may opt to initiate foreclosure. The Borrower must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the Sponsor to prevent foreclosure (such as, funds to bring a delinquent BMIR current or pay off a DPL).

At the end of thirty days, the Sponsor should contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the owner and junior lienholders. The service will advise the Sponsor of all required documentation to initiate foreclosure (Note and Deed of Trust usually) and funds required from the owner to cancel foreclosure proceedings. The service will keep the Sponsor informed of the progress of the foreclosure proceedings.

When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, the Sponsor could sell the home themselves under a homebuyer Program or use it for an affordable rental property managed by a local housing authority or use it for transitional housing facility or other eligible use. The Sponsor could contract with a local real estate broker to list and sell the home and use those funds for Program income-eligible uses.

#### 9. Process Demands and Payoffs:

Requests for demands and payoffs will be processed within the time frame allowed by law. Sponsor or its designated Loan Servicing Agent is proficient in performing the related calculations. Reconveyance and lien releases would be prepared for processing by a qualified Title Company.

**ATTACHMENT G****CITY OF CHOWCHILLA'S  
FORECLOSURE POLICY**Sponsor As Junior Lienholder

It is the City of Chowchilla's (Sponsor's) policy to prepare and record a "Request for Notice" on all junior liens (any lien after the first position) placed on properties financed by a loan.

This document requires any senior lienholder to notify the Sponsor of initiation (recording of a "Notice of Default") of a foreclosure only. This is to alert the junior lienholder that they are to monitor the foreclosure with the senior lienholder. When the Sponsor is in a third position and receives notification of foreclosure from only one senior lienholder, it would be in their best interest to contact both senior lienholders regarding the status of their loans.

The junior lienholder may cancel the foreclosure proceedings by "reinstating" the senior lienholder. The reinstatement amount must be obtained by contacting the senior lienholder. This amount will include all delinquent payments, late charges, advances (fire insurance premiums, property taxes, property protection costs, etc.), and foreclosure costs (fees for legal counsel, recordings, certified mail, etc.)

Once the Sponsor has the information on the reinstatement amount, staff must then determine if it is cost effective to protect their position by reinstating the senior lienholder, keeping them current by submitting a monthly payment thereafter, foreclosing on the property possibly resulting in owning the property at the end of foreclosure, protecting the property against vandalism, and paying marketing costs (readying the home for marketing, paying for yard maintenance, paying a real estate broker a sales commission).

If the Sponsor decides to reinstate, the senior lienholder will accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." This "foreclosure sale date" usually occurs about four (4) to six (6) months from the date of recording of the "Notice of Default." If the Sponsor fails to reinstate the senior lienholder before five (5) days prior to the foreclosure sale date, the senior lienholder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If the Sponsor determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lienholder to complete foreclosure, the Sponsor's lien may be eliminated due to insufficient sales proceeds.

Sponsor As Senior Lienholder

When the Sponsor is in a first position, or the senior lienholder, active collection efforts will begin on any loan that is 31 or more days in arrears. Attempts will be made to assist the homeowner in bringing and keeping the loan current. These attempts will be conveyed in an increasingly urgent manner until loan payments have reached 90 days in arrears, at which time the Sponsor may consider foreclosure. Sponsor staff will consider the following factors before initiating foreclosure:

- Can the loan be cured (brought current or paid off) by the owner without foreclosure?
- Can the owner refinance with a commercial lender and pay off the Sponsor?
- Can the owner sell the property and pay off the Sponsor?
- Does the balance warrant foreclosure? (If the balance is under \$5,000, the expense to foreclose may not be worth pursuing.)
- Will the sales price of home "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure, and marketing costs?

If the balance is substantial and all of the above factors have been considered, the Sponsor may opt to initiate foreclosure. The owner must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the Sponsor to prevent foreclosure (such as, funds to bring a delinquent BMIR current or pay off a DPL).

At the end of thirty days, the Sponsor should contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the owner and junior lienholders. The service will advise the Sponsor of all required documentation to initiate foreclosure (Note and Deed of Trust usually) and funds required from the owner to cancel foreclosure proceedings. The service will keep the Sponsor informed of the progress of the foreclosure proceedings. When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, the Sponsor would then contact a real estate broker to market the home.

**ATTACHMENT H**

**CERTIFICATION OF OCCUPANCY**

**CITY OF CHOWCHILLA**

I/We \_\_\_\_\_ declare as follows:  
 (Please Print Occupant's Name(s))

That I/we am/are currently occupying as my/our principal place  
 of residence the real property commonly known as:

\_\_\_\_\_  
 (Address)

\_\_\_\_\_  
 (City, State, Zip code)

Daytime Phone Number: \_\_\_\_\_

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, CA  
 (Date) (City)

I/We declare under penalty of perjury that the foregoing is true and correct.

Signature(s) of all occupants:

Occupant: \_\_\_\_\_

Occupant: \_\_\_\_\_

Occupant: \_\_\_\_\_

Occupant: \_\_\_\_\_

Occupant: \_\_\_\_\_

Occupant: \_\_\_\_\_

**ATTACHMENT I**

**LEAD-BASED PAINT**

**VISUAL ASSESSMENT, NOTICE OF PRESUMPTION, AND HAZARD REDUCTION FORM**

<b>Section 1: Background Information</b>			
Property Address:		No LBP found or LBP exempt <input type="checkbox"/>	
Select one:	Visual Assessment <input type="checkbox"/>	Presumption <input type="checkbox"/>	Hazard Reduction <input type="checkbox"/>
<b>Section 2: Visual Assessment.</b> Fill out Sections 1, 2, and 6. If paint stabilization is performed, also fill out Sections 4 and 5 after the work is completed.			
Visual Assessment Date:		Report Date:	
Check if no deteriorated paint found <input type="checkbox"/>			
Attachment A: Summary where deteriorated paint was found. For multi-family housing, list at least the housing unit numbers and common areas and building components (including type of room or space, and the material underneath the paint).			
<b>Section 3: Notice of Presumption.</b> Fill out Sections 1, 3, 5, and 6. Provide to occupant w/in 15 days of presumption.			
Date of Presumption Notice:			
Lead-based paint is presumed to be present <input type="checkbox"/> and/or Lead-based paint <i>hazards</i> are presumed to be present <input type="checkbox"/>			
Attachment B: Summary of Presumption: For multi-family housing, list at least the housing unit numbers and common areas, bare soil locations, dust-lead location, and or building components (including type of room or space, and the materials underneath the paint) of lead-based paint and/or hazards presumed to be present.			
<b>Section 4: Notice of Lead-Based Paint Hazard Reduction Activity.</b> Fill out Sections 1, 4, 5, and 6. Provide to occupant w/in 15 days of after work completed.			
Date of Hazard Reduction Notice:			
Initial Hazard Reduction Notice? Yes <input type="checkbox"/> No <input type="checkbox"/>		Start & Completion Dates:	
If “No”, dates of previous Hazard Reduction Activity Notices:			
Attachment C: Activity locations and types. For multi-family housing, list at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust–lead locations, and/or building components (including type of room or space, and the material underneath the paint), and the types of lead-based paint hazard reduction activities performed at the location listed.			
Attachment D: Location of building components with <u>lead-based paint remaining</u> in the rooms, spaces or areas where activities were conducted.			
Attachment E: Attach clearance report(s), using DHS form 8552 (and 8551 for abatement activities)			
<b>Section 5: Resident Receipt of Notice for Presumption or Lead-Based Paint Hazard Reduction Activity and Acknowledgement of Receipt of pamphlet <i>Protection Your Family from Lead in Your Home.</i></b>			
Printed Name:		Signature:	Date:
<b>Section 6: Contact Information</b>		Organization:	
Contact Name:		Contact Signature:	
Date:	Address:	Phone:	

## ATTACHMENT J TEST FOR RECONSTRUCTION

**Jurisdiction:** \_\_\_\_\_ **Test Prepared By:** \_\_\_\_\_  
**Program:** \_\_\_\_\_ **Date Submitted to HCD:** \_\_\_\_\_  
**Contract #:** \_\_\_\_\_ **Date Received by HCD:** \_\_\_\_\_  
**HCD Rep:** \_\_\_\_\_ **Representative Initial and Date:**

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**Manager Initial and Date:**

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**Property Address**

**Part A**

1. Does the structure meet the definition of a dwelling? Yes  No   
A dwelling must have cooking, eating, sleeping and sanitation facilities.
2. Is the site/lot/land owned by the homeowner? Yes  No
3. Is the structure presently occupied by the owner? *(Provide proof)* Yes  No
4. Is the structure a 5th wheeler? Yes  No

**IF "NO" TO #1, #2 or #3, or "YES" to #4, STOP HERE. A Reconstruction is not authorized.**  
 Consult your HCD Representative for possible exceptions.

IF YES TO BOTH QUESTIONS, PROCEED WITH PART B

**Part B**

1. Is the cost to reconstruct the structure less than the cost of Rehabilitating it? Yes  No   
(Provide documents showing cost estimates for each line item for both Rehab and Reconstruction)

IF YES, SUBMIT THIS COMPLETED FORM WITH THE REQUIRED BACKUP DOCUMENTS TO HCD

<u>REHABILITATION</u>	(Be sure to include all costs for proposed changes, if any, to the number of bedrooms & bathrooms)	<u>RECONSTRUCTION</u>
	Est. Fair Market Value of the Land	
	Estimated Fees	
	Architectural/Engineering/Design	
	Relocation Costs	
	Lead Based Paint Abatement	
	Site Work	
	Demolition	
	Environmental Remediation	
	Structure Construction Costs	
	Other costs _____	
<b>\$0</b>	<b><u>TOTAL ESTIMATED COSTS</u></b>	<b>\$0</b>

Have you submitted this "Test" to another HCD Program?  
 Yes:  No:

Is the structure in a flood plain?  
 Yes:  No:

Is the proposed footprint the same as the existing footprint?  
 Yes:  No:

	Current Structure	Proposed Structure
Sq. Footage of Structure:	_____	_____
Number of Bedrooms	_____	_____
Number of Bathrooms	_____	_____

Provide justification for any increases or decreases.

**ATTACHMENT K****HOUSING REHABILITATION/RECONSTRUCTION PROGRAM CONTRACTOR  
GUIDELINES AND INFORMATION SHEET****SELF-HELP ENTERPRISES  
Housing Rehabilitation/Reconstruction Program  
Contractor Guidelines and Information Sheet****Introduction**

The mission of Self-Help Enterprises (SHE) is to work together with low-income families to build and sustain healthy homes and communities.

Though known as a top agricultural production region, the San Joaquin Valley has among the highest poverty rates in the State of California with many rural, unincorporated communities lacking adequate housing, water and sewer services. In particular, the people who provide the source of labor for the agricultural fields can find little except substandard housing in existing stock, and have insufficient income to qualify for standard new home loans. Similarly, the low income, elderly, and handicapped often find themselves trapped in substandard housing. Through our programs, staff works with cities, counties and residents to help meet the needs of our participants and the communities they call home.

SHE appreciates your interest in improving the housing conditions of low-income families in the San Joaquin Valley. It is our hope that together we can realize the dream of safe and decent housing for the less fortunate in our community.

**A. General Program Information**

The aim of the Housing Rehabilitation/Reconstruction Program is to repair or replace houses making life-safety and sanitary upgrades under the standards of the California Building Code (CBC) and the requirements of the State and/or Federal funding sources.

To accomplish this, Self-Help Enterprises (SHE):

1. Assists the jurisdiction to apply for funds providing low-interest financing to eligible Owners so that they can afford to rehabilitate or reconstruct their home or rental unit;
2. Contracts with the jurisdiction to provide technical assistance for the financial and construction aspects of the program; and
3. Keeps jobs on schedule, running smoothly, and when problems arise, works with all parties to swiftly resolve those problems.

**B. Work Standards**

The work must meet all applicable building codes and be done in a competent manner. We expect professional quality. Everything must be functional, visually acceptable, and be built to California Building Performance Guidelines for Residential Construction Standards.

**C. Contractor Eligibility**

1. Contractors must be licensed in the State of California as a Class B General Contractor and their license must be in good standing with the Contractors' State Licensing Board;

2. California law requires Contractors have a minimum of \$1,000,000.00 liability insurance, worker's compensation, and a valid Contractor Bond. ***Evidence of these must be provided prior to entering into a Construction Contract and insurance must be in force throughout the term of the Contract;***
3. Contractors listed on the Housing and Urban Development (HUD) debarred list are ineligible;
4. Contractors must complete an application;
5. Contractors may be asked to participate in project orientation; and
6. Contractors will receive an evaluation after every job.

**D. Contractor Suspension/Elimination from Bid List**

A Contractor will be moved to the Inactive Contractor List for the reasons identified below and/or if a performance evaluation results in a Below Standard rating. If not permanently eliminated, a Contractor can submit a request to be reinstated to Active status upon correction of the issue or following the time period found in parenthesis by each reason.

1. Contractor fails to return the annual request for confirmation of interest in remaining on the Active Contractor List (Upon Receipt of Confirmation of Interest)
2. Contractor's license is no longer valid (Upon Proof of Correction)
3. Inability to acquire insurance (Upon Proof of Correction)
4. Failure to finish one or more jobs in the time specified in the Contract (One Year)
5. Failure to prove the knowledge and/or ability to perform the work required of any given Contract per the California Building Code (One Year AND Upon Proof of Correction)
6. Quality of work does not meet specifications in the Contract (One Year)
7. Failure to resolve legitimate complaints about the workmanship and/or materials (Permanent Elimination)
8. Evidence of financial problems (One Year AND Proof of Positive Credit/Credit Report)
9. Withdrawal of bids and/or failure to attend bid tours (Six Months)
10. Pressuring Owners to choose a specific Contractor; promising rebates, kickbacks, or additional work not included in the bid documents, or otherwise trying to circumvent the bid process in an unethical or illegal manner (Permanent Elimination)
11. Failure to disclose that the Contractor, or an employee of the Contractor, is the Owner of, or has a financial interest in, the property the Contractor is rehabilitating (Permanent Elimination)
12. Failure to comply with established jurisdiction guidelines and/or standards (Permanent Elimination)

**E. Federal/State Requirements**

The paperwork required (contracts, bid procedures, payment requisition, etc.) is designed to protect the Contractor's and Owner's interests, and it is far less complicated than the typical federally-funded project.

Three requirements to take note of are:

1. Equal opportunity laws govern the program. Discriminatory practices in the employment of individuals based on race, creed, color, gender, age, religion, or national origin are unacceptable;
2. No jurisdiction or SHE employee can have any direct or indirect financial interest in the work to be performed and cannot have any financial dealings with Contractors or Owners involved in the program; and

3. Neither a Contractor, nor their employee(s) can be the Owner of or have a financial interest in the property, except as an Owner-Builder.

#### **F. Scope of Work**

The Owner, working with SHE staff and jurisdiction inspectors, decides on the work. This is specified in the bid documents and any drawings needed.

#### **G. Bid/Contractor Selection**

When a home comes up for bid in the area(s) you requested, your name/company will be submitted with other contractors to the family for consideration. If the family selects your name, you will be contacted by a SHE Rehabilitation Specialist to attend a bid tour. Owners have the right to exclude Contractors from the list without justification, and they may request that other qualified Contractors be added. Contractors will be notified via telephone and/or in writing (email, fax, etc.) at least one week prior to each bid tour.

1. Contractors must develop a proven performance record to be awarded multiple contracts. A Contractor develops a proven performance record upon completion of the following steps:
  - a. All new Contractors who have been awarded their first contract under the Housing Rehabilitation Programs operated by SHE are not eligible to receive additional contracts until the awarded contract is completed and job performance is evaluated by the jurisdiction's building official or building inspector and SHE's Rehabilitation Construction Manager or Rehab Specialist (see attached Contractor Job Performance Evaluation).
  - b. After completion and positive evaluation of the first contract, a Contractor may be awarded two contracts but will not be eligible to receive additional contracts until one or both of the two awarded contracts are completed and evaluated.
  - c. Following the completion of three, positively evaluated contracts, a Contractor is considered to have established a proven performance record. Once a Contractor establishes a proven performance record, that Contractor is eligible to bid and receive multiple contracts.
2. Contractors cannot submit a bid on any property in which they have a vested interest. Such a Contractor may act as an Owner-Builder, subject to standard construction procedures. (Owner-Builders are reimbursed for purchased materials which are verified by invoice/receipt and used on the job, but they are not reimbursed for labor. Reimbursement occurs after the work is completed, inspected by the Building Department as required/applicable, and verified by a SHE Rehabilitation Specialist).
3. Homeowners are encouraged to accept the lowest reasonable bid. Reasonableness is determined by comparing the bids received with the cost estimate prepared by the SHE Rehab Specialist. Bids should be within 10% of SHE's cost estimate.
4. The total bid amount is **non-confidential** and available for everyone to see. However, the itemized amounts for each part of the work required with the bid are **confidential**.
5. Construction Contract is between the Owner and Contractor. Neither the jurisdiction nor SHE is a party to the Contract. The Owner pays for all work specified in the Contract from the loan which he or she has received.

#### **H. Change Orders**

All changes in the scope of work must be in writing and approved by the Owner, Contractor, SHE Rehab Specialist, and the jurisdiction. No changes to the scope of work should be handled

without a written change order. It is not a sound business practice. The Contractor has no guarantee of payment without an approved, written change order.

**I. Loan Funds**

Loan funds are safe. A construction account is established with SHE for each job. Before the job starts, the loan funds are on deposit. Since no money can be withdrawn without authorization by the Owner and review by SHE, you can be assured that funds are available to cover the amount of the Contract.

**J. Payment**

Contractor submits an invoice for a progress payment based on work completed. The invoice must be inspected and approved by the Owner and SHE's Rehab Specialist prior to payment of the invoice. Generally a contractor will receive payment by mail within two (2) to three (3) weeks after submitting an invoice.

Ten Percent (10%) of each invoice will be withheld and paid to the Contractor thirty-five days after the Notice of Completion has been recorded and all paperwork has been submitted and pick up/punch list work completed.

We look forward to talking to you more about this opportunity. Please feel free to call the office if you would like more information.

Rich Aicklen  
Construction Manager – Housing Rehabilitation  
559-802-1645

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## CONTRACTOR JOB PERFORMANCE EVALUATION INSTRUCTIONS

### I. Introduction

Contractor performance is defined as how a contractor carries out the obligations of the contract. This includes all requirements stated in the contract scope of work, provisions, and SHE's General Specifications, adherence to the budget or price, and the provision of customer service. The purpose of this document is to establish a standardized process for Self-Help Enterprises (SHE) to identify, document, and communicate performance with contractors and other program, SHE, and City/County staff. The process used provides staff the ability to identify performance issues, if any, as they arise. The performance evaluation and rating process provides feedback to contractors with below standard, standard, and above standard performance.

Performance evaluations will occur at the end of the life of the contract, no later than 30 calendar days following the final walk-through, clearance of any punch list items, or submission of the contractor's final invoice, whichever occurs later. SHE will email or mail a copy of the results of the evaluation to the contractor for review and comment. The evaluation process is NOT a collaborative process between the contractor and staff. Contractors do not participate in the evaluation and rating process. The purpose for sharing the evaluations with the contractor is to provide feedback to the contractor on performance.

All evaluation results will be recorded by SHE to determine eligibility, and Active or Inactive status, of the contractor for future contracting.

### II. General Instructions

#### A. Contractor Notification

Contractor should be made aware of the evaluation process prior to receiving the results of the evaluation. Contractors attending a bid tour will receive a copy of this document to explain the purpose of the evaluation, process, and rating system. Contractors requesting additional information about the evaluation process will be instructed to contact SHE directly.

#### B. Evaluation Timeline

Performance evaluations must be completed no later than 30 calendar days after the final walk-through, clearance of any punch list items, or submission of the contractor's final invoice, whichever occurs later. During the 30 calendar days, the evaluation is conducted, the results are sent to the contractor and the contractor is provided 14 calendar days to review the results and submit comments to SHE. There is some flexibility of this time line for unforeseen or unusual circumstances (e.g., a death in the family).

### III. Evaluation Process

The staff member(s) conducting the evaluation must be familiar with the contract and the contractor's performance. Unless otherwise stated in writing, the jurisdiction's building official or building inspector and SHE's Rehabilitation Construction Manager or Rehab Specialist will perform the performance evaluation. These individuals are referred to as the "Evaluators" in performance evaluation related materials.

#### IV. Below Standard Ratings & Disputes

Performance evaluations may result in a Below Standard rating. If this occurs, the Evaluators will move the contractor from the Active Contractor List to the Inactive Contractor List with reasons noted and send the contractor a letter of explanation along with the copy of his or her evaluation results.

Regardless of the rating given, a contractor may disagree with the evaluation/rating. A contractor must dispute his or her evaluation by submitting comments to SHE within 14 days of receiving his or her copy of the evaluation results. Upon receipt of a dispute, the Evaluators will review the contractor's comments and respond to the contractor by elaborating on the reasons for the rating given.

#### V. Evaluation Category Definitions and Factors

The seven categories listed below are used by SHE to assess each contractor's performance during the contract period. Each evaluation category is described and examples of possible factors provided. Factors listed below that are not applicable can be removed from the list and replaced with applicable factors developed by the Evaluators. While factors can be customized, the descriptions CANNOT.

Each contract is unique and the Evaluators should utilize contract specific factors to evaluate performance under each category. This necessary flexibility may be confusing to contractors and will require thoughtful explanation. If the contractor requires clarification or additional information about the categories or evaluation process, they may contact SHE directly.

A. Quality: The contractor achieved desired outcomes with a minimum of avoidable errors and problems. Work met the requirements, expectations, or desired outcomes as set forth in the contract/scope of work. The work was accurate and complete. The work was done in an efficient and effective manner.

**Factors:**

- Overall compliance – the contractor complied with the terms and conditions (to include program and funding requirements) of the contract and showed an understanding of agency's standards and expectations.
- Conformity to specifications – the product or service conformed to the specifications identified in the original solicitation and contractual agreement. The product performed and/or the services were provided as expected.
- Reliability – the rate of product failure was within reasonable limits or repairs and rework was acceptable.
- Durability – reasonable period of time lapses before replacement is necessary.
- Support – available from the contractor in a reasonable period of time and met the need for assistance.
- Warranty – reasonable length and provisions of warranty protection offered and problems resolved in a timely fashion.
- State-of-the-art product/service – The contractor offered products and/or services consistent with industry standards. The contractor consistently refreshes product life by adding enhancements.

- B. Timeliness: The contractor performed work within the time frames identified or specified in the contract/scope of work and kept the project on schedule.

**Factors:**

- The contractor delivered product and/or services by date agreed to in the contract.
- The contractor met timelines for the submission of deliverables such as reports, plans, invoices, etc.
- The contractor responded/replied to requests for information or assistance in a reasonable period of time.
- The contractor's average delivery time was comparable to that of other contractors for similar products and/or services.

- C. Price/Budget: The contractor effectively managed costs and the value of the product and/or services received supported the costs. The contractor adhered to budget as specified in the contract/scope of work.

**Factors:**

- Contractor's invoices were accurate with appropriate backup documentation.
- Estimates did not vary from the final invoice.
- There were a low number of variances from the initial agreed to prices and the costs stated on received invoices.
- The contractor was sensitive to costs and demonstrated respect for funding and the agency's needs.

- D. Business Relations/Customer Service: The degree to which the contractor was professional and respectful in its business approach and interactions with the agency.

**Factors:**

- The contractor was courteous, cooperative, and had a professional approach in all forms of communication.
- The contractor handled complaints efficiently and effectively.
- The contractor was knowledgeable about the project and/or had the expertise to provide assistance as requested.
- The contractor managed change effectively.
- The contractor attempted to resolve problems in a timely manner and followed up with a status report.
- The contractor provided technical support for maintenance, repair, and installation situations. Technical instructions, documentation, and general information was also provided.
- The contractor provided training on the effective use of its products or services.

- E. Deliverables/Requirements: The degree to which the contractor was compliant in meeting the standards of contract requirements and deliverables.

**Factors:**

- All deliverables submitted were complete, accurate, and submitted within the required timeline using required forms or format, if applicable.
- Requirements were demonstrated and/or documented.

F. **Safety:** The degree to which the contractor mitigated and demonstrated freedom from risk of injury, danger, damage, or loss of life or property.

**Factors:**

- The contractor complied with all Federal, State, and local laws and regulations concerning the health and safety of workers, the general public, and personal property.
- Contractor's safety record for the project.

G. **Dependability:** The degree to which contractor demonstrated trustworthiness and reliability.

**Factors:**

- The contractor was fair, honest, and reasonable in interactions with the agency.
- The contractor demonstrated consistency in business operations.
- The contractor was sincere in efforts to deliver a quality product and/or services.
- The contractor followed through on agreements made with the program/agency.

## VI. Contractor Performance Rating Definitions and Factors

The following three ratings make up the evaluation rating structure. These rating definitions and factors CANNOT be customized.

A. **Below Standard:** Contractor performance has been less than standard or satisfactory. This rating encompasses contractors whose performance does not consistently meet expectations defined in the contract/scope of work.

**Factors:**

- Contractor performance does not consistently meet expectations defined in the contract.
- Close supervision of the contractor was required to progress the work.
- Work was unsatisfactory and consistently failed to meet expectations.
- Lack of cooperation.
- Most performance requirements were not met.
- Significant cost overruns.
- Many schedule slips with negative cost impact.
- Lack of user satisfaction.

B. **Standard:** Contractor has met all specifications and requirements. This rating includes a range of expected performance as stated in the contract/scope of work to support the project.

**Factors:**

- Contractor exhibits competency in the assignments and consistently meets the desired expectations of the project.
- Contractor meets standards and objectives and all performance requirements.
- Contractor sometimes exceeds expectations.
- Contractor met overall price.

- Contractor met expectations.
- Deliveries were on time.
- Project schedule was not impacted.
- Adequate user satisfaction.

C. **Above Standard**: Contractor performance exceeds standard or satisfactory. This rating represents consistent and exceptional performance or consistently superior achievement beyond regular assignments and expectations as stated in the contract/scope of work.

**Factors:**

- Meeting and exceeding performance requirements.
- Significant positive impact to the project.
- Reduced costs while meeting contract requirements.
- All deliveries on time with some arriving early.
- Significantly exceeded expectations.
- High user satisfaction.
- Highly responsive and proactive.

VII. CONTRACTOR PERFORMANCE EVALUATION

**CONTRACTOR JOB PERFORMANCE EVALUATION**

File #: \_\_\_\_\_ Contractor Name: \_\_\_\_\_  
 Project: \_\_\_\_\_ License #: \_\_\_\_\_  
 Project Address: \_\_\_\_\_ Project Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

		Below Standard	Standard	Above Standard
<b>Overall Rating:</b>				
1. Quality				
2. Timeliness				
	Original Contract Completion Date: _____			
	Actual Contract Completion Date: _____			
3. Price/Budget				
	Original Contract Amount: \$ _____			
	Final Contract Amount: \$ _____			
4. Business Relations/Customer Service				
5. Deliverables/Requirements				
6. Safety				
7. Dependability				

**Evaluator Information:**

Printed Name: \_\_\_\_\_ Organization: \_\_\_\_\_  
 Title: \_\_\_\_\_ Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Signature/Date: \_\_\_\_\_

**Comments:**

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## PERFORMANCE FACTORS

**1. Quality:** The contractor achieved desired outcomes with a minimum of avoidable errors and problems. Work met the requirements, expectations, or desired outcomes as set forth in the contract/scope of work. The work was accurate and complete. The work was done in an efficient and effective manner.

**FACTORS:**

Overall compliance – the contractor complied with the terms and conditions (to include program and funding requirements) of the contract and showed an understanding of agency’s standards and expectations

Conformity to specifications – the product or service conformed to the specifications identified in the original solicitation and contractual agreement. The product performed and/or the services were provided as expected

Reliability – the rate of product failure was within reasonable limits or repairs and rework was acceptable

Durability – reasonable period of time lapses before replacement is necessary

Support – available from the contractor in a reasonable period of time and met the need for assistance

Warranty – reasonable length and provisions of warranty protection offered and problems resolved in a timely fashion

State-of-the-art product/service – The contractor offered products and/or services consistent with industry standards. The contractor consistently refreshes product life by adding enhancements

**2. Timeliness:** The contractor performed work within the time frames identified or specified in the contract/scope of work and kept the project on schedule.

**FACTORS:**

The contractor delivered product and/or services by date agreed to in the contract

The contractor met timelines for the submission of deliverables such as reports, plans, invoices, etc

The contractor responded/replied to requests for information or assistance in a reasonable period of time

The contractor’s average delivery time was comparable to that of other contractors for similar products and/or services

**3. Price/Budget:** The contractor effectively managed costs and the value of the product and/or services received supported the costs. The contractor adhered to budget as specified in the contract/scope of work.

**FACTORS:**

Contractor’s invoices were accurate with appropriate backup documentation

Estimates did not vary from the final invoice

There were a low number of variances from the initial agreed to prices and the costs stated on received invoices

The contractor was sensitive to costs and demonstrated respect for funding and the agency’s needs

**4. Business Relations/Customer Service:** The degree to which the contractor was professional and respectful in its business approach and interactions with the agency.

FACTORS:

The contractor was courteous, cooperative, and had a professional approach in all forms of communication

The contractor handled complaints efficiently and effectively

The contractor was knowledgeable about the project and/or had the expertise to provide assistance as requested

The contractor managed change effectively

The contractor attempted to resolve problems in a timely manner and followed up with a status report

The contractor provided technical support for maintenance, repair, and installation situations. Technical instructions, documentation, and general information was also provided

The contractor provided training on the effective use of its products or services

**5. Deliverables/Requirements:** The degree to which the contractor was compliant in meeting the standards of contract requirements and deliverables.

FACTORS:

All deliverables submitted were complete, accurate, and submitted within the required timeline using required forms or format, if applicable

Requirements were demonstrated and/or documented

**6. Safety:** The degree to which the contractor mitigated and demonstrated freedom from risk of injury, danger, damage, or loss of life or property.

FACTORS:

The contractor complied with all Federal, State, and local laws and regulations concerning the health and safety of workers, the general public, and personal property

Contractor's safety record for the project

**7. Dependability:** The degree to which contractor demonstrated trustworthiness and reliability.

FACTORS:

The contractor was fair, honest, and reasonable in interactions with the agency

The contractor demonstrated consistency in business operations

The contractor was sincere in efforts to deliver a quality product and/or services

The contractor followed through on agreements made with the program/agency



# CITY COUNCIL STAFF REPORT

Item 5.1

[CLICK HERE  
TO RETURN TO  
THE AGENDA](#)

April 26, 2016

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**AGENDA SECTION:** Deferred Business

**SUBJECT:** Setting an Interim Fee for Community Events

**PREPARED BY:** D. Martin Piepenbrok, Community Relations Manager

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

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**RECOMMENDATION:**

The recommendation is for City Council to find that a public benefit exists and to establish an interim Community Events Fee of \$50.00 in lieu of the other fees currently specified in the City of Chowchilla Master Fee Schedule that apply to community events presented by non-profit and for-profit organizations, until such time as a new community events application process and fees schedule is developed by staff.

**HISTORY / BACKGROUND:**

This item was tabled from the April 12, 2016 meeting to provide staff time to further evaluate the proposal.

Chowchilla has hosted a variety of community oriented events over time with some focused in the downtown area utilizing State Highway 233/Robertson Boulevard. Many of them are presented by non-profit and for-profit organizations.

Community events are recognized to be a valued enhancement of the city's identity – highlighting the legacy of our history, bolstering its attractiveness and adding to the economic vitality. These events can bring increased numbers of visitors into local business establishments like restaurants, hotels and retail stores. It is in the City's best interest establish good partnerships with event presenters and strive to reduce barriers wherever possible so that Chowchilla enhances its position as a destination place for visitors and a community where residents are pleased to call home.

The City of Chowchilla Master Fee Schedule identifies fees that directly apply to conducting community events whether they are in the downtown, the neighborhoods, public park facilities and so forth. Specifically there are three to four fees that are supposed to be charged event applicants particularly for events like street festivals and parades. These include a temporary use permit fee of \$105.00, a street closure fee of \$262.00 per block that is closed, a post event street inspection fee of \$240.00 per block, and a fee for City Public Works personnel at \$44.00 per hour per block. For some events the City has rented barricades used to close streets to traffic, though some street events have been conducted without active street closures. In past practice the City has absorbed these rentals costs, amounting to about \$1,700.00 for each of the two large Robertson Boulevard events, as an expenditure that was neither invoiced, nor recouped in part or full from the event providers. Further still, there is no specific measure of overtime costs to City personnel such as for Police and Public Works assistance and oversight that have been charged. Thus it appears those costs have also been absorbed by the respective departments as part of conducting their duties.

Generally it appears that at some past time a decision was made to charge a fee of \$50.00 to community event applicants. No one seems to know why that particular amount, nor can justification be found that supports the determination. Additionally, there have been some organizations that were not charged any fees for a reason that today is unfounded.

It is apparent that past decisions and practices over many years have resulted in processes that have produced disparity in assigning and collecting any portion of the defined fees in the Master Fee Schedule. At the same time, costs incurred by the City have not be reimbursed or paid as direct charges by the event presenters. Again, it appears that perhaps years if not decades of past practice without question has created the current community events application and fees assessment process.

Staff wants to develop an approved community events application process that more simply and thoroughly addresses all of the items that need to be considered when an applicant wants to present a community event in Chowchilla. Because of past practices staff intends to define the process first. Once that is established then an evaluation of costs and fees that are truly appropriate to charge for events will be conducted. It is recognized that the costs and fees will need to be something that will likely have to be implemented over many years on an increasing scale. Plus, through that determination consideration will be given to the value and the dollars that come into the community by welcoming these kinds of events. It will not be the intent of the City to push events away because of the perception of costs.

Fortunately the foundation to develop a community events application process exists in a vast majority of communities throughout California and the country, and they are all quite similar in their processes. Staff intends to formulate the application process and bring it before City Council for consideration. While a specific timeline cannot be established at this moment the intent is to complete the project in 4-6 months.

In the meantime there remains a challenge to be addressed. Since the Master Fee Schedule legally dictates fees that must be assessed a community event application and staff is required by law to follow the City Council approved schedule, only City Council can vote to adjust any fees. As an interim step City Council is asked to consider assigning a basic level fee for community events presented by non-profit and for-profit organizations. In keeping with past practice it is recommended that this interim fee be \$50.00 per event. For the balance of the fiscal year staff is aware of only one large community event to be conducted on Robertson Boulevard this spring and one in Veterans Memorial Park next fall.

**FINANCIAL IMPACT:**

Considering that most community events presented by non-profit and for-profit organizations have to-date only been charged a \$50.00, there is no financial impact to the recommendation to establish and charge an interim community events fee, other than the lost opportunity to charge more for these events per the current approved City of Chowchilla Master Fee Schedule. In contrast, there is a financial gain through increased economic activity as a result of visitors utilizing downtown businesses.

**ATTACHMENTS:**

Resolution

**COUNCIL RESOLUTION # -16**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA  
TO SET AN INTERIM COMMUNITY EVENTS FEE OF \$50.00 PER EVENT**

**WHEREAS**, the City of Chowchilla recognizes the value of having community events presented in the city as part of enhancing the city's identity – highlighting the legacy of our history, bolstering its attractiveness and adding to the economic vitality; and

**WHEREAS**, the City of Chowchilla Master Fee Schedule has established fees to charge applicants who choose to present community events such as street festivals and parades; and

**WHEREAS**, separate applicable fees are prescribed in the Master Fee Schedule that include a temporary use permit fee, a street closure fee, and a post event street inspection fee, along with provisions to charge a fee for rented barricades; and

**WHEREAS**, though there is no consideration of City personnel costs who are associated with facilitating community events there is value to providing assistance and oversight of community events; and

**WHEREAS**, past practice, though not warranted by the Master Fee Schedule, has established a \$50.00 fee that has been charged to most community event presenters; and

**WHEREAS**, the actual fees that would be imposed to be in compliance with the Master Fee Schedule would substantially increase the fees paid by community event presenters; and

**WHEREAS**, the City intends to develop a new community events application process and subsequent fees structure for future implementation.

**NOW THEREFORE**, the City Council of the City of Chowchilla hereby resolves to establish an interim Community Events Fee of \$50.00 per event in lieu of the other fees currently specified in the City of Chowchilla Master Fee Schedule that apply to community events presented by non-profit and for-profit organizations, until such time as a new community events application process and fees schedule is adopted.

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla this 26<sup>th</sup> day of April, 2016 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**APPROVED:**

\_\_\_\_\_  
Mayor Waseem Ahmed

**ATTEST:**

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk



# CITY COUNCIL STAFF REPORT

Item 6.1

[CLICK HERE  
TO RETURN TO  
THE AGENDA](#)

April 26, 2016

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**AGENDA SECTION:** New Business

**SUBJECT:** **Approval of a Resolution Authorizing the City Administrator to Execute an Amended Lease Agreement with Cleargas Inc. for Tenancy and Easements to Allow Provision of Airplane Fuel and a Pilot Lounge at the Chowchilla Airport**

**PREPARED BY:** Craig Locke, City Engineer, Public Works Director  
David. G. Ritchie, City Attorney

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

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**RECOMMENDATION:**

Staff recommends approval of a resolution authorizing the City Administrator to execute an amended lease agreement with Cleargas Inc., a California corporation that will allow airplane fuel to be provided at the Chowchilla Airport. The lease will also provide for space for a pilot's lounge at the airport.

**SITUATION / ANALYSIS:**

The City of Chowchilla previously authorized the City Administrator, on March 3, 2015, to execute a lease agreement between the City and Clear Gas Inc. Before the Parties were able to execute the Agreement, Clear Gas Inc. informed the City that the finance company supporting the project indicated it would not move forward with financing expected to be repaid over a period of time that exceeded the lease term if renewals to that term could be avoided on the unilateral "without cause" desire of any single party to the lease agreement.

In effect, the finance company concerns related to the fact that substantial debt owed to them arising out of their investment under the lease might still be owed while the lease agreement had come to an end. Clear Gas and the City discussed the new development in an attempt to resolve the concerns raised.

The City has been encouraged by staff to minimize the use of contracts that automatically renew indefinitely without any action needing to be taken by either Party involved, and this effort to avoid these "evergreen" contracts has previously been the usual recommendation of the City Attorney. Staff recommends, that in the context of the unique facts presented, the prior FAA approval of a total contract term not exceeding 40 years, and the need to accommodate approval from the finance company, an alternate mechanism be used for the process for renewals as described in Article 3 of the original agreement. Summary of the change:

- Prior to the end of each five-year segment, either party may propose to terminate the lease and easement agreement for good cause.
- Should the parties disagree on termination of the lease and these differences not be resolved, the matter would then be presented to a neutral who would determine if good cause exists to terminate the lease.
- This change would not alter the rights of the Parties in connection with any breach of other provisions of the lease and easement agreement.
- The Costs of the arbitrator would be shared equally between the Parties.

The intent of this amendment is to remove unilateral decisions at the end of lease segments that could result in terminated leases and instead insert a procedure whereby either party could communicate the desire to terminate to the other and obtain a determination from a neutral third-party that good cause exists for that termination; in order to provide an additional layer of assurance that will allow investment into the airport fuel project to be financed.

Clear Gas, Inc. has indicated to the City that their finance company finds the alternate approach proposed here to be satisfactory.

No other changes to the lease and easement agreement are proposed as part of this amendment.

**FINANCIAL IMPACT:**

No financial impact, however the change carries potential future costs through obligating the City to share equally in the costs of arbitrating in the event a dispute arises that cannot be informally resolved.

**ATTACHMENTS:**

Resolution

Airport Fixed Base Operation "FBO" Land Lease and Easement Agreement (with Amended Article 3)

**SPECIAL INSTRUCTIONS:**

None

**COUNCIL RESOLUTION # -16**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA  
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AMENDED LEASE AGREEMENT  
WITH CLEAR GAS INC. FOR TENANCY AND EASEMENTS TO ALLOW PROVISION OF AIRPLANE  
FUEL AND A PILOT LOUNGE AT THE CHOWCHILLA AIRPORT**

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**WHEREAS**, the City is the owner of certain real property located in the City of Chowchilla, County of Madera, and State of California, which is being used for airport purposes ("Airport Property"), and

**WHEREAS**, Cleargas Inc. desires to lease portions of the airport property for the purpose of providing a pilot lounge and refueling facilities at the Chowchilla Airport, and

**WHEREAS**, the City and Cleargas have jointly presented the negotiated terms of the lease agreement to the Federal Aviation Administration (FAA), later incorporating the requested FAA changes into said lease agreement, and

**WHEREAS**, the City Council approves of the continued improvement of airport facilities including provision of fuel and lounge facilities for aviators

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Chowchilla hereby finds and determines the following:

1. The above recitals are true and correct.
2. Council further directs the City Administrator may execute the amended lease agreement with Cleargas.
3. This resolution is effective immediately upon adoption.

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla this 26<sup>th</sup> day of April 2016 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

APPROVED:

\_\_\_\_\_  
Waseem Ahmed, Mayor

ATTEST:

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk

**CITY OF CHOWCHILLA  
CHOWCHILLA MUNICIPAL AIRPORT  
AIRPORT FIXED BASE OPERATION “FBO” LAND LEASE AND EASEMENT  
AGREEMENT (“AGREEMENT”)**

The City of Chowchilla, a municipal corporation in the County of Madera, State of California (“CITY”), hereby leases to Clear Gas, Inc., a California corporation with its principal place of business located at 815 South Third Street, in the City of Chowchilla (“TENANT”), (collectively, the “PARTIES”), that certain portion of property located at the Chowchilla Municipal Airport which is more particularly described in the Legal Property Description in Exhibit A (Attached) (“LEASED PROPERTY”), pursuant to the following terms and conditions the CITY further grants TENANT an easement for access from certain contiguous property onto portions of the Chowchilla Municipal Airport, as more particularly described in Exhibit B (“EASEMENT PROPERTY”). The LEASED PROPERTY and EASEMENT PROPERTY are collectively referred to herein as the “PROPERTY.”

1. **FAA APPROVAL.** This AGREEMENT is subject to the approval of the Federal Aviation Administration (“FAA”).
  
2. **COMPLIANCE WITH SPONSOR’S ASSURANCES.** To the extent applicable, TENANT shall comply with all FAA assurances as shown in Exhibit C, attached hereto and incorporated by this reference herein, including but not limited to, compliance with civil rights requirements, prohibition of exclusive rights, proper maintenance and operation of airport facilities, keeping good title of Airport property, preservation of rights and powers, adherence to approved Airport layout plan(s), and compatibility of land use.

**TERM OF AGREEMENT.** This AGREEMENT shall have a term of five (5) years and may be terminated by either party to this agreement, as listed above, pursuant to the terms of this AGREEMENT or applicable law. This AGREEMENT shall renew automatically seven (7) times in successive five (5) year increments, unless the following occurs: No later than 180 days prior to the date the AGREEMENT would automatically renew, either party may give notice to the other, in writing, of a desire to terminate the agreement and shall state the reasons in support of their desire to terminate the AGREEMENT. The Parties shall then meet, within thirty (30) days, to attempt to resolve any disagreements that exist (if any) pertaining to the termination of the agreement. Should a disagreement over the termination of the AGREEMENT not be resolved between the Parties, the Party seeking termination of the AGREEMENT may refer the matter to arbitration. The Party referring the matter to arbitration shall have the burden of proving, on balance of probabilities, that there is good cause to terminate the agreement. Good cause may exist in, but is not limited to, situations where there are, external or economic factors, regulation or requirements imposed by outside agencies or third parties, or other conditions that have arisen that tend to frustrate the AGREEMENT. The Arbitrator may not subtract from, alter or add to the terms of this agreement in rendering their decision. Formal rules of evidence shall not apply during such arbitration proceedings, and the arbitrator is at liberty to issue a decision and fashion

remedies that they deem appropriate in resolving the dispute. The cost of any such arbitration shall be borne equally by the parties, with witness and legal costs and fees each to their own. Nothing in this section shall be read or interpreted to limit the ability of either party to terminate or otherwise enforce the terms of the AGREEMENT based on the other Party's breach of the AGREEMENT as provided for elsewhere in the AGREEMENT.

- a. **DELAY IN POSSESSION.** CITY agrees to use its best commercially reasonable efforts to deliver possession of the PROPERTY to TENANT by the first day of the month immediately following the day this agreement is signed by all parties. If, despite said efforts, CITY is unable to deliver possession by such date, CITY shall not be subject to any liability therefore, nor shall such failure affect the validity of this AGREEMENT or change its expiration date. TENANT shall not, however, be obligated to pay RENT (as defined below) or perform its other obligations until CITY delivers possession of the PROPERTY.
  - b. **AGREEMENT COMPLIANCE.** CITY shall not be required to deliver possession of the PROPERTY to TENANT until TENANT complies with its obligation to provide evidence of insurance pursuant to the terms of this AGREEMENT. Pending delivery of such evidence, TENANT shall be required to perform all of its obligations under this AGREEMENT, including the payment of RENT (as defined below), notwithstanding CITY's election to withhold possession pending receipt of evidence of insurance.
3. **RENT.** "RENT" is defined to include all monetary amounts owing by TENANT to CITY pursuant to the terms of this AGREEMENT, whether they are described in this paragraph or elsewhere.
- a. **USE FEE.** TENANT shall pay to CITY without deduction or offset on or before the 1<sup>st</sup> day of each year, an annual fee of seven hundred dollars (\$700) for use of the LEASED PROPERTY. The CITY retains the right to increase the annual fee, at each option period, with any fee increase not to exceed the Consumer Price Index (CPI) for California's Central Valley Region and becoming effective January 1<sup>st</sup> of each year. The CITY will notify the TENANT in writing of any increase in the annual fee on or before November 1<sup>st</sup>. All fee payments shall be made at City Hall, 130 South Second Street, Civic Center Plaza, Chowchilla, California.

**EASEMENT PROPERTY FEE.** TENANT shall pay to CITY without deduction or offset on or before the 1<sup>st</sup> day of each year, an annual fee of one thousand three hundred dollars (\$1,300) in exchange for the use of the EASEMENT PROPERTY. The CITY retains the right to increase the annual fee, at each option period, with any fee increase not to exceed the Consumer Price Index (CPI) for California's Central Valley Region and becoming effective January 1<sup>st</sup> of each year. The CITY will notify the TENANT in writing of any increase in the annual fee on or before November 1<sup>st</sup>. All fee payments shall be

made at City Hall, 130 South Second Street, Civic Center Plaza, Chowchilla, California.

- b. **FUEL FLOWAGE FEE.** TENANT shall pay to CITY without deduction or offset on or before January 31<sup>st</sup> of each calendar year, following the prior calendar year, a per gallon fee of fuel pumped by TENANT on the Airport surface. The CITY retains the right to increase the fee, at each option period, with any fee increase not to exceed the Consumer Price Index (CPI) for California's Central Valley Region and becoming effective January 1<sup>st</sup> of each year. The CITY will notify the TENANT in writing of any increase in the fee on or before November 1<sup>st</sup>. All fee payments shall be made at City Hall, 130 South Second Street, Civic Center Plaza, Chowchilla, California.

Fuel Flowage Fees Per Gallon

0 – 5,000 = \$0.00

5,001 – 10,000 = \$0.03

10,001 – 20,000 = \$0.04

20,001 – 30,000 = \$0.05

30,001 – 40,000 = \$0.06

40,001 – Unlimited = \$0.07

- c. **LATE CHARGES.** TENANT hereby acknowledges that its late payment of RENT will cause CITY to incur costs not contemplated by this AGREEMENT, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any RENT is not received by CITY on the day that it is due plus any grace period, then, without any requirement or notice to TENANT, TENANT shall immediately pay to CITY a one-time late charge equal to ten percent (10%) of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs CITY will incur by reason of such late payment. Acceptance of such late charge by CITY shall in no event constitute a waiver of TENANT's BREACH (as defined below) with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder.
- d. **INTEREST.** Any monetary payment due to CITY hereunder, other than late charges, not received by CITY, when due shall bear interest from the 31st day after it was due. The interest charged shall be computed at the rate of ten percent (10%) per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for above.

4. **TAXES.** Any and all taxes assessed by any governmental unit shall be the responsibility of the TENANT.
  
5. **USE OF PROPERTY.** The EASEMENT PROPERTY shall be used for the sole purpose of selling FUEL from a fueling island with dispensing equipment adequate for fueling aircraft. Any necessary electrical, water, air, fuel, and data will be delivered to the EASEMENT PROPERTY from TENANT adjacent property and shall comply with all federal, state and local governing authorities. The LEASED PROPERTY shall be used for the sole purpose of providing a lounge catering primarily to pilots and their guests utilizing the Chowchilla Municipal Airport.
  - a. TENANT shall not use or permit said property or any portion thereof to be used for any purpose other than the purposes than those provided for in this AGREEMENT. All uses must be within any restrictions placed by the Federal Aviation Authority (“FAA”).
  
  - b. TENANT shall comply with all federal, state and local procedures to prevent soil, water and air quality degradation; and pay for equipment and devices, including the cost of installation, necessary to meet said requirements. TENANT shall, prior to commencement of any FUEL sales, install ground facilities capable of containing any chemical or substances, including FUEL, per CITY, State and federal standards. TENANT shall store all unused FUEL at a location other than the PROPERTY. TENANT shall provide a fenced enclosure of sufficient size to contain the equipment needed to dispense FUEL at the EASEMENT PROPERTY to ensure its safety when TENANT’s representatives are not present. Said enclosure must be locked whenever TENANT’s representatives are not personally present at the EASEMENT PROPERTY. During the term of this AGREEMENT, TENANT shall own all improvements constructed and equipment located on the EASEMENT PROPERTY and LEASED PROPERTY by TENANT until expiration of this AGREEMENT or until earlier termination as hereinafter provided, at which time such improvements and equipment shall become the CITY’s property. TENANT shall not remove any improvements or equipment from the PROPERTY, or waste, destroy or modify any improvements except as permitted by this AGREEMENT. The location of all improvements and equipment TENANT installs on or at the PROPERTY must be approved by the CITY prior to installation or construction. **The installation and construction of improvements shall be provided by a licensed contractor. All installations shall be in inspected, approved and accepted by the CITY.** TENANT shall maintain ownership of all personal property located at the PROPERTY but not affixed to the PROPERTY following termination of this AGREEMENT. Tenant shall not affix any item to the LEASED PROPERTY without the CITY’s prior approval.
  
  - c. TENANT shall not provide or serve alcohol by any means anywhere at the Chowchilla Municipal Airport. TENANT shall also take all reasonable steps to

ensure guests and/or customers using the PROPERTY do not consume alcohol while at the PROPERTY.

- d. TENANT shall be solely responsible for janitorial servicing of the restrooms located near the LEASED PROPERTY, including clean-up of any graffiti. TENANT shall maintain the restrooms in a neat and clean manner and shall ensure the restrooms remain stocked with items appropriate for a public restroom. CITY shall be responsible only for repairing and maintaining equipment in the restroom such as the toilets, faucets, plumbing, mirrors, and locks.
6. **UTILITIES.** TENANT shall pay for all utility services, including electric and water, supplied to the EASEMENT PROPERTY, including the cost of installation and Maintenance thereof, if any. TENANT shall use City of Chowchilla water and shall pay the Standard Commercial Fee for hook-up and monthly services charge.
  7. **MAINTENANCE OF PROPERTY, IMPROVEMENTS, SOIL, WATER AND AIR QUALITY PROTECTION DEVICES.** CITY shall provide on-site soil testing to establish that no soil contamination or spillage is within the EASEMENT PROPERTY prior to TENANT taking possession of the EASEMENT PROPERTY. TENANT shall, at its sole cost and expense, keep and maintain the PROPERTY, improvements and all portions thereof, including the EASEMENT PROPERTY's soil, in safe and sanitary order, in good state of repair, and in proper working order. TENANT shall keep the PROPERTY clean and free of weeds, debris and other unsightly or unsafe matter and shall properly dispose of all debris and other waste matter which may accumulate. Should any portion of the EASEMENT PROPERTY's soil become exposed to fuel, or any other contamination, it shall be TENANT's sole responsibility to immediately take all actions necessary to remediate the soil.
    - a. **SERVICE CONTRACTS.** TENANT shall, at TENANT's sole expense, procure and maintain contracts with copies to CITY, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if and when installed on the PROPERTY: (i) HVAC equipment, (ii) fire extinguishing systems, including fire alarm and/or smoke detection, (iii) landscaping and irrigation systems, and (iv) fuel pumping equipment. If TENANT does not procure or maintain such service contracts, CITY reserves the right, upon fifteen (15) days' notice to TENANT, to procure and maintain any or all of such service contracts, and TENANT shall reimburse CITY, upon demand, for the cost thereof.
    - b. **ENVIRONMENTAL CONTAMINATION.** If a hazardous substance is released onto the PROPERTY during the term of this AGREEMENT, TENANT shall provide CITY with reasonable notice of such release to the CITY's Airport Manager, or if unavailable, the CITY's City Administrator. TENANT shall provide notice of such release by completing and submitting a "Spill Incident Report Form" a copy of which is attached hereto as Exhibit "\_\_" or in another writing that provides substantially the same information as is required by said

Spill Incident Report Form. Reasonable notice shall never be more than twenty-four (24) hours after the release. TENANT's notice that a hazardous substance release has occurred shall include a proposed plan for remediation. CITY shall either consent to TENANT's proposed remediation plan, or CITY may choose to conduct the remediation at TENANT's cost.

- c. **FAILURE TO PERFORM.** If TENANT fails to perform its obligations to maintain the PROPERTY, CITY may enter upon the PROPERTY after ten (10) days written notice to TENANT (unless an emergency situation exists, in which case notice is not required), perform such actions as needed to bring the PROPERTY into compliance on TENANT's behalf, and TENANT shall promptly pay the CITY a sum equal to 115% of the cost thereof.
8. **TERMINATION.** Upon expiration or termination of this AGREEMENT, TENANT shall have no further right or interest in any of the PROPERTY, improvements and equipment thereon, with the sole exception of personal property. CITY shall have the option as to whether any or all improvements or equipment constructed and/or installed on the PROPERTY by TENANT may be removed by TENANT or whether they shall remain. Should CITY determine that any or all such improvements and equipment shall remain, such improvements and equipment shall thereupon become the property of CITY, and TENANT agrees to execute a Bill of Sale transferring all rights, interests and ownership in such improvements to CITY. Should CITY exercise its option of requiring TENANT to remove any or all such improvements or equipment from the PROPERTY, such removal shall be accomplished by TENANT at TENANT's sole cost and expense within 30 days after termination or expiration of this AGREEMENT, during which 30 days TENANT will have no liability for RENT. If TENANT fails to remove such improvements within said 30-day period, CITY may remove them at TENANT's expense, and TENANT shall be liable for payment of RENT as herein described for any period TENANT occupies the PROPERTY after termination.
  9. **PROHIBITIONS.** TENANT shall be subject to all airport rules and regulations, including but not limited to, the following:
    - a. This AGREEMENT is subject to all applicable terms, and conditions, executed by the Administrator of Federal Aviation Agency acting on behalf of the United State of America.
    - b. TENANT agrees that it will not use or permit the PROPERTY to be used for any unlawful purpose.
    - c. TENANT shall not commit nor suffer to be committed any waste upon the PROPERTY, or any public or private nuisance or other act or thing which may disrupt the normal utilization by any other tenant of the Chowchilla Municipal Airport.

- d. TENANT shall, at its sole cost and expense, promptly observe and comply with all laws, orders, regulations, rules, ordinances and requirements now in force or which may hereafter be in force of federal, state, county and city governments or other lawful governmental bodies or any of their departments, bureaus or officers having jurisdiction over the PROPERTY or any of the activities conducted thereon.
- e. TENANT agrees to observe and obey all laws, ordinances rules and regulations now in effect or promulgated in the future by CITY and/or by any other proper authority having jurisdiction over the conduct of operations at the Chowchilla Municipal Airport. CITY reserves the right to suspend all chemicals handling, storage and FUEL sales if TENANT is found to be in non-compliance with Madera County Health Department, California Department of Health Services, or California Regional Water Quality Control Board soil, air and water quality protection regulations.
- f. TENANT shall store all FUEL that reaches the EASEMENT PROPERTY, in accordance with city, county, state and federal regulations. TENANT AGREES TO PAY ALL COSTS for the cleanup and remediation, if any, of chemical spills or jettisoned loads anywhere on the PROPERTY or anywhere on property owned by the City of Chowchilla, that result from TENANT's operations or related activities.
- g. TENANT shall do all things which may be required of it or be deemed necessary on account of the use by TENANT of said PROPERTY, and TENANT shall and does agree to pay, at its sole cost and expense, all fines, penalties, damages, costs and expenses that may in any manner arise out of or be imposed because of the failure of TENANT to comply with this paragraph. TENANT shall and does hereby agree to hold CITY harmless from any damage, injury or loss suffered by reason of any breach by TENANT.

10. **SUBCONTRACTORS.** TENANT shall provide CITY a written list of all subcontractors used in its operations at the PROPERTY including, but not limited to the following:

- a. TENANT is required to give 24 hour written notice to CITY for use of a new subcontractor in TENANT's operation.
- b. All subcontractors are required to provide to CITY Commercial General Liability Insurance.
- c. TENANT shall only use subcontractors that are providing direct services to the TENANT. NO independent operations by subcontractors are allowed under the terms of this AGREEMENT.
- d. TENANT must be able to produce upon demand to CITY, written documentation that subcontractor services are directly related to TENANT's operations when using the Chowchilla Airport Facility.

11. **USE OF AIRPORT FACILITIES.** TENANT, by virtue of this AGREEMENT, shall not have use of any improvement or facility located at the Chowchilla Municipal Airport other than what is located on the PROPERTY and expressed by this agreement. TENANT shall be allowed to bring a fuel truck and/or trailer on to the Airport property from TENANTS adjacent property for the purpose of fueling aircraft. TENANT shall fuel aircraft on all Airport properties except runways, taxiways or restricted surfaces. TENANT shall not make, or suffer to be made any soil contaminations and spillage from hazardous materials used in fixed base operations TENANT agrees to pay for any clean-up, remediation and/or cost incurred during clean-up or remediation until soil testing is approved and contamination is no longer present in the EASEMENT PROPERTY.
12. **COMPLIANCE WITH LAWS AND REGULATIONS.** In addition to the covenants herein and above set forth, TENANT agrees to the following:
- a. TENANT shall not commit or allow to be committed in or upon the PROPERTY any other act or thing that may disturb any other tenant at the airport.
  - b. TENANT shall, at Tenant's own cost and expense, obtain and maintain all licenses, permits, certificates or other authorizations of any governmental authority having jurisdiction there over, including, but not limited to, the FAA, this may be necessary for the conduct of its business on the Premises. Without limiting the generality of the foregoing, TENANT shall comply with all applicable laws, resolutions, codes, rules, orders, directions, ordinances and regulations of any department, bureau or agency or any governmental authority having jurisdiction over the operations, occupancy, maintenance and use of the PROPERTY for the purpose described in the AGREEMENT.
13. **AIRPORT APPROPRIATED BY FEDERAL GOVERNMENT.** In the event that the Chowchilla Municipal Airport or any portion thereof is appropriated by the Federal Government in a national emergency and as a result thereof civil aircraft are prohibited from using said airport, and as a result thereof TENANT is otherwise prohibited by federal law, rule or regulation from using and/or occupying the PROPERTY, and TENANT for such reason does not use or occupy said PROPERTY and TENANT is not compensated for damages caused thereby, then during the period in which all such conditions exist, the rental herein required to be paid shall be suspended. Except for such suspension or rental, each and every provision term, covenant and condition of this AGREEMENT shall remain in force and effect, including, but not by way of limitation, TENANT's obligation to maintain the PROPERTY. The term of this AGREEMENT shall not be extended because of the occurrence of the above conditions.
14. **ENVIRONMENTAL INDEMNIFICATION.** TENANT agrees to indemnify, defend by separate counsel appointed by mutual agreement of the TENANT and the CITY, and hold harmless, CITY, its directors, council members, officers, employees, representatives and agents hereinafter referred to collectively as "CITY PERSONNEL" from and against

and in respect of any and all claims, damages (including, without limitations, diminution deficiencies, interest, penalties, attorney fees and all amounts paid in defense of settlement of the foregoing whether or not arising out of third-party claims, which may be imposed upon or incurred by CITY or asserted against CITY PERSONNEL by any other party or parties (including governmental entities), in connection with any environmental non-compliance arising out of, resulting from, or attributable to, the assets, business, or any claims, expenses, losses, liabilities, etc., resulting from the alleged exposure of any person to environmental conditions or exposure resulted from TENANT's activities or TENANT's agents, representatives, employees or independent contractors.

15. **ASSIGNMENTS.** TENANT shall not assign this AGREEMENT or any interest therein, and shall not sublet the PROPERTY or any portion thereof or any rights or privileges appurtenant thereto or suffer any other person (agents and servants of CITY excepted) to occupy or use the PROPERTY or any portion thereof without the CITY's prior written consent. Consent to one assignment subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use.
16. **ABANDONMENT.** TENANT shall not abandon the PROPERTY described herein at any time during the term hereof. The PROPERTY shall be deemed abandoned following notices as provided by California's Civil Code or should TENANT fail to operate its business at the PROPERTY for more than seven (7) calendar day.
17. **ALTERATIONS-REMOVAL OF ADDITIONS.** Except as provided in this AGREEMENT, TENANT shall not make or allow to be made any alterations to the PROPERTY or any part thereof without first obtaining the CITY's written consent. TENANT shall keep the PROPERTY free from any liens arising out of any work performed, materials furnished or obligations incurred by TENANT. In the event the TENANT desires to make any alterations or improvements, plans and specifications thereof shall be submitted to the CITY and if satisfactory, completion thereof shall be made to the CITY's satisfaction.
18. **INSURANCE.**
  - a. **GENERAL LIABILITY INSURANCE.** TENANT shall at all times carry commercial general liability insurance which shall provide coverage from any claim or liability for any injury or damage to any person or property occurring on the PROPERTY or arising out of or resulting from the TENANT's operations or omissions on said PROPERTY or at the Chowchilla Municipal Airport. The policy limits of general commercial liability policies shall be in not less than Five Million Dollars (\$5,000,000).
  - b. **PROPERTY DAMAGE.** TENANT shall obtain and maintain insurance coverage on all of TENANT's personal property, trade fixtures and TENANT owned alterations and utility installations located on the PROPERTY. Such insurance shall be full replacement cost coverage with a deductible that does not exceed \$10,000 per occurrence. The proceeds from any such insurance shall be

used by TENANT for the replacement of personal property, trade fixtures and TENANT owned alternations and utility installations.

- c. **ENVIRONMENTAL INSURANCE.** At all times, TENANT shall also carry environmental insurance which shall provide coverage for any pollution or contamination that may arise from activities occurring at the PROPERTY. The policy limits of TENANT's environmental insurance policy shall be not less than Five Million Dollars (\$5,000,000.00).
- d. **INSURANCE DURING CONSTRUCTION.** TENANT shall, in addition to the insurance above required, provide similar liability insurance covering CITY, its officers and employees, during the construction of any and all improvements made by TENANT upon the PROPERTY and/or pursuant to this AGREEMENT. Said policy shall remain in full force and effect until the completion of all of said improvements and the acceptance thereof by CITY.
- e. **VERIFICATION OF COVERAGE.** TENANT shall furnish to CITY certificates of insurance with original endorsements effecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy(ies) are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates or endorsements are to be received and approved by CITY prior to the commencement date, and thereafter, TENANT shall furnish new certificates 30 days prior to the expiration date of the previous certificate(s). City reserves the right to require complete, certified copies of all prior insurance policies at all times.

All insurance policies obtained to comply with the terms of this AGREEMENT shall be in a form that meets the CITY's approval and shall be underwritten by a company or companies holding at least an A Financial Strength Rating from A.M. Best Company. Policy limits shall be reviewed on yearly intervals and adjusted as required. Said policies shall expressly include CITY, its officers and employees, as insured and shall not in any way limit the coverage provided by said policy or policies for injury or damage to the person or property of CITY, its officers and employees, arising or resulting from any wrongful act or omission or negligence on the part of TENANT, its servants, employees or agents. Other insurance of CITY shall not be required to participate with said insurance in the payment of any damages. Said insurance policy, policies or certificates evidencing issuance of the policies required herein shall be provided to the CITY concurrently with the execution of this AGREEMENT and shall include an endorsement precluding cancellation thereof without 30 days prior written notice to CITY.

## **19. BREACH; REMEDIES.**

- a. **BREACH.** A “BREACH” is defined as TENANT’s failure to comply with or perform any of the terms, covenants, conditions under this AGREEMENT or FAA Rules and Regulations, and the failure of TENANT to cure that BREACH within any applicable grace period.
- i. TENANT shall be deemed in BREACH if, for three (3) calendar days following written notice, TENANT fails to make any payment of RENT when due, or to provide reasonable evidence of insurance. **THE CITY’S ACCEPTANCE OF A PARTIAL PAYMENT OF RENT SHALL NOT CONSTITUTE A WAIVER OF ANY OF CITY’S RIGHTS, INCLUDING CITY’S RIGHT TO RECOVER POSSESSION OF THE PREMISES.**
  - ii. TENANT shall be deemed in BREACH if it fails to fulfill any obligation under this AGREEMENT which endangers or threatens life or property.
  - iii. TENANT shall be deemed in BREACH if any of the following events occur: (a) the making of any general arrangement or assignment for the benefit of creditors; (b) becoming a debtor as defined in 11 U.S.C Section 101 or any successor statute thereto (unless, in the case of a petition filed against TENANT, the same is dismissed within 60 days); (c) the appointment of a trustee or receiver to take possession of substantially all of TENANT’S assets located at the PROPERTY or of TENANT’S interest in this AGREEMENT, where possession is not restored to TENANT within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of TENANT’S assets located at the LEASED PROPERTY or of TENANT’S interest in this AGREEMENT, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.
- b. **REMEDIES.** If TENANT is in BREACH of this AGREEMENT, CITY may, at its option, perform on TENANT’S behalf, and TENANT shall pay to CITY an amount equal to 115% of the costs and expenses CITY incurs in such performance upon receipt of an invoice therefor. CITY may also, with or without further notice or demand, and without limiting CITY in the exercise of any right or remedy which CITY may have by reason of such BREACH:
- i. Terminate TENANT’S right to possession of the PROPERTY by any lawful means, in which case this AGREEMENT shall terminate and TENANT shall immediately surrender possession of the PROPERTY with all of its improvements and equipment to CITY, keeping only TENANT’S personal property. In such event, CITY shall be entitled to recover from TENANT (a) the unpaid RENT which had been earned at the time of the termination; (b) the worth at the time of award of the amount by which the

unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that TENANT proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the TENANT proves could be reasonably avoided; and (d) any other amount necessary to compensate CITY for all the detriment proximately caused by TENANT's failure to perform its obligations under this AGREEMENT or which the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the PROPERTY, expenses or reletting, including necessary renovation and alteration of the PROPERTY, reasonable attorneys' fees, and that portion of any leasing commission paid by CITY in connection with this AGREEMENT applicable to the unexpired term of this AGREEMENT. The worth at the time of award of the amount referred to in provision (c) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the PROPERTY is located at the time of award plus one percent. Efforts by City to mitigate damages caused by TENANT's BREACH of this AGREEMENT shall not waive CITY's right to recover any damages to which CITY is otherwise entitled. If termination of this AGREEMENT is obtained through the provision remedy of unlawful detainer, CITY shall have the right to recover in such proceeding any unpaid RENT and damages as are recoverable therein, or CITY may reserve the right to recover all or any part thereof in a separate suit. If notice and grace period required under this AGREEMENT was not previously given, a notice to pay rent or quit, or to perform or quit given to TENANT under the unlawful detainer statute shall constitute the notice required by this AGREEMENT. In such case, the applicable grace period and the unlawful detainer statute shall run concurrently, and TENANT's failure to cure within the greater of the two periods shall constitute both an unlawful detainer and a BREACH of this AGREEMENT entitling CITY to the remedies provided for in this AGREEMENT and/or by said statute.

- ii. Continue this AGREEMENT and TENANT's right to possession and recover the RENT as it becomes due, in which event TENANT may sublet or assign, subject only to reasonable limitations.
- iii. Pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of California or the United States of America. The expiration or termination of this AGREEMENT and/or the termination of TENANT's right to possession shall not relieve TENANT from liability under any indemnity provisions of this AGREEMENT as to matters occurring or accruing during the term hereof or by reason of TENANT's occupancy of the PROPERTY.

20. **BREACH BY CITY.**

- a. **NOTICE OF BREACH.** CITY shall not be deemed in breach of this AGREEMENT unless CITY fails within a reasonable time to perform an obligation required to be performed by CITY. For purposes of this paragraph, a reasonable time shall in no event be less than thirty (30) days after receipt by CITY of written notice specifying the obligation CITY has purportedly failed to formed; provided, however, that if the nature of CITY's obligation is such that more than thirty (30) days are reasonably required for its performance, then CITY shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.
- b. **PERFORMANCE BY TENANT ON CITY'S BEHALF.** In the event that CITY fails to cure such default within the reasonable time described above, then TENANT may elect to cure said breach at TENANT's expense and offset from RENT the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to one year's worth of fees due under this AGREEMENT, reserving TENANT's right to seek reimbursement from CITY for any such expense in excess of such offset. TENANT shall document the cost of said cure and supply said documentation to CITY.

21. **CONDEMNATION CLAUSE.** If any part of the PROPERTY shall be taken or condemned for a public or quasi-public use, and a part thereof remains which is susceptible of occupation hereunder, this AGREEMENT shall, as to the part so taken, terminate as of the date title shall vest in the condemner, and the RENT payable hereunder shall be adjusted so that TENANT shall be required to pay for the remainder of the term only such portion of such RENT as the value of the part remaining after the condemnation bears to the value of the entire PROPERTY as the date of condemnation but in such event, CITY and TENANT shall each have the option to terminate this AGREEMENT as of the date when title to the part so condemned vests in the condemner. If all the PROPERTY, or such part thereof, be taken or condemned so that there does not remain a portion susceptible of occupation hereunder, this AGREEMENT shall thereupon terminate. If part or all of the PROPERTY be taken or condemned, all compensation awarded upon such condemnation or taking shall be shared by CITY and TENANT, as their interests appear of record.

22. **INDEMNITY.** To the fullest extent permitted by law, TENANT agrees to indemnify, hold harmless, protect and defend CITY and CITY's employees, City Council, agents, representatives and contractors from any and all claims, causes of action, liability, losses, costs, and damages, for the foreseeable or unforeseeable, arising out of or related to any act, omission, or negligence of TENANT or TENANT's agents, employees, representatives or contractors, or arising from or related to TENANT's use of activities related to this AGREEMENT and/or on or at the Chowchilla Municipal Airport. The provisions of this section shall survive the termination, cancellation or expiration of this AGREEMENT.

23. **NOTICES.**

- a. **NOTICE REQUIREMENTS.** All notices required or permitted by this AGREEMENT or applicable law, including unlawful detainer statutes, shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by mail, and shall be deemed sufficiently given if served in a manner specified by this paragraph to the addresses below. Either party may be written notice to the other specify a different address for notice.

If to TENANT:

Clear Gas, Inc.  
Attn: Adam DeBard  
815 South Third St.  
Chowchilla, CA 93610  
Fax: (559) 427-5710

With copy to:

Crabtree Schmidt  
Attn: Robert W. Crabtree  
1100 14<sup>th</sup> Street, Suite E  
Modesto, CA 95354  
Fax: (209) 526-5231

If to CITY:

City of Chowchilla  
Attn: Airport Manager  
130 S. Second Street  
Chowchilla, CA 93610  
Fax: (559) 665-2569

With copy to:

Cota Cole LLP  
Attn: Chowchilla City Attorney  
2261 Lava Ridge Court  
Roseville, CA 95661  
Fax: (916) 780-9050

- b. **DATE OF NOTICE.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of same to the Postal Service or courier. Notices transmitted by facsimile transmission shall be deemed delivered upon confirmation of receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **RIGHT OF SPECIAL GATHERINGS/EVENTS.** TENANT hereby acknowledges that CITY has approved or will approve in the future occasional large-scale special events (i.e., Annual Gatherings) which may take place on the Chowchilla Municipal Airport. CITY reserves the right to require temporary suspension of activities and evacuation of personnel from the PROPERTY during special events and special activities as may be determined by CITY, without compensation to TENANT. The CITY shall not suspend operations for more than twenty four (24) hours. With the exception of

TENANT's insurance and indemnity requirements, all of TENANT's obligations under this AGREEMENT shall be suspended for the duration of such special gatherings or events.

25. **NONDISCRIMINATION.** TENANT for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereto, does hereby covenant and agree as a covenant running with the land, that:
- a. No person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
  - b. In the construction of improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits, or otherwise be subjected to discrimination;
  - c. TENANT shall use the PROPERTY in compliance with all other requirements imposed by or pursuant to Title Forty-nine, Code of Federal Regulations, of the Secretary, Part Twenty-one, nondiscrimination in federal assisted programs of the Department of Transportation-Efficacy of Title VI of the Civil Rights Act of 1964, and as said Regulations by being amended; and
  - d. In the event of breach of any of the above nondiscrimination covenants, the City of Chowchilla shall have the right to terminate this AGREEMENT and to re-enter and repossess said land, and hold the same as if said AGREEMENT had never been made or issued.
26. **NO RIGHT TO HOLDOVER.** TENANT has no right to retain possession of the PROPERTY or any part thereof beyond the expiration or termination of this AGREEMENT. In the event that TENANT holds over, then the Monthly Fee shall be increased to 150% of the applicable amount owing for the month immediately preceding the expiration or termination. The Holdover Monthly Fee shall be calculated on a monthly basis and shall therefore increase by 150% each month. Nothing contained herein shall be construed as consent by CITY of any holding over by TENANT.
27. **WAIVER.** The exercise of any right, option or privilege hereunder by CITY shall not exclude CITY from exercising any and all other rights, privileges and options, or privilege hereunder and shall not be deemed a waiver of said right, option, or privilege nor shall it relieve the TENANT from his obligation to perform each and every covenant, term, provision and condition on the part of TENANT to be performed hereunder or from damages or other remedy for failure to perform or meet the obligations of this AGREEMENT.

28. **CUMULATIVE REMEDIES.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
29. **NO PRIOR AGREEMENTS.** This AGREEMENT represents the entire contract and supersedes all other promises, representation and understanding with reference to or in consideration of the subject matter thereof
30. **ATTORNEYS' FEES.** If any party to this AGREEMENT brings an action or proceeding involving the PROPERTY or this AGREEMENT, whether founded in tort, contract or equity, the PREVAILING PARTY (as defined hereunder) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "PREVAILING PARTY" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, CITY shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of BREACH and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such BREACH (\$200 is a reasonable minimum per occurrence for such services and consultation.)
31. **CITY'S ACCESS; REPAIRS.** CITY and CITY's agents shall have the right to enter the PROPERTY at any time, in case of an emergency, and otherwise at reasonable times without notice for the purpose of showing the same to prospective purchasers, lenders, tenants or governmental agencies, inspecting the PROPERTY, and making such alterations, repairs, improvements or additions to the PROPERTY as CITY may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the PROPERTY and/or other premises as long as there is no material adverse effect to TENANT's use of the PROPERTY. Inspections of the PROPERTY shall not in any way be deemed an approval to the condition of the improvements or equipment's condition. All such activities shall be without abatement of rent or liability to TENANT.
32. **FORCE MAJEURE.** CITY shall not in breach of this AGREEMENT in the event that TENANT's access to the PROPERTY is temporarily interrupted or continued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, fires, or other catastrophic events which are beyond the reasonable control of CITY. Events of force majeure and other catastrophic events do not include labor disturbances, the financial inability of TENANT to perform each and every obligation of the AGREEMENT or failure of TENANT to obtain any necessary permit(s) or license(s) or any other certification or entitlement necessary for TENANT to perform the services defined by this AGREEMENT from any

government agency or TENANT's inability to obtain or maintain the right to use facilities of public utilities or such failure is due solely to TENANT's acts or omissions.

33. **AMENDMENTS.** This AGREEMENT may be modified only in writing, signed by the parties in interest at the time of the modification.

34. **SEVERABILITY.** If any of the provisions contained in this AGREEMENT shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) of this AGREEMENT and this AGREEMENT shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this AGREEMENT.

35. **BINDING EFFECT ON CITY.** Neither this AGREEMENT nor any amendments or supplements hereto shall be binding on CITY unless and until it is signed in CITY's behalf by a representative duly authorized by its City Council and a copy thereof so signed is delivered to TENANT.

**CITY AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS AGREEMENT AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS AGREEMENT SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS AGREEMENT IS EXECUTED, THE TERMS OF THIS AGREEMENT ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF CITY AND TENANT WITH RESPECT TO THE PROPERTY.**

**CITY OF CHOWCHILLA:**

**TENANT(s):**

By: \_\_\_\_\_  
City Mayor

\_\_\_\_\_  
Owner/Authorized Agent

\_\_\_\_\_  
Owner/Authorized Agent

**ATTESTED BY** \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

## EXHIBIT A – LEGAL PROPERTY DESCRIPTION

**EXHIBIT B – EASEMENT PROPERTY DESCRIPTION**

## EXHIBIT C – AIRPORT SPONSORS ASSURANCES



# CITY COUNCIL STAFF REPORT

Item 6.2

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THE AGENDA](#)

April 26, 2016

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**AGENDA SECTION:** New Business

**SUBJECT:** **Approval of a Resolution Authorizing the City Administrator to Execute an Agreement Between the City of Chowchilla and Cleargas, Inc. for Maintenance and Improvements at the Chowchilla Airport**

**PREPARED BY:** Craig Locke, City Engineer, Public Works Director  
David. G. Ritchie, City Attorney

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

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**RECOMMENDATION:**

Staff recommends approval of a resolution authorizing the City Administrator to execute an agreement with Cleargas Inc. for maintenance and improvement services to be performed at the Chowchilla Airport.

**SITUATION / ANALYSIS:**

The City of Chowchilla previously authorized the City Administrator, on March 3, 2015, to execute a lease agreement between the City and Clear Gas Inc. That lease agreement is set for 40 years in five-year on the airport premises.

The City and Cleargas, during discussions about the airport lease agreement, recognized that the City has a desire to keep, maintain and improve miscellaneous areas on the airport property. Two examples of this are as the pilot's lounge, and signage at the entry to the airport to encourage use of airport facilities. This desire is shared by Cleargas, who hope to attract additional activity at the airport that potentially could result in greater airplane fuel sales and an increase in overall activity at the airport.

Clear Gas, Inc. has indicated a willingness to perform certain maintenance tasks on an "as approved" basis, and agrees that if the City desires to do so, Cleargas would perform such services on an "in-kind" basis, if the value of such services serves to offset rental amounts it would otherwise owe under the terms of the lease.

The agreement provides that all maintenance and improvements be authorized by the Airport Manager / City. Cleargas would be relieved of the obligation to pay rental fees at the beginning of the year. Before the beginning of each succeeding year, a reconciliation would occur during which the value of any authorized services performed would be deducted from the rent amount. In the event that the value of services performed is less than what remains owing on the rent, Cleargas would pay the balance to the City. If the value of services is greater than the rent owed, the balance would be carried forward and applied against future rent obligations in successive years. In the event the lease and easement agreement terminated, for any reason and a balance to be applied on future years of rent remained in favor of Cleargas, Cleargas agrees that it forfeits the right to collect the residual amount from the City.

The maintenance and improvement agreement specify a term of one year, renewable by mutual written agreement of the parties annually, for a maximum duration not to exceed five years. The total value of all maintenance and improvement services is strictly limited and shall not, in the aggregate, exceed the purchasing authority of the City Administrator over the entire potential five-year duration of the Agreement.

No other changes to the lease and easement agreement are proposed as part of this amendment.

**FINANCIAL IMPACT:**

The City may experience a reduction in rent received under the Cleargas Lease and Easement Agreement in amounts that annually do not exceed the rent otherwise owed, as any balance is carried forward.

**ATTACHMENTS:**

Resolution  
Agreement

**SPECIAL INSTRUCTIONS:**

None

**COUNCIL RESOLUTION # -16**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA  
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY  
OF CHOWCHILLA AND CLEAR GAS, INC. FOR MAINTENANCE AND IMPROVEMENTS AT THE  
CHOWCHILLA AIRPORT**

**WHEREAS**, the City is the owner of certain real property located in the City of Chowchilla, County of Madera, and State of California, which is being used for airport purposes ("Airport Property"), and

**WHEREAS**, The Cleargas, Inc. has an existing Lease and Easement Agreement for Occupation of Certain portions of the Chowchilla Airport Property providing for payment of rent and use fees by Cleargas, Inc. to the CITY; and,

**WHEREAS** the CITY desires to keep, maintain and improve miscellaneous areas on the Airport properties as identified from time-to-time by the CITY's Airport Manager; and,

**WHEREAS** the TENANT desires to undertake these maintenance tasks and the CITY desires to offset the value of these maintenance tasks against the rent, otherwise payable by Cleargas, Inc.,

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Chowchilla hereby finds and determines the following:

1. The above recitals are true and correct.
2. Council further directs the City Administrator may execute the Agreement for Maintenance and Improvement Services between the City and Cleargas, Inc..
3. This resolution is effective immediately upon adoption.

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla this 26<sup>th</sup> day of April 2016 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

APPROVED:

\_\_\_\_\_  
Waseem Ahmed, Mayor

ATTEST:

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk

## AGREEMENT FOR AIRPORT MICELLANEOUS MAINTENANCE SERVICES

This agreement for services is between the City of Chowchilla (the "CITY") and Clear Gas Inc. / Adam DeBard (the "TENANT"), collectively the "PARTIES"

WHEREAS The TENANT has an existing Lease and Easement Agreement for Occupation of Certain portions of the Chowchilla Airport Property providing for payment of rent and use fees by TENANT to the CITY; and,

WHEREAS the CITY desires to keep, maintain and improve miscellaneous areas on the Airport properties as identified from time-to-time by the CITY's Airport Manager; and,

WHEREAS the TENANT desires to undertake these maintenance tasks and the CITY desires to offset the value of these maintenance tasks against the rent, otherwise payable by the TENANT,

THEREFORE the TENANT and CITY hereby agree as follows:

### 1. TERM

This agreement shall have a term of one year, and shall begin on the date this Agreement is executed by all PARTIES. The term of this agreement may be extended through mutual written agreement of all PARTIES in one-year successive increments, with a maximum term of five (5) years.

### 2. MAINTENANCE AND IMPROVEMENT SERVICES

During the term of this agreement, the CITY may engage the services of the TENANT on an as-needed basis to provide the services listed below or other such services as are mutually agreed upon in writing by the Parties. The Airport manager shall determine and recommend the type, nature, scope and prioritization of maintenance services, and those to be performed shall be identified in a task order signed by both PARTIES, subject to the approval of the City Administrator. A copy of a model task order is attached hereto as Exhibit "A" to this AGREEMENT.

The TENANT shall perform the work designated in the task orders as agreed to from time-to-time and such work shall be supervised by the Airport Manager.

### 3. PAYMENT

The TENANT and the CITY's Airport Manager shall agree upon the value of services included in each individual task order established under this Agreement. The total value of all such services, in the aggregate, over the course of this AGREEMENT and any extensions, shall not exceed the purchasing authority of the City Administrator as detailed in Administrative Policies and Procedures Manual as amended from time-to-time.

Pursuant to this AGREEMENT for services, the TENANT's obligation to pay rent and other fees at the beginning of each year shall be suspended. Any amounts for in-kind work shall be applied as

against the rent owed. On or before December 5 of each calendar year, the completed work under all task orders for the prior 12 months shall be reviewed by the Airport Manager. The value of those completed services shall be computed for the purpose of reconciling the net owed amount.

Should an amount owed by the TENANT remain for the prior year, TENANT shall pay such amount prior to January 31, of the following year (the January after the reconciliation). Should there be an excess (should the amount of work authorized and performed exceed the owed rental amount), that amount shall be applied as against future rent incurred by the TENANT as such obligations accrue from year-to-year.

In the event the Lease and Easement Agreement terminates for any reason provided for in that Lease and Easement Agreement, TENANT agrees that any excess that would otherwise be applied against future rent obligations of the TENANT shall be forfeit and shall not be payable by the CITY to TENANT.

#### 4. INDEPENDENT CONTRACTOR STATUS

The Parties intend that the TENANT and any TENANT personnel be engaged as independent contractors to the CITY. Nothing contained in this Agreement will be construed to create an employer-employee, principal and agent, partnership or joint venture relationship between the CITY and TENANT.

The TENANT shall not be eligible for, or entitled to, worker's compensation, retirement, insurances or other benefits of employment that are ordinarily provided to employees of the CITY.

The CITY shall not be responsible for federal, state and local taxes or other payroll deductions, nor shall it be responsible for withholding and/or payment of such taxes derived from the TENANT's income. The TENANT remains solely responsible for payment of any legally required taxes or fees associated with compensation for work performed, whether those be imposed by Federal, State or local government.

#### 5. REPRESENTATIONS

Both Parties represent that they are fully authorized and empowered to enter into this Agreement, and that the performance of the obligations under this Agreement will not violate or infringe upon the rights of any third-party, or violate any agreement between the Parties and any other person, firm or organization or any law or government regulation.

#### 6. INDEMNIFICATION

The CONTRACTOR shall indemnify and hold the CITY, its affiliates and respective officers, directors, agents and employees harmless from any and all claims, demands, losses, causes of action, damage, lawsuits, and judgments, including any claims for costs and attorney's fees arising out of or relating to the TENANT's services under this Agreement.

## 7. LIABILITY

Except with respect to the Parties' Indemnification obligations expressly provided for in this Agreement, neither Party shall be liable to the other for any special, indirect, incidental, punitive or consequential damages arising from or related to this agreement; including: bodily injury, death, loss of revenue or profits, or other benefits, and claims by any third party, even if the Parties have been advised of the possibility of such damages. The foregoing limitation applies to all causes of action in the aggregate, including without limitation claims of breach of contract, breach of warranty, negligence, strict liability and other tort claims.

## 8. MISCELLANEOUS PROVISIONS

- A) Entire Agreement: This Agreement and any accompanying task orders, appendices, duplicates or copies, constitutes the entire agreement between the Parties with respect to the subject matter contained herein. This Agreement supersedes all prior negotiations, agreements, representations and understandings of any kind, whether written or oral, between the parties, that precede the date this Agreement is executed by all Parties.
- B) Amendments to Agreement: This agreement may be amended only by a writing duly executed by the authorized representative of both Parties to this Agreement. For purposes of this section, amendments sent by email from the authorized representative of each Party shall be deemed to be sufficient as "a writing" and shall be deemed to contain a valid electronic signature when the name of that Party is entered at the bottom of the email.
- C) Illegal or Unenforceable Provisions: If any provision or portion of a provision of this Agreement is held to be illegal or unenforceable for any reason, such provision shall be deemed to be modified to the extent required to comply with the law and to give maximum effect to the intent of the Parties. In the event a provision is so affected, the remaining provisions of the agreement each shall remain in full force and effect for the duration of the Agreement.
- D) Non-Assignment: This Agreement nor any of the rights, privileges or obligations provided for herein may be assigned by either the CITY or TENANT to a third party without the express consent of the other Party.
- E) Waiver: A failure or delay in exercising any right, power or privilege with respect to this Agreement or its contents shall not be deemed or presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege of the Agreement shall not be deemed or presumed to preclude any subsequent or further exercise of that right, power or privilege; or the exercise of any other right power or privilege.
- F) Governing Law: This Agreement is to be governed by and construed in accordance with the laws of the State of California. Any action instituted by either party arising out of a dispute concerning this Agreement or related to it in any manner shall be only in the applicable Federal or State Court located in the County of Madera, State of California.

**EXECUTION:**

**For the CONTRACTOR**

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

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

Adam DeBard  
Clear Gas, Inc.

**For the CITY**

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

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

Brian Haddix  
City Administrator  
City of Chowchilla



# CITY COUNCIL STAFF REPORT

Item 6.3

[CLICK HERE  
TO RETURN TO  
THE AGENDA](#)

April 26, 2016

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**AGENDA SECTION:** New Business

**SUBJECT:** Rail Spur Track Use Agreement and Memorandum of Agreement with Harmer Steel Products

**PREPARED BY:** Harry Turner, Fire Chief

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

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**RECOMMENDATION:**

Approve temporary spur track use agreement with Harmer Steel Products Company

**HISTORY / BACKGROUND:**

The City of Chowchilla has a spur track that extends into the City's industrial park. There are several businesses that use the spur track through agreements with the City and with Union Pacific railroad. All current users of the City spur have an additional siding that extends off of the City's spur. Each of these businesses also pays an annual fee for the maintenance of the City spur.

Harmer Steel Products has had rail cars delivered to near their facility along the City's spur, where they then loaded and/or unloaded the cars. At that time they did not have a use agreement with the City. When attempting to have rail cars delivered again under these same circumstances, Union Pacific discovered they did not have an agreement with the City and Harmer Steel Products for joint use of the spur so Union Pacific is now requiring that agreement between the three parties.

City staff, along with the City Attorney, is recommending an additional agreement, along with the Joint Use Agreement, with Harmer Steel Products so that they are participating in rail spur use and maintenance fees in the same manner as other spur users. Further stipulations of the agreement will include an indemnification by Harmer Steel for any liability arising from or related to their use of the rail spur; a clause requiring Harmer Steel to notify the City immediately of any spill or industrial accident occurring on City-owned property and related to their use of the spur; an agreement that Harmer Steel will promptly clean any debris or mess left by loading or unloading rail cars, and an agreement that Harmer Steel will work collaboratively with other spur users to ensure that their use of the spur under the joint use agreement does not interfere with other users of the spur beyond Harmer Steel Products when they are receiving or sending rail cars.

With Harmer Steel Products participating in the spur maintenance, the costs to the balance of the users will drop as there are more participating entities on the spur among whom the costs are divided (these fees, for maintenance and use are included in the City's Master Fee Schedule.)

Staff is recommending authorizing the City Administrator to execute the Joint Use Agreement and a one-year wraparound agreement. The one-year wraparound agreement would be renewable by mutual agreement of the parties on an annual basis.

**FINANCIAL IMPACT:**

None.

**ATTACHMENTS:**

Resolution

Joint Use Agreement

Memorandum of Agreement between the City and Harmer Steel

**SPECIAL INSTRUCTIONS:**

None.

**COUNCIL RESOLUTION # -16**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA  
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A JOINT USE AGREEMENT  
AND MEMORANDUM OF AGREEMENT WITH HARMER STEEL PRODUCTS CO. FOR USE  
OF THE RAIL SPUR**

**WHEREAS** Harmer Steel Company operates adjacent to the City Rail Spur system,

**WHEREAS** Harmer Steel Company does not own and operate their own separate spur, but requires use of rail access in furtherance of its business activities; and

**WHEREAS** the City and Harmer Steel have agreed on terms and conditions for Harmer Steel's joint use of areas on the spur that are on City-owned property that include Harmer Steel's participation in use and maintenance fees and other mutually agreed upon consideration.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Chowchilla that the City of Chowchilla hereby authorizes the City Administrator to execute the Joint Use Agreement for Harmer Steel's use of the rail spur between the City, Harmer Steel Products Co and Union Pacific Rail, and authorizes the City Administrator to execute the Memorandum of Agreement setting out the additional terms of Harmer Steel's use of the spur system, including participation in maintenance and use fees.

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla this 26th day of April 2016 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

APPROVED:

\_\_\_\_\_  
Waseem Ahmed, Mayor

ATTEST:

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk

**AGREEMENT AND  
CONSENT TO JOINT USE OF TRACK**

**THIS AGREEMENT** is made and entered into as of \_\_\_\_\_, 20\_\_\_\_  
by and between **UNION PACIFIC RAILROAD COMPANY** (hereinafter "Railroad") and **CITY OF CHOWCHILLA**, to be addressed at 145 W. Robertson Boulevard, Chowchilla, CA, 93610, (hereinafter "Industry") and **HARMER STEEL PRODUCTS COMPANY**, an Oregon corporation to be addressed at 700 Airport Way, Chowchilla, CA, 93610 (hereinafter "User").

**RECITALS:**

By agreement dated December 8, 2003, identified in the records of Railroad as Agreement Audit No. 231579 in Folder No. 02222-41 (hereinafter the "Basic Agreement"), Railroad has agreed to operate certain track 739, Circ7: JQ326, Yard 2 (herein and therein "Track") for the benefit of Industry at CHOWCHILLA, CA, as described in the Basic Agreement, for the purpose of receiving rail service as contemplated by the Basic Agreement.

User desires rail service from Railroad on or over all or a portion of the Track, represents that it has made arrangements with Industry to use all or a portion of the Track jointly for rail service, and that Industry and User desire Railroad's consent to be jointly served;

Railroad is willing to give such consent on the terms and conditions described in this Consent to Joint Use of Track (this "Agreement").

**AGREEMENT:**

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

**Article 1.     INDUSTRY'S CONSENT**

In consideration of the covenants and agreements of User herein contained, Industry hereby consents to the joint use by User of the Track for the purpose of being served thereon by Railroad.

**Article 2.     RAILROAD'S CONSENT, TERM**

In consideration of the covenants and agreements herein contained, and subject to the terms and conditions hereof, Railroad hereby consents to serve jointly Industry and User over all or a portion of the Track for the period commencing as of the date first herein written, and extending for a term concurrent with the term of the Basic Agreement, conditioned upon and subject to the terms and conditions of this Agreement; provided, however, that upon termination howsoever of the Basic Agreement, this Agreement shall terminate forthwith.

**Article 3.     OBLIGATIONS OF INDUSTRY AND USER**

All of the covenants, terms and conditions of the Basic Agreement shall remain in full force and effect. User agrees to be bound by the terms and conditions of the Basic Agreement which are binding upon Industry, to the same extent and in the same manner as such terms and conditions pertain to the

Track and are binding upon Industry; provided, however, nothing herein contained shall be deemed to release Industry from keeping and performing all the terms, covenants, and conditions by Industry to be kept and performed under the Basic Agreement or to release Industry from any of Industry's liabilities or obligations thereunder; further provided, however, that User shall not acquire by virtue of this Agreement any ownership or salvage interest in the Track. Nothing in this Agreement shall be construed as amending or modifying the Basic Agreement except as specifically provided herein.

**Article 4. TERMINATION**

This Agreement may be terminated by any party upon at least 30 days written notice to the other parties. Such notice shall be in writing and (a) personally delivered; (b) delivered by a reputable overnight courier; or (c) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices are valid only if actually received by the individual to whom addressed, and followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices will be deemed received at the earlier of actual receipt, or one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit, or three (3) business days after deposit in the U.S. mail as evidenced by a return receipt. Notice must be directed to the parties at their respective addresses shown below, or such other address as any party may, from time to time, specify in writing to the others in the manner described above:

If to Railroad:           UNION PACIFIC RAILROAD COMPANY  
                                  ATTN: Real Estate Folder 02981-15  
                                  1400 Douglas Street, Mail Stop 1690  
                                  Omaha, Nebraska 68179  
                                  Facsimile: (402) 501-0340

With a copy to:           UNION PACIFIC RAILROAD COMPANY  
                                  ATTN: Senior Vice President Law and General Counsel  
                                  1400 Douglas Street, Mail Stop 1580  
                                  Omaha, Nebraska 68179  
                                  Facsimile: (402) 501-0132

If to Industry:           CITY OF CHOWCHILLA  
                                  145 W. Robertson Boulevard  
                                  Chowchilla, CA 93610

If to User:                HARMER STEEL PRODUCTS COMPANY  
                                  700 Airport Way  
                                  Chowchilla, CA 93610

**Article 5. INSURANCE**

A. Before commencement of the term of this Agreement, User shall provide to Railroad a certificate issued by its insurance carrier evidencing the insurance coverage required under Exhibit A to this Agreement.

B. Not more recently than once every two years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. User shall direct all insurance correspondence, certificates and endorsements to Railroad via its insurance contractor EBIX by one of the following methods:

- i. By email to: [UnionPacific@ebix.com](mailto:UnionPacific@ebix.com)
- ii. By fax to: (770) 325-3344

or to such other address as Railroad may, from time to time, specify in writing to Industry in the manner described in the Notices provision of this Agreement.

D. Industry and User shall direct all questions regarding insurance coverage to EBIX at (951) 652-7947.

**Article 6. NO FURTHER SUBLETTING OR ASSIGNMENT**

Neither Industry nor User may transfer or assign any interest in this Agreement. This Agreement shall not be construed to authorize Industry or User further to transfer or assign any interest in the Basic Agreement.

**Article 7. NON-DISCLOSURE**

For the term of this Agreement and for thirty six (36) months thereafter, no party may disclose any of the terms of this Agreement to any non-party without the prior written consent of the other party except (1) as required by law, (2) to a corporate parent, subsidiary, or affiliate or (3) to legal counsel. Each party to this Agreement agrees to indemnify the other from and against any damage(s) suffered by a party as a result of disclosure by a party hereto, or by an auditor or counsel of any of the terms or conditions in violation of this provision. In the event a party determines that the terms of the Agreement have been disclosed to a non-party without the prior written consent of the non-disclosing party, then the non-disclosing party shall have the right to terminate this Agreement immediately upon notice to the other party, and to seek whatever remedies it may have at law or in equity.

**Article 8. TRACK SAFETY DEVICE - DERAILS**

A. Unless otherwise notified by Railroad, Industry at its sole cost shall maintain all derail device(s) on the Track, if any, including without limitation those required pursuant to Subarticle B below, in accordance with Article - MAINTENANCE BY INDUSTRY.

B. Whether or not derail devices(s) are on the Track, Railroad in the sole discretion of its Operating personnel at any time may require Industry to install new or replace existing derail device(s) on the Track. In such event, upon thirty (30) days notice from Railroad, Industry at its sole cost shall install or cause to be installed the required replacement or additional derail(s) of a type and size, and in location(s) specified by Railroad. Industry shall cooperate at all times with Railroad personnel regarding inspecting, repairing, replacing and installing derail device(s) on the Track.

This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile shall be effective as the delivery of a manually executed counterpart of this Agreement.

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

UNION PACIFIC RAILROAD COMPANY

By: \_\_\_\_\_  
Jonathan Gargano  
Asst. Manager - Track

CITY OF CHOWCHILLA

By: \_\_\_\_\_  
Print Name:  
Title: - Industry

HARMER STEEL PRODUCTS COMPANY

By:  \_\_\_\_\_  
Print Name: J. DAVID LYNN  
Title: V.P. - User

**EXHIBIT A**  
**Union Pacific Railroad**  
**Contract Insurance Requirements**

User shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

**A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

**B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos.)

**C. Environmental Liability insurance.** Environmental Legal Liability Insurance (ELL) applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or compliance with statute; all in connection with any loss arising from the insured's performance under this Agreement. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance must apply as if each named insured were the only named insured; and separately to the additional insured against whom claim is made or suit is brought. Coverage shall be maintained in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$4,000,000. The ELL insurance policy must contain no exclusion for bodily injury, property damage, or environmental damage arising out of ownership, maintenance, use or entrustment to others of any rolling stock owned or operated or rented or loaned to User.

User warrants that any retroactive date applicable to ELL insurance coverage under the policy is the same as or precedes the effective date of this Agreement; and that continuous coverage will be maintained for a period of 5 years beginning from the time the work under this Agreement is completed or if coverage is cancelled for any reason the policies extended discovery period, if any, will be exercised for the maximum time allowed.

**D. Umbrella or Excess insurance.** If User utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

**E.** All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as Additional Insured shall not be limited by User's liability under the indemnity provisions of this Lease. BOTH USER AND COMPANY EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.

**F.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise

under this Agreement, or (b) all punitive damages are prohibited by all states in which this Agreement will be performed.

**G.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

**H.** The fact that insurance is obtained by User will not be deemed to release or diminish the liability of User, including, without limitation, liability under the indemnity provisions of this Agreement or the Basic Agreement. Damages recoverable by Railroad from User or any third party will not be limited by the amount of the required insurance coverage.

**I.** User shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements in this Agreement.

**J.** All insurance correspondence, certificates of insurance and endorsements shall be addressed and mailed to as follows:

Union Pacific Railroad Company  
Insurance Compliance – Folder #: 02981-15  
P.O. Box 12010 – UP  
Hemet, CA. 92546-8010

Please have your insurance agents send in a new Certificate of Insurance, showing the required coverages, using one of the following methods:

- By email to: [UnionPacific@ebix.com](mailto:UnionPacific@ebix.com)
- By fax at: (770) 325-3344

Basic points to remember:

- All questions regarding insurance coverage should be directed to EBIX at (951) 652-7947.
- The certificate must indicate that Union Pacific Railroad Company is included as an additional insured. (Listing Union Pacific Railroad Company only as a certificate holder is not sufficient.)
- Binders are only accepted for sixty (60) days.
- A condition of UPRR service is your providing and retaining the required insurance.
- Failure to comply with insurance requirements may result in a delay of your activity with UPRR.
- The certificate must indicate your folder number.
- Ebix will correspond with User by the email address on file with the Railroad's Real Estate Department.

**RAIL SPUR WRAPAROUND AGREEMENT RE: JOINT USE OF RAIL SPUR  
BETWEEN THE CITY OF CHOWCHILLA AND HARMER STEEL PRODUCTS CO.**

The Parties to this Agreement are, the **CITY OF CHOWCHILLA (“CITY”)** and **HARMER STEEL PRODUCTS CO. (“HARMER STEEL”)**, collectively, the **“PARTIES”**.

1. ENTRY INTO AGREEMENT AND CONSENT FOR JOINT USE OF TRACK, TERM:

The CITY agrees that it will execute an AGREEMENT AND CONSENT FOR JOINT USE OF TRACK between the CITY, UNION PACIFIC RAILROAD COMPANY and HARMER STEEL PRODUCTS COMPANY. This agreement for joint use shall endure for a term of one year unless terminated pursuant to the terms contained therein. In the event the agreement for joint use of track terminates for any reason, this agreement shall also terminate. A copy of the AGREEMENT AND CONSENT FOR JOINT USE OF TRACK is attached hereto as Exhibit “A” to this agreement.

2. CONSIDERATION:

In consideration for the CITY agreeing to enter into the AGREEMENT AND CONSENT FOR JOINT USE OF TRACK, the PARTIES have agreed to document their respective additional commitments in this wraparound agreement, setting out the following covenants and expectations:

- a) HARMER STEEL shall agree to participate and pay spur use, maintenance and inspection fees / costs equally with all of the other entities operating on the Rail Spur system. Such fees are listed in the CITY’s master fee schedule, as adjusted from time-to-time. A listing of these fees is attached hereto as Exhibit “B” to this agreement. The CITY shall provide data as to how the spur use, maintenance and inspection fees are calculated to HARMER STEEL in the same manner as it makes such data available to other spur system users subject to the use, maintenance and inspection fees.
- b) HARMER STEEL agrees that following their operating on CITY property while loading or unloading, it shall promptly ensure that any cleanup needed to restore the property to the condition it was in prior to each instance of loading or unloading or otherwise using the spur system shall be completed promptly.
- c) HARMER STEEL hereby indemnifies the CITY, any city staff or officials from any and all liability, including the CITY’s attorney fees and costs, arising out of or related to HARMER STEEL’s use of the rail spur system or exercise of rights under the AGREEMENT AND CONSENT FOR JOINT USE OF TRACK or this Agreement. HARMER STEEL further agrees, in the event a claim is filed by a third party against it that relates in any manner to HARMER STEEL’s joint use of the track, that it shall immediately notify the CITY of such claim. In order to ensure that any exposure to claims is minimized, HARMER STEEL agrees that it shall immediately notify the CITY in the event of a spill, or in the event of any industrial accident causing injury, or causing property damage estimated at over \$500.00, if such spill or

accident occurs on property owned by the CITY and is related to HARMER STEEL's use of the Rail Spur or Spur system.

- d) The CITY agrees to furnish contact information for other entities using the spur on an ongoing basis as it is or becomes known to the CITY. HARMER STEEL agrees that it shall use this information for the purpose of working collaboratively with these other users of the spur system and shall take all reasonable affirmative steps to ensure that its' joint use of the track does not cause delay or disruption to any other user.

3. RENEWALS

The PARTIES agree that this wraparound agreement shall be renewable annually, in one-year increments by the mutual written agreement of the PARTIES.

4. NO OTHER AMENDMENTS OR ALTERATIONS

The PARTIES agree that this wraparound agreement shall not alter or affect the terms and conditions in the AGREEMENT AND CONSENT FOR JOINT USE OF TRACK, unless specifically provided for herein.

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

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

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

J. David Lynn, VP  
Harmer Steel Products Co

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

Brian Haddix, City Administrator  
City of Chowchilla



# CITY COUNCIL STAFF REPORT

Item 6.4

[CLICK HERE  
TO RETURN TO  
THE AGENDA](#)

April 26, 2016

**AGENDA SECTION:** New Business

**SUBJECT:** Adopt a Resolution Amending the Project Development Agreement with Johnson Controls, Inc. (JCI) to Develop a Water and Energy Efficiency Project and Authorizing the City Administrator to Execute the Same; and Establish an Additional \$352,092 Reserve for the JCI Step 2 Project Development Agreement

**PREPARED BY:** Craig Locke, City Engineer/Public Works Director

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

**RECOMMENDATION:**

After a thorough review by the Ad Hoc Committee consisting of the City Administrator, Director of Public Works, Director of Finance, City's Municipal Advisor and Council members Dennis Hayworth and Mary Gaumnitz, staff recommends that the City should proceed with the following amendment to the Step-2 Johnson Controls Project Development Agreement previously approved by the City on December 8, 2015. This new Resolution will amend the Project Development Agreement by expanding the scope of work to the current project under development by including certain improvements previously scheduled to be included in Phase-2. It has been determined that there are several benefits that will be derived by accelerating the implementation of phase 2. This resolution approving the amendment to the existing Project Development Agreement with Johnson Controls, Inc. (JCI), authorizes the City Administrator to execute the said agreement and establish a \$352,092 reserve in accordance with said agreement.

**HISTORY / BACKGROUND:**

On August 24, 2015 the City entered into an agreement with Johnson Controls Inc. (JCI) to perform a preliminary analysis of city operations and facilities with a \$10,000 reserve for their work should the City decline to pursue the project. Since that time, City staff has worked with JCI to develop potential projects.

On December 8, 2015, after substantial research, the City Council approved Step-2 of Johnson Controls Project Development Agreement for a Water and Energy Efficiency Project. The scope of work was divided into two phases. The first phase was to develop infrastructure improvements which would result in water and energy savings. The second phase was intended to develop additional water and waste water infrastructure improvements, thought to be too complicated to include in Step 1. JCI has confirmed that the Phase-1 improvement measures scope of work is currently being prepared, progressing well and will be available for the City Council to review in detail this summer. After further analysis and review, it was determined that it would be more cost efficient if some of the improvements in Phase-2 were included in Phase-1. The improvement measures from Phase-2 to be included are valued to be approximately \$10,100,000 and consist of the Replacement of Water Well - #1, Water Storage Tank, New installed Booster Pumps and potential pressure zones, and Upgrade to the City Corporate Yard Buildings. By expanding the project to include the Phase 2 scope of work as described above, Johnson Controls has identified additional benefits to the City which will consist of additional energy savings, increased water capacity and improved system pressure and reliability, which has been the principal source of complaints about the water system.

In working with the City's Municipal Advisor, Wulff Hansen, it was recommended to divide the project into three separate financings based on the funding sources that would support the financings. The three sources are the Water Enterprise, Waste Water Enterprise and the General funds. By combining the Phase 1 and Phase 2 improvements in one financing for each of the funds, it was determined that the financing would be more cost efficient. In the Water and Waste Water Projects, the savings, guaranteed by Johnson Controls, are anticipated to be sufficient to pay all of the yearly costs of the financings required and in addition produce excess revenues for each enterprise. These benefits will begin in year one of the operation of the installed new improvements. The General Fund improvement will be partially paid by the guaranteed savings producing a small shortfall in the funding of the financing costs. However, there are other sources of funds the city can produce which will reduce the effect of the shortfall. The overall level of savings from all three projects will provide in total sufficient net revenues to pay the costs of financing and produce an overall of excess funds to the city.

**FINANCIAL IMPACT:**

Subsequent analysis and design will be required for Phase-2 scope of work in order to confirm budget pricing for design/build Performance Contract. Should the City authorize construction for Phase-2 mentioned above all cost will be rolled into the installation contract of Phase-1 and Phase-2, the City would not realize any cost in the current fiscal year.

In addition to the financing described above the City will also utilize resources on hand (\$1.5 Million in Community Facilities District Bond Proceeds and \$1.0 Million in California State Water Resources Control Board Revolving Loan Fund) to finance the project.

If the City decides not to proceed with phase-2 the City will be liable for up to \$352,092, split \$79,087 from the General Fund and \$272,285 from the Water Enterprise Fund.

**ATTACHMENTS:**

Resolution

Amendment to the Project Development Agreement

**SPECIAL INSTRUCTIONS:**

**COUNCIL RESOLUTION # -16**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA  
AMENDING THE PROJECT DEVELOPMENT AGREEMENT WITH JOHNSON CONTROLS, INC. (JCI)  
TO DEVELOP A WATER AND ENERGY EFFICIENCY PROJECT AND AUTHORIZING THE CITY  
ADMINISTRATOR TO EXECUTE THE SAME; AND ESTABLISH AN ADDITIONAL \$352,092  
RESERVE FOR THE JCI STEP 2 PROJECT DEVELOPMENT AGREEMENT**

**WHEREAS**, on August 24, 2015 the City of Chowchilla retained JCI with the Project Development Agreement for Water and Energy Efficiency pursuant to California Public Resource Code 25008; and

**WHEREAS**, on December 8, 2015 the City of Chowchilla retained JCI to perform the work specified in Step 2 of the Notice to Proceed in the Project Development Agreement; and

**WHEREAS**, the City of Chowchilla staff in concert with JCI engineers and Wulf Hansen, the City's Municipal Advisor, identified additional savings potential through merging the financing of the Phase1 and Phase 2 projects identified in the December 8 2015 report; and

**WHEREAS**, the City of Chowchilla is authorized and empowered pursuant to California Government Code Chapter 3.2. Energy Conservation Contracts, Section 4217.10-4217.18, and the City of Chowchilla has complied with all requirements of said laws;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Chowchilla hereby finds and determines the following:

1. The recitals above are true and correct.
2. The City Council hereby authorizes the City Administrator to execute the attached Amendment to the Project Development Agreement from the original \$346,740 by \$352,092 to a total of \$698,832
3. This Resolution is effective immediately upon adoption.

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla this 26th day of April, 2016 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

APPROVED:

\_\_\_\_\_  
Waseem Ahmed, Mayor

ATTEST:

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk

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**PROJECT DEVELOPMENT AGREEMENT  
BETWEEN**

**City of Chowchilla  
130 S. Second Street  
Chowchilla, CA 93610**

**AND**

**Johnson Controls, Inc.  
103 Woodmere Road, Suite 110  
Folsom, CA 95630**

The purpose of this Project Development Agreement (PDA) is to confirm the intent of City of Chowchilla and Johnson Controls, Inc. (JCI) to develop a Water and Energy Efficiency Project pursuant to California Government Code 4217.10. This PDA will provide the basis of the scope of the projects, the obligations of both parties, the technical and financial requirements to be met and the intended outcome and timeline.

**1. Scope of Work**

It is the Parties' mutual understanding that this PDA is for the purpose of development of a Final Proposal and pre-construction services, to be delivered to City of Chowchilla, for review and approval of the scope of work. The overall Project Development Agreement will be a two-step approach. The first step is a preliminary analysis followed by detailed engineering which is described in Attachment 1 – Notice to Proceed. The desired outcome of Step 1 is to accomplish the Preliminary Water and Energy savings analysis at the facilities operated and maintained by City of Chowchilla. The preliminary analysis will include, but is not limited to the following items:

1. Waste Water Treatment Plant
  - a. Centrifuge
  - b. Recycled Water
  - c. Expansion of services
2. Photovoltaic
3. SCADA System
4. Water Treatment Plant
  - a. Well Water Retro-Commissioning
  - b. WTP O&M
  - c. Water Storage
  - d. AWWA Water Meter Audit
5. HVAC
6. Roofing
7. Indoor/Outdoor Lighting
8. ADR – Automatic Demand Response at Water and Waste Water Treatment Plant

**Step 1: Preliminary Analysis**

Preliminary Analysis will be developed to provide a Water and Energy Services project which will be self-funding. Johnson Controls will collect data and conduct onsite surveys of infrastructure improvements. This effort will develop a list of potential Facility Improvement Measures (FIMs) that will be the basis of the energy, water & operational and maintenance savings plan. A Pro Forma business case for the financial impact of the FIMs relative to the baseline will be developed. The deliverables resulting from the Preliminary (“**Step 1**”) Analysis will include:

- a) A list of FIMs expected to meet City of Chowchilla financial criteria with a summary of the scope of each measure.
- b) A summary of the energy savings and greenhouse gas emissions reduction expected to result from the package of FIMs.
- c) An estimated cost to implement the package of FIMs and to provide optional ongoing services.
- d) A recommended implementation process.
- e) A cash flow Pro-Forma Potential financing, grant and rebate sources.

- 
- f) Preliminary Analysis
  - g) In addition to the above Johnson Controls complete an AWWA Water Audit.

The Financial Goals for Step 1 are as follows:

- Johnson Controls will develop an economic proposition that is self-funding throughout the twenty-five (25) year rated useful life.
- The financial components will include, but are not limited to: (a) Utility and operational cost savings, including potential increased revenues (b) utility rebates and incentives, and (c) Federal and State grants.

City of Chowchilla will receive Step 1 deliverables within **60** days of the execution of this Agreement, (the “**Start Date**”).

## **2. Records and Data**

During the development, City of Chowchilla will furnish to Johnson Controls upon its request, accurate and complete data concerning the most recent three years audited financial statements, the current year’s budget, current utility costs, budgets, facility operating requirements, future projected loads, collective bargaining agreements, etc. Johnson Controls will provide a separate document with the required information and City of Chowchilla shall make every effort to provide that information within a reasonable time.

## **3. Preparation of Implementation Contract**

Along with the other Scope of Work required under this Agreement, Johnson Controls will develop the framework of the subsequent Contracts. These Contracts shall be co-developed by Johnson Controls and City of Chowchilla during the Project Development Agreement phase. These documents will vary dependent on City of Chowchilla desired structure and legal counsel review, but where possible shall be standardized Johnson Controls documents for most expedient delivery.

## **4. Price and Payment Terms - Step 1: Preliminary Analysis**

All costs associated with Step 1 will be included in the Guaranteed Maximum Price. Should City of Chowchilla decide not to proceed with Step 2 in this document a payment in the amount of **\$10,000** will be due and payable within **60** days of City of Chowchilla receipt of Step 1 deliverables.

City of Chowchilla will have no obligation to pay this amount if:

City of Chowchilla enters into Step 2 of this agreement within 60 days after City of Chowchilla has received the documentation described in this Agreement. The costs for the Study will be transferred to the total cost of the Installation Contract.

## **5. Indemnity**

Johnson Controls and City of Chowchilla agree that the parties shall each be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of the parties, their officers, agents, directors, and employees. To the extent permitted by law, Johnson Controls and City of Chowchilla agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, resulting from the intentional misconduct of their officers, agents or employees or any negligent act or omission by their officers, employees or agents.

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**6. Disputes**

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. All disputes not resolved by negotiation may be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at the time, except as modified herein, if the parties elect to at the time the dispute arises. In that event, all disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the parties. Judgment may be entered upon the award in the highest State or Federal court having jurisdiction over the matter. The prevailing party shall recover all costs, including attorney's fees, incurred as a result of this dispute.

**8. Timeline**

It is the intent and commitment of all parties identified in this Agreement, to work diligently and cause others under their direction, to work diligently toward meeting the following timeline:

- August 25, 2015                      Approve Project Development Agreement (PDA)
- November 17, 2015                 Johnson Controls to complete Step 1
- December 8, 2015                 Johnson Controls to present Preliminary Analysis
- January 26, 2015                    City of Chowchilla to consider "Attachment 1" – Notice to Proceed with Step 2

These timeframes may be modified by subsequent work plans approved by the parties.

**9. Miscellaneous Provisions**

This Agreement cannot be assigned by either party without the prior written consent of the other party. This Agreement is the entire Agreement between Johnson Controls and City of Chowchilla and supersedes any prior oral understandings, written agreements, proposals, or other communications between Johnson Controls and City of Chowchilla. Any change or modification to this Agreement will not be effective unless made in writing. This written instrument must specifically indicate that it is an amendment, change, or modification to this Agreement.

This document represents the business intent of both parties and should be executed by the parties who would ultimately be signatory to a final agreement.

**Johnson Controls, Inc.**

**City of Chowchilla**

By: Brad Harlow

By: Brian Haddix

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

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

Title: Area General Manager, West Building Efficiency

Title: City Administrator

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

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

December 8, 2015 - Project Development Agreement

Brad Harlow  
Johnson Controls, Inc.  
103 Woodmere Road, Suite 110  
Folsom, CA 95630

ATTN: Brad Harlow, Area General Manager, West Building Efficiency

Re: Addendum for Phase-2 Scope of Work

Date: April 26, 2016

Dear Brad Harlow:

This Addendum is being issued by City of Chowchilla (City) to Johnson Controls, Inc. (JCI) pursuant to the Project Development Agreement between City of Chowchilla and Johnson Controls signed on December 8, 2015 for the purpose of adding Phase-2 Scope of work to the current Project Development Agreement.

### **1. Scope of Services and Deliverables**

Perform site inspections, interviews, gather data and background information necessary to create a Technical Report for the Water Well, Water Storage and Public Works building at the City Corporate Yard. All scope of work is anticipated to be completed and delivered in the Performance Contract by June 15, 2016 with the exception of the Urban Water Master Plan (completed by September 1, 2016) and Fairmead Clean Water State Revolving Fund General Package Information (completed by May 30, 2016).

The Technical Report will include, but is not limited to the following items:

1. Preliminary mapping of the Corporation Yard site
2. Preliminary Environmental Assessment of the Corporation Yard site
3. Verification of existing Preliminary Hydraulic Model Analysis
4. Preliminary assessment from a registered Hydrogeologist
5. Phase-2 Design Cost (to be included in Phase-1 contract)
6. Preliminary Project Budget Cost for Phase-2
7. Assist the City's Financial Advisor with the Business Case

Facility Improvement Measures (FIM's) for Phase-2 include the following, but not limited to the following items:

1. New City Corporation Yard Building & Demo
2. New Well #1 at Corporation Yard
3. RESBCT PV-Solar at WWTP for Water Wells
4. NEM PV for Well and Corporation Yard Building
5. Pressure and Booster Pumps
6. 2.0 MM Gallon Water Storage Tank
7. Water System SCADA System
8. Water Main Upgrades

Preparation of the following technical documents for the City of Chowchilla to submit:

1. 2015 Urban Water Resource Master Plan (to be delivered by September 1, 2016)
2. Fairmead Clean Water State Revolving Fund(CWSRF) General Package Information (to be delivered by May 30, 2016)

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**2. Price and Payment Terms**

All costs associated with this addendum for Phase 2 will be included in the Phase 1 installation contract with the following exception: Should the City of Chowchilla decide not to proceed with Phase-1 Project for any reason, payment in the amount of \$352,092 will be due and payable within 60 days of City of Chowchilla receipt of deliverables.

Should the City of Chowchilla enter into the Phase 1 installation contract within 60 days after City of Chowchilla has received the documentation described in the addendum the costs for the Study will be transferred to the total cost of the Installation Contract.

**3. Timeline**

- April 26, 2015 City Council Approves Addendum
- April 28, 2016 JCI to Start Addendum Scope of Work
- May 20, 2016 Verification Scope of Work Workshop with Staff
- May 26, 2016 Verification of Project Budget Cost/Financial analysis with Ad-HOC committee
- May 30, 2016 JCI to deliver Fairmead CWSRF General Package application
- June 15, 2016 Phase 1 Project Contract for approval by City Council
- September 1, 2016 City to submit UWMP to the State

The signatories below authorize Johnson Controls to finalize Design and Cost Analysis under the terms of this Agreement.

**City of Chowchilla**

By: Brian Haddix  
Signature: \_\_\_\_\_  
Title: City Administrator  
Date: \_\_\_\_\_

**Johnson Controls Inc.**

By: Brad Harlow  
Signature: \_\_\_\_\_  
Title: Area General Manager, West Building Efficiency  
Date: \_\_\_\_\_



# CITY COUNCIL STAFF REPORT

Item 6.5

[CLICK HERE  
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THE AGENDA](#)

April 26, 2016

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**AGENDA SECTION:** New Business

**SUBJECT:** Approval of a Reserves Policy

**PREPARED BY:** Rod Pruett, Finance Director

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

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**RECOMMENDATION:**

That City Council approves the attached Resolution and the attached Reserve Policy.

**HISTORY / BACKGROUND:**

Prudent financial management dictates that some portion of the funds available to the City be reserved for future use.

As a general budget principle concerning the use of reserves, the City Council decides whether to appropriate funds from Reserve accounts. Even though a project or other expenditure qualifies as a proper use of Reserves, the Council may decide that it is more beneficial to use current year operating revenues or bond proceeds instead, thereby retaining the Reserve funds for future use. Reserve funds will not be spent for any function other than the specific purpose of the Reserve account from which they are drawn without specific direction in the annual budget; or by a separate City Council action. Information regarding Annual Budget Adoption and Administration is contained in the Budget and Finance Policy.

Staff examined Reserve Policies from various cities and followed best practice as a guideline for the proposed Reserve Policy. The policy was tailored to meet the financial needs of Chowchilla based on the economic factors and resources that are attributable to the City.

**FINANCIAL IMPACT:**

There is no fiscal impact to the City of Chowchilla.

**ATTACHMENTS:**

Resolution to Approve the Reserve Policy  
Investment Policy

**SPECIAL INSTRUCTIONS:**

None

**COUNCIL RESOLUTION # -16**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA  
APPROVING THE RESERVE POLICY**

**WHEREAS** an essential component of a prudent fiscal policy is to have formal provision for the oversight of the budget and the city's finances,

**WHEREAS** a documented Reserve Policy is standard practices; and

**WHEREAS** a Reserve Policy will act as a guide to the City of Chowchilla to mitigate any future fluctuations and to establish a system for fiscal responsibility.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Chowchilla that the City of Chowchilla hereby approves the attached Reserve Policy.

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla this 26th day of April 2016 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

APPROVED:

\_\_\_\_\_  
Waseem Ahmed, Mayor

ATTEST:

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk

# City of Chowchilla

## ADMINISTRATIVE POLICY and PROCEDURE MANUAL

<b>Section:</b> Finance	<b>Date:</b>
<b>Subject:</b> Reserve Policy	<b>Supersedes:</b> N/A
<b>Pages:</b> 5	<b>Council Approval:</b>

*Note: Policy language subject to modification at any time.*

### **POLICY PURPOSE**

To establish City Council policy for the administration of Reserves defined as fund balances in governmental funds and net working capital in proprietary funds.

### **BACKGROUND**

Prudent financial management dictates that some portion of the funds available to the City be reserved for future use.

As a general budget principle concerning the use of reserves, the City Council decides whether to appropriate funds from Reserve accounts. Even though a project or other expenditure qualifies as a proper use of Reserves, the Council may decide that it is more beneficial to use current year operating revenues or bond proceeds instead, thereby retaining the Reserve funds for future use. Reserve funds will not be spent for any function other than the specific purpose of the Reserve account from which they are drawn without specific direction in the annual budget; or by a separate City Council action. Information regarding Annual Budget Adoption and Administration is contained in the Budget and Finance Policy.

### **GOVERNMENTAL FUNDS AND FUND BALANCE DEFINED**

Governmental Funds including the General Fund, Special Revenue Funds, Capital Projects Funds and Debt Service Funds have a short-term or current flow of financial resources, measurement focus and basis of accounting and therefore, exclude long-term assets and long-term liabilities. The term Fund Balance, used to describe the resources that accumulate in these funds, is the difference between the fund assets and fund liabilities of these funds. Fund Balance is similar to the measure of net working capital that is used in private sector accounting. By definition, both Fund Balance and Net Working Capital exclude long-term assets and long-term liabilities.

### **ENTERPRISE FUNDS AND NET WORKING CAPITAL DEFINED**

Enterprise Funds have a long-term or economic resources measurement focus and basis of accounting and therefore, include long-term assets and liabilities. This basis of accounting is very similar to that used in private sector. However, instead of Retained Earnings, the term Net Assets is used to describe the difference between fund assets and fund liabilities. Since Net Assets include both long-term assets and liabilities; the most comparable measure of proprietary fund financial resources to governmental Fund Balance is Net Working Capital, which is the difference between current assets and current liabilities. Net Working Capital, like Fund Balance, excludes long-term assets and long-term liabilities.

## **GOVERNMENTAL FUND RESERVES (FUND BALANCE)**

For Governmental Funds, the Governmental Accounting Standards Board (“GASB”) Statement No. 54 defines five specific classifications of fund balance. The five classifications are intended to identify whether the specific components of fund balance are available for appropriation and are therefore “Spendable.” The classifications also are intended to identify the extent to which fund balance is constrained by special restrictions, if any. Applicable only to governmental funds, the five classifications of fund balance are as follows:

<u>CLASSIFICATIONS</u>	<u>NATURE OF RESTRICTION</u>
Non-spendable	Cannot be readily converted to cash
Restricted	Externally imposed restrictions
Committed	City Council imposed commitment
Assigned	City Manager assigned purpose/intent
Unassigned	Residual balance not otherwise restricted

- A. Non-spendable fund balance: That portion of fund balance that includes amounts that are either (a) not in a spendable form, or (b) legally or contractually required to be maintained intact. Examples of Non-spendable fund balance include:
1. Reserve for Long Term Receivables and Advances: This Reserve is used to identify and segregate that portion of the City’s financial assets which are not due to be received for an extended period, so are not available for appropriation during the budget year.
  2. Reserve for Prepaid Assets: This reserve represents resources that have been paid to another entity in advance of the accounting period in which the resource is deducted from fund balance. A common example is an insurance premium, which is typically payable in advance of the coverage period. Although prepaid assets have yet to be deducted from fund balance, they are no longer
- B. Restricted fund balance: The portion of fund balance that reflects constraints placed on the use of resources (other than non-spendable items) that are either (a) externally imposed by creditors, grantors, contributors, or laws or regulations of other governments; or (b) imposed by law through constitutional provisions or enabling legislation. Examples of restricted fund balance are:
1. Reserve for Debt Service: Funds are placed in this Reserve at the time debt is issued. The provisions governing the Reserve, if established, are in the Bond Indenture and the Reserve itself is typically controlled by the Trustee.
  2. Reserve for Special Revenues: Special revenue funds account for revenues that are received for a specifically identified purpose and are restricted by the very nature of the revenue received.

3. Reserve for Capital Projects: Capital project funds reserve funds for specified capital improvements such as construction projects, facility improvements and infrastructure improvements. These funds also include Impact Fees.
- C. Committed fund balance: That portion of a fund balance that includes amounts that can only be used for specific purposes pursuant to constraints imposed by formal action by the government's highest level of decision making authority, and remain binding unless removed in the same manner. The City considers a resolution to constitute a formal action for the purposes of establishing committed fund balance. The action to constrain resources must occur within the fiscal reporting period; however the amount can be determined subsequently. City Council imposed Commitments are as follows:
- Emergency Contingency Reserve: Funds designated to mitigate costs of unforeseeable emergencies and natural disasters. A 4/5 council vote is required to spend funds as well as a minimum amount of \$50,000. Should the Contingency Reserve be used, the City Administrator shall present a plan to City Council to replenish the reserve within three years.
- D. Assigned fund balance: That portion of a fund balance that includes amounts that are constrained by the City's intent to be used for specific purposes but that are not restricted or committed. This policy hereby delegates the authority to the City Administrator or designee to modify or create new assignments of fund balance. Constraints imposed on the use of assigned amounts may be changed by the City Administrator or his designee. Appropriations of balances are subject to the Budget and Finance Policy concerning budget adoption and administration. This also includes encumbered amounts at year end.
- E. Unassigned fund balance: These are the residual positive net resources of the General Fund in excess of what can be properly be classified in one of the other four categories, or negative balances in all other funds.
- F. Reserve Funding Levels: The Government Finance Officers Association (GFOA) recommends a minimum of two months (17%) of operating expenditures, excluding capital expenditures, to be the level of the Unrestricted Fund Balance, which includes the last three categories (Committed, Assigned & Unassigned) where the only constraint on spending, if any, is imposed by the government itself.

### **ENTERPRISE FUND RESERVES (NET WORKING CAPITAL)**

In the case of Enterprise Funds, Generally Accepted Accounting Principles ("GAAP") does not permit the reporting of reserves on the face of City financial statements. However, this does not preclude the City from setting policies to accumulate financial resources for prudent financial management of its proprietary fund operations. Since proprietary funds may include both long-term capital assets and long-term liabilities, the most comparable measure of liquid financial resources that is similar to fund balance in proprietary funds is net working capital which is the difference between current assets and current liabilities. For all further references to reserves in Enterprise Funds, Net Working Capital is the intended meaning.

The delivery of water, wastewater, storm drain and solid waste services are accounted for in Enterprise Funds. These "business-type activities" are operated in a manner similar to

businesses in the private sector and are primarily funded through user fees and charges. All costs related to providing these services, including direct and indirect operating costs, capital Improvements and depreciation are supported by user charges and fees and shall not be subsidized by the General Fund.

It shall be the policy of the City to establish reserve fund guiding principles for water, wastewater, storm drain and solid waste services and to maintain a rate stabilization account as part of these reserve policies.

**Section 1 Operating Reserve Funds:**

Each utility operating reserve fund is to be used for unanticipated events that impair the ability of the City to provide specific utility services in its normal course of business. The methodology to establish these reserve funds shall be based upon the annual adopted operating budget for each fund which represents the amount necessary to provide for three months (25%) of operations in the event of a major disruption to revenues. The use of these reserve funds shall be restricted to emergency situations resulting from the loss of revenues and must be replenished before the end of the following fiscal year.

**Section 2 Capital Reserve Funds:**

A Capital Reserve fund is a fund used to accumulate a set amount of excess revenues for the purpose of financing certain capital Improvements on a pay-as-you-go basis when the Improvement has a fairly short life expectancy or the use of bond financing is not cost effective. Major long-term capital Infrastructure projects may be financed through enterprise bonds. Small unanticipated capital projects may also be financed through the capital reserve fund. The Public Works Director with the approval of the City Administrator shall determine an appropriate "contribution" to the capital reserve fund each year and identify it as part of the Capital Improvement Budget.

**Section 3 Rate Stabilization Fund – Solid Waste:**

The purpose of the Rate Stabilization Fund is to maintain a prescribed stable balance in reserve as a means to mitigate future rate increases. The use of this reserve fund is limited to only operations and maintenance related expenses and not capital improvements. This reserve is specific to Solid Waste and serves as the operating reserve as these services are contracted out and the City does not have as much control on expenses.

**Section 4 Replenishment of Reserves:**

The Director of Public Works with the approval of the City Administrator shall establish a replenishment schedule pursuant to the guidelines provided in this policy.

**EQUIPMENT REPLACEMENT RESERVE FUNDS**

The City Council has decided to avoid, whenever possible, expensive lease/purchase arrangements or incurring replacement cost expenses all at once in a single fiscal year for vehicles and equipment. This can be made possible by establishing equipment replacement

accounts for each City Utility Enterprise Fund and the General Fund. Each year, depreciation is calculated on a straight-line basis for several years, depending on the projected useful life of each piece of equipment or vehicle, for all items that cost \$5,000 or more. Depreciation schedules are determined at the time of purchase and have been examined each year during the City's audit. An amount equal to the annual depreciation expense for all equipment will be placed into an account each year. Additionally, any proceeds from the sale of City vehicles and equipment will be placed into the appropriate equipment replacement account.

#### **RESPONSIBILITY FOR ENFORCEMENT**

The City Administrator and Finance Director has authority to oversee the operational issues associated with the maintenance of the Budget and Finance Policy. Department Heads and supervisors are responsible for ensuring department expenditures stay within the department's budget appropriations.



# CITY COUNCIL STAFF REPORT

Item 6.6

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April 26, 2016

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**AGENDA SECTION:** New Business

**SUBJECT:** Debt Management Policy

**PREPARED BY:** Rod Pruett, Finance Director

REVIEWED BY  
ADMINISTRATOR

REVIEWED BY  
ATTORNEY

REVIEWED BY  
FINANCE

---

**RECOMMENDATION:**

That City Council approves the attached Resolution and the attached Debt Management Policy.

**HISTORY / BACKGROUND:**

In order to link resources and establish a fiscally responsible budget, the staff is recommending a written policy on Debt Management for the City of Chowchilla. This Debt Management Policy will provide clear and comprehensive guidelines for the issuance and financial management of the City of Chowchilla's debt portfolio. This policy confirms the commitment of the Council, management, staff and other decision makers to adhere to sound financial management practices, including full and timely repayment of borrowings, achieving the lowest possible cost of capital within prudent risk parameters. Priorities of this policy are:

- Achieve the lowest cost of capital;
- Maintain a prudent level of financial risk
- Preserve future financial flexibility
- Maintain full and complete financial disclosure and reporting
- Obtain highest practical credit ratings and good investor relations; and
- Ensure compliance with state and federal laws and regulations.

**FINANCIAL IMPACT:**

There is no fiscal impact to the City of Chowchilla.

**ATTACHMENTS:**

Resolution to Approve the Debt Management Policy  
Investment Policy

**SPECIAL INSTRUCTIONS:**

None

**COUNCIL RESOLUTION # -16**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA  
APPROVING THE DEBT MANAGEMENT POLICY**

**WHEREAS** an essential component of a prudent fiscal policy is to have formal provision for the oversight of the budget and the city's finances,

**WHEREAS** a documented Debt Management Policies are standard practices; and

**WHEREAS** a Debt Management Policy will act as a guide to the City of Chowchilla to mitigate any future fluctuations and to establish a system for fiscal responsibility.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Chowchilla that the City of Chowchilla hereby approves the attached Debt Management Policy.

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla this 26th day of April 2016 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

APPROVED:

\_\_\_\_\_  
Waseem Ahmed, Mayor

ATTEST:

\_\_\_\_\_  
Joann McClendon, CMC  
City Clerk

**City of Chowchilla**

ADMINISTRATIVE POLICY and PROCEDURE MANUAL

<b>Section:</b> Finance	<b>Date:</b>
<b>Subject:</b> Debt Management Policy	<b>Supersedes:</b> N/A
<b>Pages:</b> 5	<b>Council Approval:</b>

**Note: Policy language subject to modification at any time.**

**POLICY PURPOSE**

The City of Chowchilla has established this Debt Management Policy to provide clear and comprehensive guidelines for the issuance and financial management of the City of Chowchilla's debt portfolio. This policy confirms the commitment of the Council, management, staff and other decision makers to adhere to sound financial management practices, including full and timely repayment of borrowings, achieving the lowest possible cost of capital within prudent risk parameters. Priorities of this policy are:

- Achieve the lowest cost of capital;
- Maintain a prudent level of financial risk
- Preserve future financial flexibility
- Maintain full and complete financial disclosure and reporting
- Obtain highest practical credit ratings and good investor relations; and
- Ensure compliance with state and federal laws and regulations.

**SCOPE**

The guidelines established by this policy will govern the issuance and management of all debt funded for long term capital financing needs and not for general operating functions. The Finance department recognizes that changes in the capital markets and other unforeseen circumstances may require exceptions to this Debt Management Policy. In cases which require exceptions to the Debt Management Policy, approval from the City Council will be necessary for implementation.

**RESPONSIBILITIES**

The City's debt program for all City funds shall be operated in conformance with applicable federal, state and other legal requirements, including the Chowchilla Municipal Code.

Pursuant to the provisions of Sections 37209 and 40805.5 of the Government Code of the State of California, the Finance Director (Director of Finance) shall be the head of the finance department and shall be responsible for all the financial affairs of the City. Responsibility for managing and coordinating all activities related to the structure, issuance and administration of long- and short-term debt obligations shall rest with the Finance Director.

No debt obligations shall be presented to the City Council for their authorization without the joint assessment and recommendation of the City Administrator, Finance Director and City Attorney.

The Finance Director shall be responsible for maintaining good communication with rating agencies, investors and other debt related service providers about the City's financial condition and will follow a policy of full disclosure.

### **TYPES OF DEBT**

There are a number of market factors that will affect the success of a bond offering and each should be carefully considered before selecting a method of sale. These factors include, but are not limited to, 1) market perception of the City's credit quality, 2) interest rate volatility, 3) size of the proposed issue, 4) complexity of the proposed issue, and 5) competition with other issuers for investor interest (bond supply). The following are the types of debt the City could issue:

#### **New Money Bonds**

New Money bonds are bonds issued to finance the cost of capital improvement projects or other large and extraordinary costs as approved by the City Council.

#### **Refunding Bonds**

Refunding bonds are bonds issued to refinance (refund) previously issued outstanding debt. The City may issue refunding bonds to refinance the principal of and interest on outstanding bonds or other debt to achieve debt service savings, restructure schedule debt service or convert from variable or fixed interest rate, change or modify the source(s) of payment and security for the refunded debt, or modify covenants otherwise binding upon the City. Refunding may be issued either on a current or advance basis.

#### **Revenue Bonds**

Revenue bonds are generally issued by enterprise funds that are financially self-sustaining without the use of taxes and therefore rely on the revenues collected by the enterprise fund to repay the debt.

#### **Assessment Bonds**

The Improvement Bond Act of 1915 (Streets and Highways Code Section 89500 et seq.) allows the City to issue bonds to finance the "specific benefit" improvements on the real property within its jurisdiction provided by the City. Installments are collected by posting to the secure property tax roll of the county.

#### **General Obligation (GO) Bonds**

In California, GO Bonds require a supermajority voter approval. Most GO bonds are backed by the issuer's ability to level ad valorem tax in amounts sufficient to meet debt service requirements.

#### **Certificate of Participation**

Also known as "COP", this security represents a share of an issuer's lease payment. When a City finances a public facility through a lease-purchase transaction, the interest in that City's lease payment often is assigned to a third party that issues certificates of participation. The certificates represent a share of the lease payment to be received by the investor.

### **DEBT TERM**

The City Council recognizes that any new debt obligation will have an impact on the long-term affordability of all outstanding debt and any future planned debt, as well as budgetary impacts

associated with the maintenance and operating costs of debt-financed facilities.

**Term of Debt** – Debt will be structured for the shortest period possible, consistent with a fair allocation of costs to current and future beneficiaries or users. Debt shall not be issued for a term that exceeds the useful life of the debt-financed asset.

**Debt Repayment** – Typically the City desires level debt service payments over the term of the debt. However, the cost of capital, financial risk, current economic conditions, future financial flexibility, credit rating and available cash flow will be evaluated to determine the most appropriate method of debt amortization for each debt issue. Notwithstanding the above, back loading of debt service will be evaluated as the circumstances dictate. Back loading occurs when debt service payments are lower in the initial years of a debt term and higher toward the later years of a debt term.

## **DEBT ISSUANCE**

The City has the capacity to issue long- and short-term debt and to refund any outstanding debt. The following section details the purposes of debt issuance, the method of sale for such debt and the practices for obtaining professional assistance in the debt issuance process.

**Long-term debt** – Long-term debt may be used to finance the acquisition or improvement of land, infrastructure, facilities or equipment for which it is appropriate to spread the costs of such over more than one budget year. Long-term debt may be used to fund capitalized interest, cost of issuance, required reserves and any other financing related costs that may be legally capitalized. Long-term debt should not be used to fund City operating costs.

**Short-term debt** – Short-term debt will be considered as an interim source of funding in anticipation of long-term debt. Short-term debt may be issued for any purpose for which long-term debt may be issued, including capitalized interest and financing-related costs.

Short-term debt is also appropriate to address legitimate short-term cash flow requirements during a given fiscal year to fund the operating costs of the City to provide necessary public services. The City will not engage in short-term borrowing solely for the purpose of generating investment income.

**Refunding** – Refunding opportunities will be identified by periodic review of outstanding debt obligations. Refunding will be considered when there is a net economic benefit from the refunding. Non-economic refunding may be undertaken to achieve City objectives relating to changes in covenants, call provisions, operational flexibility, tax status, issuer or other non-economic factors related to the debt.

**Method of sale** – Debt is typically issued under either a competitive or a negotiated sale. The City shall have the flexibility to determine which method of sale is appropriate for each debt issuance. Determination of the appropriate method of sale will rest collectively with the City Administrator, Finance Director and City Attorney.

**Private Placement** – The City may determine that private placement of debt is most appropriate. Use of private placement will be considered collectively by the City

Administrator, Finance Director and City Attorney.

**Pooled Financing** – The City may also consider the use of pooled financing as a method of accessing the capital markets. Use of pooled financing will be evaluated collectively by the City Administrator, Finance Director and City Attorney on a case-by-case basis.

**Selection of Financing Professionals** – Selection of financing professionals (financial advisor, underwriter, bond counsel, disclosure counsel, trustee, etc.) shall generally be on a competitive basis; however, the City Administrator is authorized to select financing professionals on a sole source basis. Selection shall balance service (experience, professional reputation and capabilities) with costs.

### **DEBT CAPACITY**

Article XVI, Section 18 of the California Constitution (the "debt limit") prohibits cities from entering into indebtedness or liability that in any year exceeds the income and revenue provided for such year unless the City first obtains two-thirds voter approval for the obligation.

Determining what the City's debt capacity is at any point in time is difficult. It depends on a number of factors including market conditions, amount of undesignated fund balance in the General Fund, fluctuating cash balances, financial policies, management and staff experience, new or existing revenues to support additional debt and availability of financial consultants to assist in financial analysis. In the development of this Debt Policy, the goal is to serve as a framework within which the City can evaluate each potential debt issuance. This Debt Policy is not to be so restrictive that it interferes with the City's legitimate efforts to prudently provide public services and facilities.

### **PERFORMANCE STANDARDS**

The City strives to maintain "investment grade" standing in the municipal market. Below is an Investment Grade Table of the three (3) major rating agencies:

<b>Moody's Investors Service Inc.</b>	<b>Standard &amp; Poor's Corporation</b>	<b>Fitch Investors Service Inc.</b>	<b>Definition</b>
AAA	AAA	AAA	Highest rating assigned Very strong security
Aa	AA	AA	Very strong security, Only slightly below the best rating
A	A	A	Average security but more subject to adverse financial and economic developments
Baa	BBB	BBB	Adequate capacity to secure debt. Adverse developments may affect ability to meet debt service requirements

Note: Moody's use the designation "1" to indicate a greater strength with the "Baa1" "A1" and "Aa1"

categories. Standard and Poor's and Fitch use "==" and "-" to indicate relative strength or weakness in the "BBB", "A" and "AA" categories

### **INTERFUND BORROWINGS**

The City may borrow internally from other funds with temporary cash surpluses to meet short term cash needs in lieu of issuing debt. The fund(s) from which the money is borrowed shall be repaid with interest at the average earnings rate of the City investment pool. Interfund borrowing extending for more than one year will be brought to the City Council for approval.

### **ON-GOING DEBT ADMINISTRATION**

The Director of Finance will regularly review the City's outstanding obligations, particularly in declining interest rate environment. When rates begin to approach levels at which refunding is cost effective, the City shall select a financing team to begin preparations for a refunding issue.

### **Continuing Disclosure**

The Finance staff will ensure that the City's annual financial statements and associated reports are posted on the City's web site. The City will also contract with Consultant(s) to comply with the Securities and Exchange Commission Rule 15c2 by filing its annual financial statements and other financial and operating data for the benefit of its bondholders on the Electronic Municipal Market Access (EMMA) website of the Municipal Securities Rulemaking Board (MSRB).

### **Arbitrage Rebate Compliance and Reporting**

The use and investment of bond proceeds must be monitored to ensure compliance with arbitrage restrictions. Existing regulation require that issuers calculate rebate liabilities related to bond issues with rebates paid to the Federal Government every five years and as otherwise required by applicable provisions of the Internal Revenue Code and regulations. The Director of Finance shall contract with a specialist to ensure that proceeds and investments are tracked in a manner that facilitates accurate, complete calculations and if necessary, timely rebate payments.

### **DEBT MANAGEMENT POLICY REVIEW**

The Director of Finance shall review this Debt Management Policy at a minimum of every five (5) years and recommend any changes to the City Administrator and City Council.