

**HOMELESS PROJECT AGREEMENT
(QUALIFIED HOMELESS PROJECT DESIGNATION)**

THIS AGREEMENT ("Agreement") is entered into by Hope Services Hawaii, a Hawai'i not-for-profit corporation, whose mailing address is 357 Waianuenue Avenue, Hilo, Hawaii, 96720, ("Applicant"), and the Governor's Coordinator on Homelessness, an office of the STATE OF HAWAII, whose mailing address is 415 South Beretania Street, Room 415, Honolulu, Hawaii, 96813 ("STATE"). Applicant and the State are collectively referred to as the "Parties." The effective date of this Agreement is September 11, 2023, 2023.

A. APPLICANT'S UNDERSTANDING AND REPRESENTATIONS

1. Applicant intends to develop Pahoehoe Homeless Housing ("Project"), as described in Exhibit A, on certain real property, located at Tax Map Key No. (3) 1-5- 006:017.

2. Applicant has applied to the State to qualify the Project as a homeless project under the Governor's Emergency Proclamation on Homelessness dated July 18, 2023, ("Proclamation") in order to receive various exemptions that may be granted to State-certified homeless projects. The Applicant's application to the State and Project plan are incorporated by reference.

3. The Proclamation sets forth the requirements applicable to homeless projects that are intended to house or serve people experiencing homelessness or who are at risk of homelessness.

4. Based on the application and Project plan, the State has determined that Applicant is subject to the terms of the Proclamation and must execute a development agreement with the State.

5. Applicant understands that the Proclamation requires Applicant to complete State reviews and to consult with the County government agency responsible for issuing building permits.

B. PURPOSE

The purpose of this Agreement is as follows:

1. To qualify the Project on the Subject Property as a homeless project under The Proclamation.

2. To provide the State with a contractually enforceable recourse in the event Applicant fails to develop and operate the Project according to the Application, Project plan, Proclamation and the terms contained below.

3. To create a covenant running with the land against the Subject Property in favor of the State, which will bind Applicant and the Subject Property to the Application, Project plan, Proclamation and the terms of this Agreement.

C. COVERAGE

This Agreement applies to the Project on the Subject Property, and covers all land use and zoning, site work, infrastructure, and vertical construction on the Subject Property. Coverage under the exemptions provided by the Proclamation shall remain in force so long as the Project maintains compliance with the term of this Agreement. This Agreement shall be null and void in the event the Applicant does not acquire site control of the Subject Property.

D. APPLICANT'S REPRESENTATIONS AND AGREEMENTS

1. This Agreement is a covenant running with the land against the Subject Property in favor of the State. Within 30 days of the effective date, Applicant shall record this Agreement against the Property in the State Bureau of Conveyances or Land Court, as the case may be, in a form acceptable to the State. Applicant shall obtain all authorizations and signatures required for recording this Agreement as a covenant that is superior to the fee simple and any other interests in the property, unless otherwise agreed by the State.

2. 100% of the Project will be used for housing, shelter, or services for people experiencing homelessness or at risk of homelessness as defined in the Proclamation for a period of not less than 20 years, in conformance with the Application, Project plan, agreements, representations, restrictions, covenants, and limitations set forth herein and in the Proclamation.

3. Applicant agrees that if it fails to adhere to the Application, Project plans, agreements, representations, restrictions, covenants, or limitations set forth herein and in the Proclamation, the State may:

- a. Rescind exemptions, expedited reviews, or approvals granted under the Proclamation and require the Project to comply with laws, rules, and procedures that would apply to the Project if it did not qualify under the Proclamation;
- b. Demand repayment from the Applicant or its successors for any financial benefit received as a result of the qualification of the Project under the Proclamation, including but not limited to any fee waivers or cost reductions that inured to the benefit of the Project or Applicant as a result of qualification under the Proclamation; and
- c. Sue Applicant, its successors, and assignees for specific performance of the Agreement and to pursue all other legal and equitable remedies to ensure compliance.

E. MISCELLANEOUS PROVISIONS

1. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered to be an original, but all of which together shall constitute a single document.

2. Modification of Agreement. This Agreement may not be modified or terminated, in whole or in part, except by another agreement in writing, duly executed by all of the parties.

3. Controlling Law. The performance and interpretation of this Agreement shall be controlled by the laws of the State of Hawai'i.

4. Attorneys' Fees. In the event of any controversy, claim or dispute among the parties arising out of or relating to this Agreement or the breach hereof, the State shall be entitled to recover from the Applicant reasonable expenses and costs, including without limitation, reasonable attorneys' fees and court costs.

5. Invalidity - Severability. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, provided that the essential provisions of this Agreement and the position of the parties hereto are not materially changed thereby.

6. Entire Agreement. This Agreement contains the complete understanding and agreement of the Parties with respect to all matters referred to herein and shall supersede any and all prior agreements between the Parties with respect to the Subject Property or the Project. No parties hereto shall be liable or bound to any other party in any manner by any agreement, warranty, representation or guarantee, except as specifically set forth herein.

7. Rights and Obligations. The rights and obligations set forth herein shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, estates, personal representatives, successors, successors in trust, and assigns.

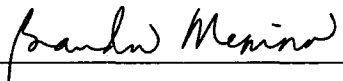
8. Definitions. The terms "Applicant" and "State," when used in this Agreement, or any pronouns used in their place, mean and include males or females, and one or more (or a combination of) real people, companies, corporations or other entities, and their and each of their respective heirs, devisees, personal representatives, successors, successors in trust and assigns, according to the context. The term "State" shall also include the State's elected and appointed officers and employees.

9. Interpretation. Each party and/or counsel for each party has received this Agreement and, accordingly, the rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

10. No Third-Party Beneficiaries. Nothing in this Agreement is intended to be for the benefit of any person, firm, or other entity not a party hereto. This Agreement is not intended to create any rights, interests, or remedies for any third-party beneficiaries. Third parties may not rely upon this Agreement to assert any claim against the Applicant, State, or any of their officers or employees, whether individually or in their official capacities.

IN WITNESS WHEREOF, the parties have executed this Housing Agreement on this 11th day of September, 2023.


APPLICANT

Signed: 

Print: Brandee Menino

Title: Chief Executive Officer

STATE

Signed: 

Print: James Koshiba

Title: Governor's Coordinator on Homelessness

Approved as to form and legality:


Deputy Attorney General

EXHIBIT A

SUBJECT REQUEST

Description: HOPE Services Hawaii, Inc. (HOPE) manages the property located at tax map key (3) 1-5-006:017 and is requesting the following exemptions, pursuant to the Emergency Proclamation Related to Homelessness, enacted on January 23, 2023, by Governor Josh Green, M.D., and all subsequent/related proclamations:

1. **Exemption from Chapter 205, Hawaii Revised Statutes (HRS), Land Use Commission – State Land Use (SLU) Boundary Amendment requirements, which would allow a change in land use district classification from Agricultural to Urban.**
2. **Exemption from Chapter 46, HRS, General Provisions – County Change of Zone (COZ) requirements, which would allow a change in zoning from Agricultural District (minimum building site of 1 acre, A-1a) to Multiple-Family Residential District (required land area of 2,000 square feet for each dwelling unit, or for each separate rentable unit, RM-2) – or simply, from A-1a to RM-2.**
3. **Exemption from Chapter 104, HRS, Wages of Hours of Employees on Public Works – State prevailing wage requirements, to ensure that benefit/use of a State proclamation will not retroactively/actively compromise wage-related cost savings to the Project (as Phase II of the project is almost fully constructed).**
4. **Exemption from Chapter 237 HRS General Excise Tax Law to save funding on construction costs.**
5. **Exemption from Chapter 103F HRS Purchases of Health and Human Services to facilitate coordination and funding for direct services on site.**
6. **Exemption from Chapter 92 HRS, Section 102–2 Contract Concession and Bid Requirement**
 - Section 103–55.5 Public Works Construction. Wages and Hours of Employees on Public Works Construction Contracts.
 - Section 103-55, HRS, Wages, Hours, and Working Conditions of Employees of Contractors Performing Services
 - Section 103D, Hawaii Public Procurement Code
 - Section 103-53, HRS, Contracts with the State or Counties; Tax Clearances, Assignments

The Project will be the site for emergency shelter and permanent low-income rental housing to serve seniors experiencing homelessness in East Hawaii, coordinated by HOPE under the development guidance of Hawaii Island Community Development Corporation (HICDC). The Project is comprised of **20 existing single-room occupancy (SRO) units (Phase 1)**, staff office, storage unit, community pavilion, two

restrooms and showers (Including one ADA accessible restroom and shower and two ADA accessible SRO) that initially served seniors impacted by the most recent lower Puna eruption at Kīlauea and continue to serve (in an emergency capacity) seniors impacted by homelessness. Phase 2 of the Project includes **twelve (12) newly constructed studio units fabricated via modular design/ construction**, to allow for portability in the event of future lava impact (and at the requirement of the substantial funder for the Project). Phase 2 will also include a newly-constructed modular structure as an accessory unit of the Project – to provide additional onsite support space, laundry, full kitchen, private meeting room and parking (**13 parking stalls**) for staff and clients. Phase 3 Future phases of the Project will be subject to availability/coordination of future funding, in addition to coordination/sourcing of additional water to serve future phases/units. We were able to secure \$1.7M from Hawaii Community Foundation to get started on predevelopment work including site planning to development additional affordable housing for our unhoused community.

Situated in Pāhoa Village (Village), the Project site is across the street from Pāhoa Intermediate and High Schools – located directly behind the popular Tin Shack Bakery (on the Sacred Hearts Church campus – 15-2979 Pāhoa Village Road). Uses of neighboring properties include both residential and commercial. See Exhibit 4 for *Location Map*.

Objective/Reason: Statutory exemption approval would **eliminate the need to pursue conventional SLU and COZ approvals, while ensuring that development costs of the Project are not subject to State prevailing wage requirements**, which would substantially and actively/retroactively increase development costs to the Project.

Acreage/Square Footage: The Project is located on tax map key (3) 1-5-006:017 – **14.537 acres** in size. The 20 emergency shelter units and staff office have a floor space of 120 square feet, while the community pavilion has an area of 1,200 square feet. Each of the 12 studio units has floor space of **512 square feet**, while the accessory unit has an area of **647 square feet**.

Clients/Employees: Occupancy of all units is currently/anticipated at **1-2 clients (residents) per unit**, while the staff office and accessory unit will provide **support space for one (1) onsite staff each** (during typical business hours).

Method of Homeless Verification: As a Continuum of Care participating agency, HOPE Services utilizes the

State-approved Homeless Verification letter to certify homelessness. HOPE Services is an active user of the Homeless Management Information System database where program participant data is stored – including but not limited to duration of homelessness, assessment of vulnerability, and participation in homeless programs. Combined, HOPE assures eligibility for programs and resources intended to serve people experiencing homelessness.

Obtaining Community Input: HOPE Services has been an active community member in the subject neighborhood since May 2018, when the lower Puna eruptions prompted the emergency construction of shelter units to house senior citizens displaced from their homes. As a community member, HOPE has participated in planning discussions, community meetings, and other neighborhood engagements, engaging with community members and stakeholders including: the Pāhoa Main Street Association; local rotary club chapters; members of the consolidated plan committee; neighbors Sacred Heart Church and its parish, local business Tin Shack Bakery, residents of Akamai loop and of Sacred Heart Shelter.

Timeframe/Cost: Development of the Project has slowly evolved despite a series of challenges spanning roughly 10 years – from initial attempts to rehabilitate existing, aged housing units, to obtaining building permits for new construction only to be stalled by lava impact and recovery, to then re-designing the project for portability in advance of future lava impact, to ultimately engaging modular design as the most cost-effective and timely method of housing production. Development proceeded based on various gubernatorial proclamations (and respective supplementary proclamation) intending to provide statutory relief in an effort to expedite housing development efforts – first declaring the lava disaster on Hawaii Island, then the statewide homeless emergency, followed by the COVID pandemic. Despite ongoing development intent to respond accordingly to each of the declared disasters/emergencies, the Project was ultimately unable to utilize the allowances of the various proclamations and has since required pursuit of conventional regulatory approvals, though somewhat out of sequence (including land use and zoning approval). As such, construction of the **Project commenced in March 2021 and is projected for completion by Fall 2023.** Total cost: **\$2,350,000.00.**

Traffic Impacts: Though a formal traffic impact assessment report was not prepared for the Project, other low-income senior rental projects managed by the Hawaii Island Community Development Corporation (consultant to the Project) reflect only 2/3 of residents own vehicles. Based on a planned 12 units for the Project, daily traffic impact is anticipated to increase by 13 vehicles – eight (8) resident vehicles plus five (5) vehicles for program staff and resource agencies. As the senior population served by the Project is also

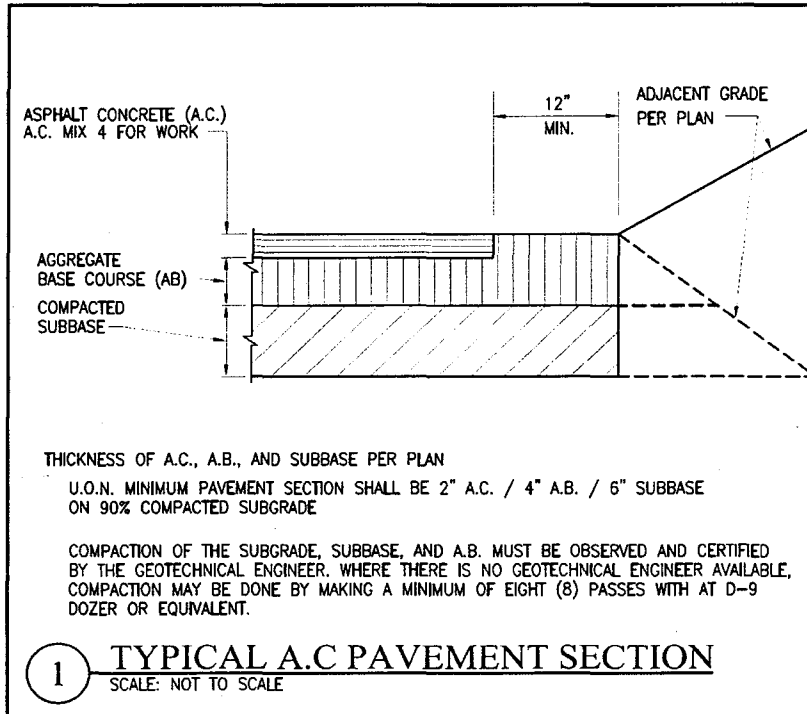
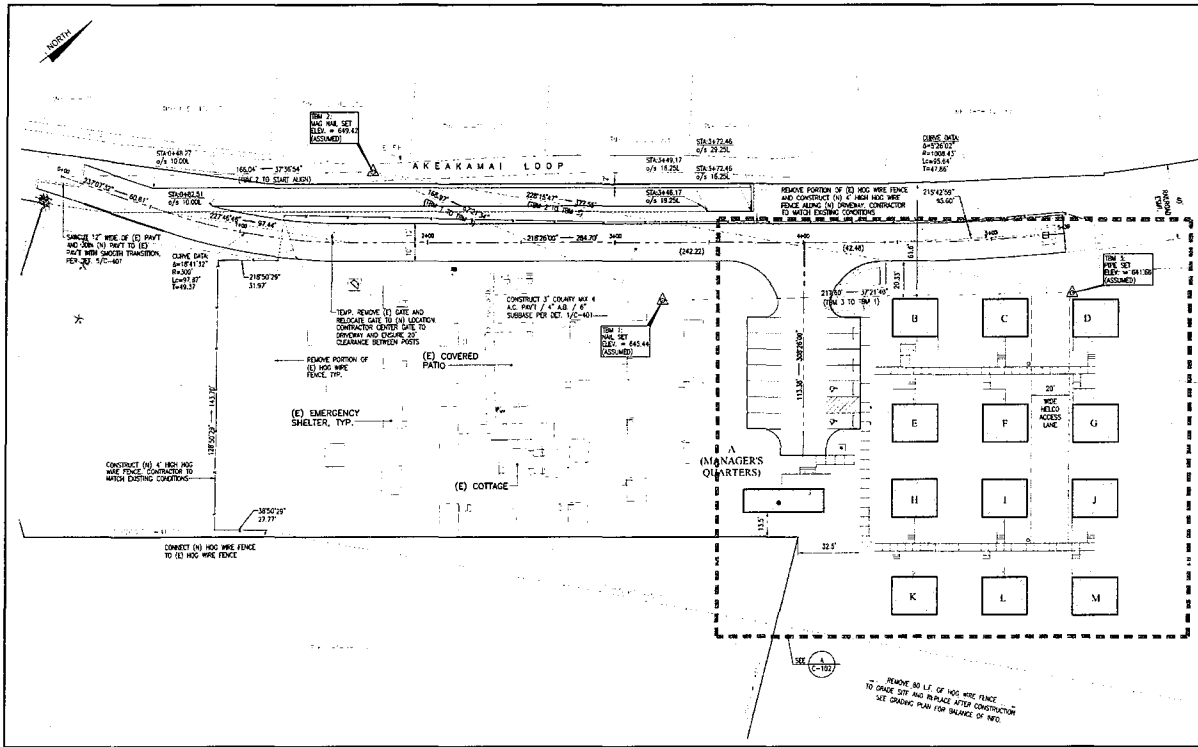
experiencing homelessness, it can be reasonably expected that the resident vehicle count (and associated traffic impact) will be (1) lower than expected and (2) insignificant in relation to existing traffic loads/patterns.

Infrastructure:

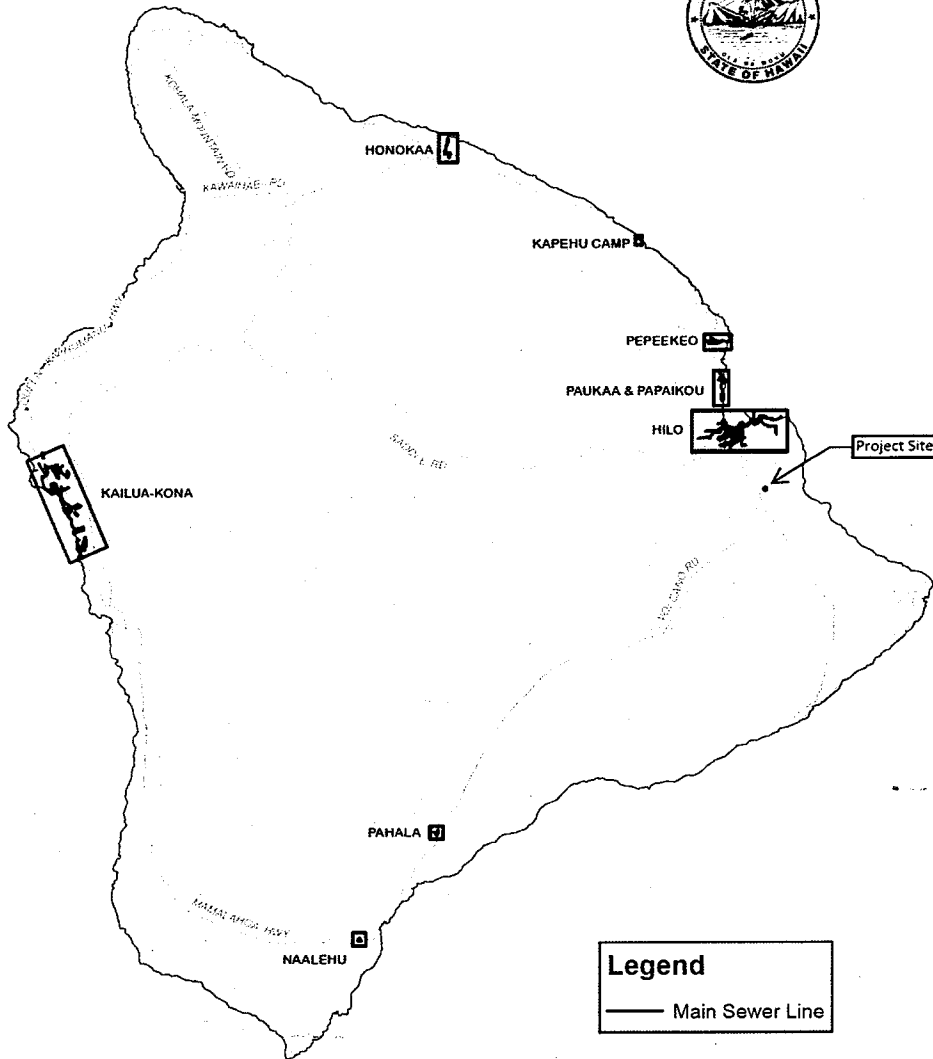
Access, Roadway (offsite) – The Project site is predominantly bordered by Kea’au-Pāhoa Road to the north, with a residential private road to the west (Akeakamai Loop) and Pāhoa Village Road to the south. As such, there is thorough access along the perimeter the Project site, with no known need for direct public access through the Project. No approvals or improvements are needed for offsite roadway access.

Access, Roadway (onsite) – While access to the Project site is available from both Kea’au-Pāhoa Road and Pāhoa Village Road, primary access for the Project will be from Pāhoa Village Road via a 20’ private roadway of typical asphalt concrete pavement – designed and approved as compliant to County standards.


Sewer – With no near access to sewer treatment (see reference index map), the Project will be equipped with seven (7) individual wastewater systems (IWS). The Project has obtained variance approvals and Certifications of Construction (File Nos. 65274-65280, inclusive) from the Department of Health for all proposed IWS.



COUNTY OF HAWAII SEWER NETWORK INDEX MAP



Water – Confirmation of available water units has been obtained for Phases 1 and 2 of the Project and the correlating rental unit design has been approved by the County Department of Water Supply (DWS). Availability/Sourcing of water for future phases will be coordinated with DWS.



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
 345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720
 TELEPHONE (808) 961-8050 • FAX (808) 961-8057

May 30, 2018

TO: Mayor Harry Kim *Harry*
 Office of the Mayor

FROM: Keith K. Okamoto, Manager-Chief Engineer


SUBJECT: Water Availability
 Tax Map Key 1-5-006:017

This is in response to your letter of April 27, 2018, requesting additional support from the Department of Water Supply for the proposed Pāhoā Affordable Housing Project.

To help meet the additional in-fill needs of the Pāhoā Affordable Housing Project, the requested fourteen (14) additional units plus the current two (2) units of water can be made available between both Parcels 001 and 017.


Please be informed, this letter shall not be construed as a water commitment. In other words, unless a water commitment is officially effected, water availability is subject to change without notice.

Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,

 Keith K. Okamoto, P.E.
 Manager-Chief Engineer

TS:dfg
 copy - DWS Customer Service Section (Hilo)

... Water, Our Most Precious Resource ... *Ka Wai A Kane* ...
 The Department of Water Supply is an Equal Opportunity provider and employer.



Harry Kim
 Mayor

Wii Okabe
 Managing Director

Barbara J. Kossow
 Deputy Managing Director

County of Hawaii
 Office of the Mayor
 25 Aupuni Street, Suite 2803 • Hilo, Hawaii 96720 • (808) 961-8211 • Fax (808) 961-6553
 KONA: 74-5044 Ane Keohokālole Hwy., Bldg C • Kailua-Kona, Hawaii 98740
 (808) 323-4444 • Fax (808) 323-4440

April 27, 2018

Mr. Keith Okamoto
 Manager-Chief Engineer, Department of Water Supply
 345 Kekūanaō'a Street, Suite 20
 Hilo, HI 96720

Mr. Okamoto,

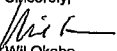
RECEIVED
 2018 APR 30 PM 2:41
 DEPT OF WATER SUPPLY
 COUNTY OF HAWAII

Subject: Water Availability for the Pāhoā Affordable Housing Project
 Tax Map Key: (3) 1-5-006:017 (portion)

The Hawai'i Island Community Development Corporation (HICDC) is embarking on a new partnership with homeless services provider, HOPE Services Hawai'i, Inc. (HOPE), to develop a low-income rental housing project in the Pāhoā community -- to serve single-parent households with children, a vulnerable population in need of affordable housing. The project will include 15 low-income rental units, community center to house essential services for the clients, and circulation, parking and landscaping. Attached is a location map and preliminary site plan of the project.

The HICDC has requested, in its efforts to increase affordable housing inventory, additional water units to serve the needs of its Pāhoā Affordable Housing Project (Project). Per the attached letter, the Department of Water Supply (Department) has indicated that there are only two (2) remaining water units available for the area of the Project. Since the HICDC-HOPE partnership will result in housing that will truly meet affordable housing needs in the Pāhoā community, we request within your means to accommodate this request to reallocate 14 water units to service the rental units and community center.

Thank you for your key support to address affordable housing and homeless initiatives in our many communities. Please call Roy Takemoto at (808) 961-8565 if you have any questions or need further clarification.

Sincerely,

 Wii Okabe
 ACTING MAYOR

Enclosures (3)

County of Hawaii is an Equal Opportunity Provider and Employer.

Electric – Confirmation of available power and subsequent design (by Hawaiian Electric) has been obtained for the Project.



CUST 3-3-1
H-W/G

July 29, 2022

Hope Services Hawaii Inc.
357 Waianuenue Ave.,
Hilo, HI 96720

Gentlemen:

Subject: Sacred Hearts Pāhoa Line Extension

This proposal letter is in reply to your request concerning the installation of an overhead electrical distribution system to serve 13 units of the above subject development located at 15-2979 Pāhoa Village Rd., Pāhoa, Puna, Hawai'i, (TMK: 3-1-5-006:017).

Hawaiian Electric will provide, install, own, and maintain an overhead electrical distribution system in accordance with our enclosed Drawing No. 22-C-0282.

Hawaiian Electric will make this installation in accordance with the Company's Rule No. 13 and "General Requirements for Installation of Overhead Electrical Distribution Systems in Subdivisions or Developments" revised date of May 24, 2017, copies attached.

The total charges of the overhead electrical distribution system are as follows:

TOTAL DEVELOPER COST	\$44,483.53
Line Extension Cost	\$42,481.79
State General Excise Tax	\$2,001.74
Total Developer Cost (refundable advance) (Includes State GET)	\$44,483.53

Based on the cost noted above, you are required to pay Hawaiian Electric a refundable customer advance of \$44,483.53, which includes the State General Excise Tax.

The required advance is due and payable upon your acceptance of this proposal. Payment shall be required a minimum of four (4) weeks prior to the processing of our construction work orders.

An advance is the amount of money paid to our Company which may be subject to refund in whole or in part in accordance with Hawaiian Electric's Rule 13. (See attached copy.)

This proposal is valid for a period of six (6) months from the date of this letter. If Hawaiian Electric is not permitted to issue its construction work orders within six (6) months, this

Hawaiian Electric

PO BOX 1027, HILO, HI 96721-1027

Sacred Hearts Pāhoa Line Extension
Page 2
7/29/22

proposal will be invalid. If the starting date, as specified below by you, is later than this date, this proposal will be invalid and a revised proposal will be sent to you. Our Company shall not be held liable for delays caused by material shortages or delays caused by materials being strikebound.

The developer is also responsible for the cutting and trimming of trees along the proposed pole line route and providing property corner pins prior to our Company's construction. All tree trimming will be done in accordance with Hawaiian Electric's Tree Trimming Specifications, a copy of which is enclosed.

Hawaiian Electric shall bill the Developer all additional costs incurred should there be a determination of special findings not available during the development of Hawaiian Electric's cost estimate. An example would be archeological findings, which would require mitigation by working around or redesigning the proposed project to enable completion.

Hawaiian Electric's construction work orders will be issued upon receipt and/or completion of all required documentation and necessary payments.

The terms of this proposal are at all times subject to change or modification by the State of Hawai'i Public Utilities Commission ("PUC") as the PUC may direct in the exercise of its jurisdiction.

Please signify your acceptance of this proposal by appropriate execution in the space provided below. We are including an extra copy of this proposal and request that the signed original and CHECK PAYMENT in the amount of \$44,483.53 be mailed to Hawaiian Electric in the enclosed self-addressed envelope or delivered and placed directly in the drop box at Hawaiian Electric's Customer Service Department located at 1200 Kilauea Avenue, Hilo, Hawai'i. Payment can also be made by using our online bill payment option at www.hawaiianelectric.com/paynow. Please note that there is a convenience fee for this service.

In addition, please include the approximate date our Company will be permitted to begin its installation.

Should you have any questions, please write or call me at (808) 969-0338 between the hours of 7:00 a.m. - 3:30 p.m.

Sincerely,

Santiago,
Christopher
Christopher Santiago
Customer Planner
T&D Engineering

Digitally signed by
Santiago, Christopher
Date: 2022.07.28
14:35:57 -1000

Hawaiian Electric

PO BOX 1027, HILO, HI 96721-1027

CONFORMANCE WITH STATE/COUNTY PLANS

State Land Use designation: The subject property is situated within the State Land Use Agricultural district and is seeking an exemption from State Land Use Boundary Amendment requirements, to allow a change in land use classification from **Agricultural to Urban** district, which will align the use of the Project with land use classification requirements. The proposed reclassification conforms to the following standards for determining the Urban district boundaries:

- The Project area is near centers of trading and employment.
- The Project area is served by basic services including schools, parks, solid waste disposal, drainage, water, transportation systems, public utilities and police and fire protection.
- The Project area includes lands with satisfactory topography and drainage, is reasonably free from the danger of any flood, tsunami, unstable soil condition and other adverse environmental effects.
- Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans.
- The Project area is in an appropriate location for new urban concentrations as evidenced by the Hawaii County Land Use Pattern Allocation Guide (LUPAG) designation as Medium Density Urban.
- Approval of the proposed reclassification will not result in spot urban development necessitating unreasonable investment in public infrastructure or support services.

Coastal Zone Management: As the Project is located approximately six (6) miles (as the bird flies) from a coastal area, there will be **no impact to coastal resources**.

General Plan: The Project aligns with the following goals of the County General Plan: Housing, Goals 9.2 (a-f) by **providing for and increasing affordable housing for seniors** in a rural community.

LUPAG designation: The Project area is in an appropriate location for new urban concentrations as evidenced by the LUPAG designation as **Medium Density Urban**.

Zoning: The property is current zoned A-1a and is seeking exemption from County Change of Zone requirements to allow a change in zoning from **A-1a to RM-2**, which will align the use of the Project with the appropriate zoning.

Community Development Plan: The Project aligns with the following goals of the County Puna Community

Development Plan: Action 3.3.3 (g): Promote multi-family housing – especially for those with special needs, such as the elderly – in designated regional or community village/town centers, by providing special needs housing – for seniors experiencing homelessness.

Special Management Area: The Project is located approximately six (6) miles (as the bird flies) from the nearest shoreline and is, therefore, **not** situated within a **Special Management Area (SMA)** boundary.

OFFICE OF THE GOVERNOR

STATE OF HAWAI'I

FIFTH PROCLAMATION RELATING TO HOMELESSNESS

By the authority vested in me as Governor by the Constitution and laws of the State of Hawai'i, in order to provide relief for damages, losses, and suffering, and to protect the health, safety, and welfare of the people, I, Josh Green, M.D., Governor of the State of Hawai'i, hereby determine, designate, and proclaim as follows:

WHEREAS, homelessness is a humanitarian crisis that threatens the health, safety, security, and wellbeing of our community; and

WHEREAS, on January 23, 2023, an Emergency Proclamation was issued relating to homelessness that declared an emergency created by homelessness for the people of Hawai'i; and

WHEREAS, on January 26, 2023, a second Emergency Proclamation was issued relating to homelessness that clarified the terms of the Emergency Proclamation; and

WHEREAS, on March 20, 2023, a third Emergency Proclamation was issued relating to homelessness that clarified the terms of the Emergency Proclamation; and

WHEREAS, on May 19, 2023, a fourth Emergency Proclamation was issued relating to homelessness that clarified the terms of the Emergency Proclamation and that included Rules Relating to the Construction of Homeless Dwelling Units ("Emergency Rules"); and

WHEREAS, based on the fourth Emergency Proclamation and the Emergency Rules, the effort to issue development agreements that allow for the construction of homeless dwelling units is underway; and

WHEREAS, more time is needed to start the construction of homeless dwelling units and to relocate homeless individuals and families to completed dwelling units; and

WHEREAS, the creation of more permanent affordable housing, permanent supportive housing, transitional housing, and shelter space is necessary to protect the health, safety, and welfare, not only for individuals experiencing homelessness, but for all residents of the State, but it must be done in a way that is respectful to our environment, our history, and our *iwi kupuna*.

NOW, THEREFORE, I, Josh Green, M.D., Governor of the State of Hawai'i, hereby determine and proclaim that an emergency contemplated by section 127A-14, Hawaii Revised Statutes (HRS), is continuing in the State of Hawai'i, and in order to promote and protect the public health, safety, and welfare of the people of the State of Hawai'i, and to prepare for and maintain the flexibility to take proactive, preventative, and mitigative measures to minimize the adverse impact that the present emergency may cause on the State, and to work cooperatively and in conjunction with federal and county agencies, do hereby invoke the following measures under the Hawaii Revised Statutes:

I. Suspension of Laws

Section 127A-13(3), HRS. To the extent necessary to expedite the acquisition, construction, repair, renovation, and occupancy of housing that is designed exclusively for permanent, temporary, or transitional occupancy by persons experiencing homelessness or at risk of being homeless, and the provision of services to those persons, I hereby suspend the following statutes and regulations:

Chapter 6E, HRS, **Historic Preservation** to the extent necessary to expedite the provision of housing for homeless persons, subject to the attached Governor's emergency rules.

Section 37-41, HRS, **Appropriations to Revert to State Treasury; Exceptions.**

Section 37-74(d), HRS, **Program Execution**, except for sections 37-74(d)(2) and 37-74(d)(3), and any such transfers or changes considered to be authorized transfers or changes for purposes of section 34-74(d)(1) for legislative reporting requirements.

Section 40-66, HRS, **Appropriations Lapse When.**

Chapter 46, HRS, **General Provisions**, to the extent prescribed by the Counties in order to meet the minimum requirements for health and safety and floodplain management.

Chapter 76, HRS, **Civil Service Law.**

Chapter 89, HRS, **Collective Bargaining in Public Employment.**

Chapter 89C, HRS, **Public Officers and Employees Excluded from Collective Bargaining.**

Chapter 92, HRS, **Public Agency Meetings and Records**, to the extent that any notice requirements or any other provisions of Chapter 92 may delay the expeditious action, decision, or approval of any agency.

Section 102-2, HRS, **Contracts for Concessions; Bid Required, Exception.**

Section 103-2, HRS, **General Fund.**

Section 103-53, HRS, **Contracts with the State or Counties; Tax Clearances, Assignments.**

Section 103-55, HRS, **Wages, Hours, and Working Conditions of Employees of Contractors Performing Services.**

Section 103-55.5, HRS, **Wages and Hours of Employees on Public Works Construction Contracts.**

Section 103-55.6, HRS, **Public Works Construction; Apprenticeship Agreement.**

Chapter 103D, HRS, **Hawaii Public Procurement Code.**

Chapter 103F, HRS, **Purchases of Health and Human Services.**

Chapter 104, HRS, **Wages and Hours of Employees on Public Works.**

Sections 105-1 to 105-10, HRS, **Government Motor Vehicles.**

Chapter 171, HRS, **Public Lands**.

Section 183C, HRS, **Conservation District**.

Chapter 205, HRS, **Land Use Commission** except as it applies to conservation district lands and important agricultural lands.

Chapter 205A, HRS, **Coastal Zone Management**.

Chapter 206E, HRS, **Hawaii Community Development Authority**.

Chapter 237, HRS, **General Excise Tax Law**, to the extent that the suspension shall only apply to qualified persons or firms involved with a newly constructed, or a moderately or substantially rehabilitated, project that is developed under this Proclamation for the provision of housing for homeless persons, subject to the attached Governor's emergency rules. The suspension shall apply to the planning, design, financing, construction, sale, or lease in the State of a project that has been certified under the attached Governor's emergency rules. "Moderate rehabilitation" and "substantial rehabilitation" shall have the same meaning as set forth in section 201H-36(d), HRS.

Sections 302A-1601 through 302A-1608, HRS, **School Impact Fees**.

Chapter 343, HRS, **Environmental Impact Statements** to the extent necessary to expedite the provision of housing for homeless persons, subject to the attached Governor's emergency rules.

Chapter 346, HRS, **Social Services**.

Section 464-4, HRS, **Public Works**.

Sections 601-1.5, 708-817, 708-818, 708-820(1)(c), 708-830.5(1)(d), 708-840(1)(c) and (d), HRS, to the extent these sections contain provisions for the suspension, tolling, extension, or granting of relief from deadlines, time schedules, or filing requirements in civil, criminal, or administrative matters before the courts of the state or to the extent that these sections contain provisions for criminal penalties that are automatically heightened by reasons of any declared disaster or emergency.

Section 127A-25(c), HRS, rules and orders, to the extent the requirement to publish rules adopted pursuant to chapter 127A, HRS, in a newspaper of general circulation in the State shall be suspended inasmuch as the posting of such rules on the applicable state or county government website or by other means of official announcement as provided by this section brings the rules' content to the attention of the general public.

Pursuant to section 127A-25, HRS, I hereby adopt the Rules Relating to Construction of Homeless Dwelling Units attached hereto. These rules shall have the force and effect of law.

II. State Cooperation

Section 127A-12(b), HRS. I hereby direct all state agencies and officers to cooperate with and extend services, materials, and facilities as may be required to assist in all efforts to address the objectives of this Proclamation.

III. Severability

If any provision of this Proclamation is rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted, and the remainder of this Proclamation and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

IV. Enforcement

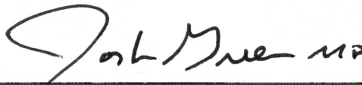
No provision of this Proclamation, or any rule or regulation hereunder, shall be construed as authorizing any private right of action to enforce any requirement of this Proclamation, or of any rule or regulation. Unless the Governor, Director of Emergency Management, or their designee issues an express order to a non-judicial public officer, no provision of this Proclamation, or any rule or regulation hereunder, shall be construed as imposing any ministerial duty upon any non-judicial public officer and shall not bind the officer to any specific course of action or planning in response to the emergency or interfere with the officer's authority to utilize his or her discretion.

I FURTHER DECLARE that the disaster emergency relief period shall commence immediately and continue through September 16, 2023, unless terminated or superseded by separate proclamation, whichever shall occur first.

I FURTHER DECLARE that notwithstanding the termination of this emergency relief period, all contracts and agreements entered into and all procurements started during the emergency relief period shall continue in full force and effect until expiration or termination of the contracts and agreements, and all construction projects commenced during the emergency relief period shall remain covered by the terms of this Proclamation through completion of construction.

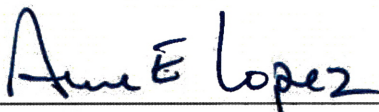
I FURTHER DECLARE that this Proclamation or subsequent emergency rules is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of Hawai'i, the counties of this State, or any State or County agencies, departments, entities, officers, employees, or any other person.

Done at the State Capitol, this 18th day of July, 2023.



Josh Green, M.D.
Governor of Hawai'i

APPROVED:



Anne E. Lopez
Attorney General, State of Hawai'i

Rules Relating to Construction of Homeless Dwelling Units

- §1 Purpose and Authority
- §2 Definitions
- §3 Applicability of Proclamation and Rules
- §4 Project Eligibility
- §5 Project Agreements

§1 Purpose and Authority.

These rules are intended to expedite construction and occupancy of temporary or permanent housing for people experiencing homelessness. Quickly creating such spaces is key to reducing unsheltered homelessness.

Only projects that propose to exclusively house or serve people experiencing homelessness or who are at risk of homelessness are eligible for coverage under the Fourth Emergency Proclamation Relating to Homelessness issued on May 19, 2023 ("Proclamation") and these rules. These rules are intended to clarify the application of the Proclamation to specific projects.

These rules are adopted pursuant to sections 127A-11, 12, 13, and 25 Hawaii Revised Statutes ("HRS"), to respond to the homelessness emergency declared by the Governor and have the force and effect of law.

§2 Definitions.

"At risk of homelessness" is defined as:

- (a) An individual who is exiting an institutional facility where he or she resided and who resided in an Emergency Shelter or place not meant for human habitation immediately before entering that institution, provided that no subsequent residence has been identified; and the individual or family lacks the resources or support networks, e.g. family, friends, faith-based or other social networks, needed to obtain other Permanent Housing.
- (b) An individual or family who will imminently lose their primary nighttime residence, provided that: (i) The primary nighttime residence will be lost within 14 days of the date of application for Homeless assistance; (ii) No subsequent residence has been identified; and (iii) The individual or family lacks the resources or support networks, e.g. family, friends, faith-based or other social networks, needed to obtain other Permanent Housing.; or
- (c) Any individual or family who: (i) is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or

life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; (ii) has no other residence; and (iii) lacks the resources or support networks, e.g. family, friends, faith-based or other social networks, needed to obtain other Permanent Housing.

“Dwelling”, “dwelling unit”, or “unit” means any structure or room, for sale, lease, or rent, that provides shelter. § 356D-1, HRS.

“Emergency Shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for a specified period of time who are not able to stay in a transitional shelter or reside in a dwelling unit. § 346-361, HRS.

“Homeless” means:

- (1) An individual or family who lacks a fixed, regular, and adequate night-time residence; or
- (2) An individual or family who has a primary night-time residence that is:
 - (A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - (B) An institution that provides temporary residence for individuals intended to be institutionalized; or
 - (C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings.

This term does not include any individual imprisoned or otherwise detained under an act of Congress or a state law. § 346-361, HRS.

“Homeless facility” means a development designed to provide shelter for homeless families or individuals pursuant to this part, or to facilitate any other homeless program authorized by this part and may include emergency or transitional shelters. § 346-361, HRS.

“Institutional facility” means a:

- (1) Hospital;
- (2) Convalescent home;
- (3) Nursing home;
- (4) Extended care facility;
- (5) Mental institution;

- (6) Rehabilitation center;
- (7) Health maintenance organization;
- (8) Psychiatric center;
- (9) Intellectual disability center;
- (10) Penal institution; or
- (11) Any other organization whose primary purpose is to provide a physical environment for patients to obtain health care services or at-home care services, except those places where physicians, dentists, veterinarians, osteopaths, podiatrists, or other prescribers who are duly licensed, engage in private practice. HRS § 328C-1.

“Permanent housing” means community-based housing without a designated length of stay. Examples of permanent housing include, but are not limited to, a house or apartment with a month-to-month or annual lease term or home ownership.

“Transitional shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services for a maximum of twenty-four months to homeless families or individuals qualified by the pertinent provider agency or department to stay in the transitional shelter. § 346-361, HRS.

§ 3 Applicability of Proclamation and Rules

The suspension of laws set forth in the Proclamation shall apply only to those projects which are certified by the Governor's Coordinator on Homelessness (“Coordinator”) as having met the requirements for eligibility set forth in these rules (“Certified Projects”).

Certified Projects do not require further state approvals to proceed with the project. Certified Projects will not be subject to the state regulations suspended under the Proclamation.

Certified Projects are still required to seek county approval in the appropriate county where the project is located. The counties may adopt an expedited approval process to support the provision of housing for homeless individuals and families while still ensuring that improvements constructed pursuant to the Proclamation meet life safety standards as defined by the Counties.

§ 4 Determination of Project Eligibility.

(a) Project proponents seeking to have the terms of the Proclamation apply to their project shall submit to the Coordinator the following documentation:

- (1) Name, address, email address and telephone number of the project

proponent and each member of the project team. If the project proponent is a corporation or other legal entity, evidence of the project proponent's status and registration with the Department of Commerce and Consumer Affairs, and the names, address, email address and telephone number of each officer and director of the entity. The name, address, email address, and telephone number of the main point of contact should be identified;

- (2) Proof that the project proponent has site control such as a deed, agreement of sale, long term lease, or other disposition;
- (3) A description of the project proponent's experience or involvement, if any, in the development of housing or projects of similar scope, size, and complexity;
- (4) A description of the project proponent's past or current experience or involvement, if any, in any programs or its provision of services, including other than housing, that would give evidence of the project proponent's ability to manage a project of this type and scope;
- (5) A conceptual site plan showing the general development of the project site including the locations and descriptions of proposed and existing buildings, parking areas, unusual site features, proposed and existing major drainage facilities;
- (6) A development plan including the number of units, maximum occupancy, construction method, and infrastructure needs. The infrastructure needs should include a description of methods of sewage and solid waste disposal and sources of water and other utilities as well as depth and location of any trenches required;
- (7) The proposed funding for the project, including the manner in which the project will be funded during the development and construction of the project, and upon completion of the project and sources of repayment of financing, if applicable. This should include any proposed grants, donations, loans, bonds, tax credits, or other sources of financial resources;
- (8) The project's method of homeless verification (e.g., homeless verification letter or Homeless Management Information System database); and
- (9) The project proponent's plan for obtaining community input (e.g., via Neighborhood Board meeting, neighborhood survey, or community meeting).

(b) Expedited reviews in the following areas shall be completed, as set forth herein, to determine whether the project is likely to have an adverse impact on resources and to define any mitigation and monitoring of impacts needed. Once the reviews are complete, the Coordinator may certify the project and the project may proceed to be developed under the Proclamation. The project proponent shall provide the following information to the Coordinator:

(1) Historical review (DLNR SHPD)

- a. TMK of property
- b. preliminary site plan
- c. proposed construction methodology
- d. proposed underground infrastructure
- e. any grading or trenching plans
- f. information of historic properties on the project site
- g. any prior historical or archaeological studies or reports done
- h. photos of the property

(2) Environmental issues (DOH HEER)

- a. TMK of property
- b. whether the dwelling units or restroom facilities will be serviced through a sewer connection or whether an individual wastewater system will be installed
- c. whether an NPDES permit will be required. An NPDES permit is required if:
 - i. 1 acre or more of land will be disturbed (e.g. by grading), either on its own or as part of a larger common plan of development that will disturb 1 or more acres of land; or
 - ii. if there will be any construction-related discharge to state waters (e.g., hydrotesting, dewatering)
- d. whether an U.S. Army Corps of Engineers Regulatory Program permit is required because there is anticipated to be the discharge of dredged or fill material into waters of the United States.

(3) Endangered species impacts (DLNR DOFAW)

- a. TMK of property
- b. any on-site or nearby streams, waterways, or wetlands
- c. any native vegetation on site
- d. any known native fauna on site
- e. vegetation control anticipated to occur as part of construction, including but not limited to tree trimming or cutting, mowing of grassy areas, or removal of native vegetation
- f. any night time construction anticipated, if yes, months during which night time construction will be used

- g. lighting plans
- h. whether the property is covered by a habitat conservation plan

(4) Flood plain management (DLNR Engineering)

- a. TMK of property
- b. floodplain management zone

If potential adverse impacts are identified, the project will be required to address these impacts in accordance with standard State processes for development projects. These processes include, but are not limited to, the review processes set forth in HRS chapters 6E, 322, 342D, 342E, 343, and Hawai'i Administrative Rules chapters 11-53, 11-55, 11-56, 11-62, 13-275, and 13-284.

Notwithstanding the Proclamation, counties may establish their own process or rules for ensuring that a Certified Project meets life safety standards.

§ 5 Project Development Agreements

If, after reviews under section 4 of these rules are complete and the Coordinator finds that the project proponent has submitted the required project information under Section 4(a) the Coordinator may accept the project as qualified under the Proclamation. Upon acceptance, the Coordinator shall enter into a development agreement with the project proponent.

The terms and conditions of the development agreement shall include:

(a) The purpose of the agreement, which shall include the development of dwelling units for homeless individuals or families;

(b) A description of the role and responsibilities of the project proponent and other parties to the agreement;

(c) Any measures required to mitigate any anticipated adverse effects of the project;

(d) A restrictive covenant requiring the property to be used for dwelling units for homeless individuals or families for a minimum of twenty years;

(e) Standard clauses that the Coordinator determines to be required, including, but not limited to, the following:

- 1. Indemnity
- 2. Severability
- 3. Termination; and
- 4. Assignability.

The development agreement will be recorded as a deed restriction or as restrictive covenant on the property.

Once an agreement is executed and filed, a project is “certified” under the Proclamation. An annual review of every project is required to verify compliance with the conditions under the Project Agreement.

(f) The fully executed development agreements will be posted on the Homeless Coordinator’s or other government website.