

Section 4

City of Modesto Home Investment Partnerships Program



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These policies supersede any previously adopted policies and are subject to review and revision by the City of Modesto's Citizens Housing and Community Development

**City of Modesto
Home Investment Partnerships Program**

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1. INTRODUCTION

- 1.1. The HOME Investment Partnerships Program (HOME) was created under Title II of the National Affordable Housing Act of 1990. The HOME program has been amended several times since then by subsequent legislation, most recently on December 2, 2016. Under the HOME program, the Department of Housing and Urban Development (HUD) allocates funds to Participating Jurisdictions (PJ) to be used to implement housing strategies in accordance with Federal HOME regulations (24 CFR Part 92). The City of Modesto has been designated as the Participating Jurisdiction (PJ) to receive HOME funds.
- 1.2. Through the use of HOME funds, the City of Modesto strives to encourage and stimulate neighborhood revitalization. As a HUD designated PJ, the City is charged with the proficient administration of HOME funds. In an effort to increase the efficiency in which HOME funds are utilized and increase the impact of these dollars on our community, the City has developed the following policies and procedures.

2. OBJECTIVE

- 2.1. The intent of the HOME program as established by HUD is to:
 - 2.1.1. Provide decent, safe, and affordable housing to low-income families, up to 80% of Area Median Income (AMI);
 - 2.1.2. Expand the capacity of non-profit housing providers;
 - 2.1.3. Strengthen the ability of local government to provide housing; and
 - 2.1.4. Leverage private sector participation through public, private and non-profit partnerships to address affordable housing.
- 2.2. HOME funds may be used for the purposes of creating, maintaining and expanding affordable rental and homeownership housing for low income families through the following eligible activities:
 - 2.2.1. Acquisition (including assistance to homebuyers);
 - 2.2.2. New construction (including adding additional units to an existing structure);
 - 2.2.3. Rehabilitation of non-luxury housing with suitable amenities including related costs such as:
 - 2.2.3.1. Property acquisition, Site improvements, Demolition, and
 - 2.2.3.2. Other eligible expenses including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations;
 - 2.2.3.3. Down payment and/or Closing Cost assistance;
 - 2.2.3.4. Operating expenses of Community Housing Development Organizations (CHDO's).
 - 2.2.4. All housing supported with HOME funds must be permanent or transitional housing.
 - 2.2.5. A HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and will be

subject to recapture by the City of Modesto.

3. Distribution of Funding

- 3.1. The City of Modesto distributes HOME funds geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in its approved Consolidated Plan and HOME Program Description. The City of Modesto only invests HOME funds in eligible projects within its boundaries.
- 3.2. Applications for City of Modesto HOME funds are solicited on a continuous basis, with the exception of CHDO funds, (subject to fund availability) and reviewed competitively.
 - 3.2.1. CHDO funds are available on annual basis. Existing CHDO's are required to submit a CHDO Recertification application to the City each year.
 - 3.2.2. The City of Modesto only accepts applications for projects noted as "Eligible HOME Program Activities" in the adopted Annual Action Plan. Before committing funds to a project, the City of Modesto underwrites and evaluates the project and will not invest any more HOME funds, in combination with other governmental assistance, than is necessary to provide affordable housing.
 - 3.2.3. The competitive selection criteria for projects, if applicable, will be published at the time applications are solicited.

4. Definitions

- 4.1. Action Plan: The one-year portion of the Consolidated Plan. It includes the PJ's annual allocation of HOME funds.
- 4.2. Adjusted Income: Adjusted income is annual (gross) income reduced by deductions for dependents, elderly households, medical expenses, handicap assistance expenses and childcare (these are the same adjustment factors used by the Section 8 Program). The low HOME rent in rental projects in which rents are based on 30% of a family's adjusted gross income.
- 4.3. Affordability: The requirements of the HOME Program that relate to the cost of housing both at initial occupancy and over established time frames, as prescribed in the HOME Final Rule. Affordability requirements vary depending upon the nature of the HOME assisted activity (i.e., homeownership or rental housing).
- 4.4. Annual Income: Annual income as defined in 24 CFR 5.609, referred to as "Part 5 annual income", also known as the rules for determining income under the Section 8 voucher program, or adjusted gross income as defined for the purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual tax purposes. Adjusted gross income as reported on Form 1040 shall be used for homebuyer, homeowner rehabilitation and down payment assistance programs.
- 4.5. Commitment: Commitment means (1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with a Community Housing Development Organization (CHDO), subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing, provide down

payment assistance; or has met the requirements to commit to a specific local project, as defined in paragraph (2) of this definition. (See § 92.504(c) for minimum requirements for a written agreement.) An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (e.g., an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment.

- 4.6. Commitment to a specific local project: Commitment to a specific local project means that a legally binding agreement was executed meeting one of the following sets of requirements:
 - 4.6.1. For rehabilitation or new construction projects, the PJ (or other entity) and the project owner will execute an agreement for an identifiable project for which all necessary financing has been secured, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within 12 months of the agreement date. If the project is owned by the City of Modesto, the project must be set up in the disbursement and information system and construction reasonably expected to start within 12 months of the set-up date.
 - 4.7. If the project consists of acquisition of standard housing by the PJ, the agreement must be a binding contract for the sale of an identifiable property and the property title must be transferred to the PJ (or other entity) within six (6) months of the date of the contract.
 - 4.8. If the project involves the acquisition of standard housing and the City of Modesto is providing HOME funds to a purchaser, under the agreement, the title of the property must be transferred to the purchaser within six (6) months of the agreement date.
 - 4.8.1. Note that preliminary or conditional "commitments" may be made, but no funds are considered committed under the rules unless the above conditions have been met.
 - 4.9. Consolidated Plan: A plan prepared in accordance with the requirements set forth in 24 CFR Part 91 which describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including HOME.
 - 4.10. Community Housing Development Organization (CHDO): A private, nonprofit organization that meets a series of qualifications prescribed in the HOME regulations at 24 CFR Part 92.2. The HOME New Rule requires that CHDO's have paid staff with demonstrated capacity appropriate to the CHDO's role (this requirement cannot be met through volunteer, donated staff, shared staff, or board members). A participating jurisdiction must award at least 15 percent of its annual HOME allocation to CHDOs.
 - 4.11. Draw-Down: The process of requesting and receiving HOME funds. The City of Modesto draws down funds from a line of credit established by HUD.
 - 4.12. Final Rule: The Final HOME Rule was published at 24 CFR Part 92 on July 24, 2013 and became effective on August

24, 2013.

- 4.13. HOME-Assisted Units: A term that refers to the units within a HOME project for which rent, occupancy and/or resale restrictions apply. The number of units designated as HOME-assisted affects the maximum HOME subsidies that may be provided to a project as such may be amended.
- 4.14. HOME Funds: All appropriations for the HOME Program, plus all repayments and interest or other returns on the investment of these funds.
- 4.15. Household: One or more persons occupying a housing unit.
- 4.16. Jurisdiction: A unit of general local government.
- 4.17. Low-Income Families: Families whose annual incomes do not exceed 80 percent of the median income for the area (adjusted for family size).
- 4.18. Match: Match is the City of Modesto's contribution to the HOME Program - the local, non- Federal contribution to the partnership. The City of Modesto's match contribution must equal not less than 25 percent of the HOME funds drawn down for projects in that fiscal year.
- 4.19. New Construction: The creation of new dwelling units. Any project which includes the creation of new or additional dwelling units in an existing structure is considered new construction.
- 4.20. Participating Jurisdiction (PJ): The term given to any state, local government or consortium that has been designated by HUD to administer a HOME Program. HUD designation as a PJ occurs if a state or local government meets the funding thresholds, notifies HUD that they intend to participate in the program and has a HUD-approved Consolidated Plan.
- 4.21. Program Income: Gross income received by the City of Modesto, a CHDO that does not retain CHDO Proceeds, or a sub recipient directly generated from the use of HOME funds or matching contributions.
- 4.22. Project: A site or an entire building or two or more buildings, together with the site or sites on which the building or buildings is located, that are under common ownership, management and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking.
- 4.23. Project completion: All necessary title transfer requirements and construction work have been performed; the project complies with all HOME requirements; the final draw-down of HOME funds has been disbursed for the project; and the project completion information has been entered in the

disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of § 92.502(d) of this part, project completion occurs upon completion of construction and before occupancy.

- 4.24. Reconstruction (also rehabilitation): The rebuilding, on the same lot, of housing standing on a site at the time of project commitment. Except that housing that was destroyed may be rebuilt on the same lot if HOME funds are committed within 12 months of the date of destruction the number of housing units on the lot may not be changed as part of the reconstruction project, but the number of rooms per unit may change. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing.
- 4.25. Sub recipient: A public agency or nonprofit organization selected by the City of Modesto to administer all or a portion of the City of Modesto's HOME Program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing (CHDO) is not a sub recipient.
- 4.26. Targeting: Requirements of the HOME Program relating to the income or other characteristics of households that may occupy HOME-assisted units.
- 4.27. Very-Low-Income Families: Families whose annual incomes do not exceed 50 percent of the median income for the area (adjusted for family size).

5. APPLICATION FOR FUNDS

5.1. Application Timeline

- 5.1.1. The City of Modesto accepts applications on a continuous basis, unless otherwise noted.
- 5.1.2. Prior to submitting applications to the City of Modesto, applicants are required to discuss project details with City of Modesto Community Development Division program staff to allow program staff to provide any Technical Assistance that may be needed to ensure the project application complies with HOME Program requirements.. Complete applications must be submitted to the office of the Community Development Division. Faxed or emailed applications will NOT be accepted.
- 5.1.3. Three original proposals with original signatures including a hard copy of the required pro forma pages must be submitted to:
 - 5.1.3.1. City of Modesto HOME Program Attention: Aaron Farnon
1010 Tenth Street, Suite 3100 Modesto, CA 95354
- 5.1.4. Applications will become the property of the City of Modesto and will not be returned. Inaccurate information contained in an application will disqualify the Applicant from consideration.
- 5.1.5. The Minimum Threshold Requirements for each HOME application

are included in the Ranking Criteria. Applicants who fail to meet any minimum threshold requirement will not be considered for funding.

5.1.6. Minor corrections to applications may be allowed, but applications requiring substantial revision or which are substantially incomplete will not be reviewed or ranked.

6. Allocation

- 6.1.1. The amount for eligible activities on an annual basis is 90% of HUD allocated HOME funds, after allocating the allowable 10% administrative funding. Up to 90% of Program Income funds may also be used for eligible activities.
- 6.1.2. A minimum of 15% of the total HOME funds is available exclusively for certified Community Housing Development Organizations (CHDO) performing CHDO eligible activities. Please refer to the CHDO section of these policies to determine an organization's eligibility as a CHDO and also to determine eligible CHDO activities.
- 6.1.3. An additional 5% of the total annual HOME grant funding may be used for CHDO administrative expenses.

7. Maximum Funding Amount

- 7.1.1. When allocating funds, HOME considers the total amount of assistance from both public and private sources needed to ensure project feasibility.
- 7.1.2. Applicants are encouraged to request only the amount of HOME funds needed as gap financing to make the project feasible.
- 7.1.3. Requesting funds for administration is not allowed; however, applicants may request reasonable amounts for developer fees and soft costs in an amount corresponding to the following housing activities.
- 7.1.4. All HOME costs, including soft costs must be tied to specific housing addresses.
- 7.1.4.1. Eligible Project Related Soft Costs, as described in 24 CFR 92.206(d), area costs that can be directly tied to an address of the project or individual being assisted. These costs must be reasonable and necessary costs associated with the financing or development (or both) of new construction, rehabilitation, or acquisition of housing assisted with HOME funds. These include the following:
- 7.1.4.1.1. Project-specific fees for a HOME-assisted project (such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorney's fees, private appraisal fees, and fees for an independent cost estimate);
- 7.1.4.1.2. Architectural, engineering, or related professional services required to prepare plans, drawings or specifications of a project;
- 7.1.4.1.3. Preparation of work write-ups, work specifications, and

implementation schedule contained within its HOME funding agreement with the City for any open HOME-assisted housing project.

7.4.1.2. There are no unresolved audit, monitoring, or performance findings for any previous HOME funding allocations to the applicant.

7.4.1.3. All projects three years or older are completed and conditionally closed out (have submitted the final draw and may just be awaiting the submittal of demographic information) before applying for additional funds

7.5. Consolidated Plan

7.5.1. HOME program applicants must submit proposals that are consistent with the City's current Consolidated Plan (Con Plan) and HOME Program Description. Before submitting an application, the applicant must review the Con Plan and HOME Program Description (found on the Community Development Division web site, <https://www.modestogov.com/1849/Five-Year-Consolidated-Plan>) to ensure that the activities are in conformance with the Plan and Description. Additionally, applicants are required to discuss the project and receive Technical Assistance from Program staff prior to submitting an application.

7.6. Disclaimers

7.6.1. The City of Modesto reserves the right to recommend to the Citizens Housing and Community Development Committee (CH&CDC) and City Council to not award all available funds if submitted proposals do not meet the project threshold, evaluation and funding criteria, or do not address the program priorities.

7.6.2. Funds not allocated during a funding cycle may be awarded during a subsequent application cycle. The City of Modesto also reserves the right to allocate these funds to projects during the course of the year, prior to the next application round.

7.6.3. The City of Modesto reserves the right to reserve and allocate HOME funds to any project. The City of Modesto may deny HOME funds for any project, regardless of the ranking score under the project selection criteria, if applicable, if it determines, in its sole discretion, the project is unacceptable based on, but not limited to the following:

7.6.3.1. Negative comments or lack of support from community organization(s) and stakeholder(s), or

7.6.3.2. Information that a particular market is saturated with affordable housing projects, or

7.6.3.3. The likelihood that the project may not comply with HOME program requirements in a timely manner, or

7.6.3.4. The applicant's (including any related party) lack of or unacceptable prior experience and performance related to compliance with housing assistance or other government-sponsored programs, regardless of type and location.

7.7. Use of Contractors

- 7.7.1. In accordance with federal regulations, HOME funds may not be used to directly or indirectly employ, award contracts to, or otherwise engage the services of any contractor or Sub-recipient during any period of debarment, suspension, or placement of ineligibility status.
- 7.7.2. The City of Modesto will require participants in lower-tier transactions to certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any equity from a federally funded transaction.
- 7.7.3. Any participant that remains on a debarred or suspended condition shall be prohibited from participation in the City of Modesto HOME as long as they are classified in this manner.
- 7.7.4. The City of Modesto will verify this information by requiring that the applicant submit its Dun and Bradstreet (DUNS) number with the project application.

8. Project Threshold Criteria

8.1. All projects submitted for funding consideration through the HOME Investment Partnership Program must meet the following threshold criteria to be eligible for a funding commitment:

8.2. **Contributes To Implementation Of Strategic Goals Of The Consolidated Plan**

8.2.1. Proposed projects must match one or more of City of Modesto Funding Priorities as listed in the Consolidated Plan. Applicants must familiarize themselves with the City of Modesto Consolidated Plan. The current plan will expire June 30, 2020. The next Consolidated Plan will cover the period of July 1, 2020 - June 30, 2025.

8.3. **Project Information**

8.3.1. For purposes of providing a detailed project description in the Integrated Disbursement and Information System (IDIS), project proposals must provide a detailed project information. At a minimum, a detailed project description will of including but not limited to the following information (which shall be used, in whole or in part, to enter a project description in IDIS):

8.3.1.1. Statement of Need:

8.3.1.1.1. Detailed project narrative regarding the Community Need or Problem the project is designed to address. This should be supported with any relevant history, data/statistics, or gap information.

8.3.1.1.2. Urgency of Need or Problem and how the project will address the Need or Problem.

8.3.1.1.3. Target population to be served by the project, and target service area, if applicable.

8.3.1.2. Project Description:

8.3.1.2.1. Detailed description of the proposed project (i.e. number of housing units, new construction, rehabilitation, rental housing, homebuyer housing, cost per unit, etc)

- 8.3.1.2.2. Proposed project timeline
- 8.3.1.2.3. Proposed project budget
- 8.3.1.2.4. Project Match sources and amounts

8.4. Site Control

- 8.4.1. For projects that require site control, applicant must have site control or the opportunity of site control for all properties necessary for project completion. Applicant must provide proof of site control with its application for funding.

8.5. Financially Feasible Project

- 8.5.1. Applicants must submit a Project Development Pro Forma, which must cover the entire HOME affordability period of the proposed project. The development proforma must provide evidence of a financially feasible project, evidenced by a complete listing of committed and anticipated funding sources available to the project and illustrate reasonable assumptions regarding interest rates, confidence in availability of funds, and evidence of market need. For homeownership projects, cost, sales, and market analyses are required. For rental projects, reasonable rent and operating cost assumptions are required.
- 8.5.2. If the applicant has applied for tax credits, a copy of the Subsidy Layering Review must be included with the application.

8.6. Project Time Frame

- 8.6.1. Applicant must submit a timeline for project completion that makes reasonable assumptions concerning land acquisition and site-preparation, funding cycles and parameters for all funding sources, construction time, sales absorption or rent-up period, and capacity of the development team. An applicant's history in project development/completion will also be considered.

8.7. Leverage Of Home Funds

- 8.7.1. Priority consideration will be given to projects with budgets that require less than 50% of permanent funds from the sum of HOME and CDBG sources. Although projects that serve very low-income households may require higher public subsidies, leveraging other funds with HOME and CDBG is strongly encouraged. For awarded projects, the City of Modesto may make conditional commitments early in the project development process to assist the developer in seeking funds from other sources.
- 8.7.2. Commitment of HOME funding (in the form of the signed Funding Agreement) will not occur until all project financing has been secured and a budget and project time frame provided. The Project must also be ready to expend funds within 12 months of project commitment.

8.8. Evidence And Capacity Of Development Team

- 8.8.1. The Applicant must have a track record of successful project development, timely completion and projects-in-service, or in the case of a new or emerging developer, evidence of real estate development and project management expertise. The Application must indicate what skills and roles the non-profit staff will be

- 8.8.2. assuming and any other members of the project development team. Note: The City of Modesto is interested in investing HOME Partnership Funding only in viable projects that will provide quality affordable housing in an efficient, and timely manner. Housing developers with minimal development experience are encouraged to partner with experienced developers to enhance their ability to produce and deliver housing efficiently. All applications for HOME funding will be reviewed for tangible evidence that the capacity of the development and construction team is solid. Projects with strong development capability will receive higher consideration for HOME funding

9. General Policies and Procedures

9.1. Minimum Subsidy

- 9.1.1. The minimum HOME subsidy for any project is \$1,000 per unit in accordance with HOME regulations.

9.2. Types Of Housing

- 9.2.1. HOME funds may be used for the construction or purchase of single-family (one unit) homes, doubles (two units sharing a common wall but owned individually), townhomes, cooperatives, and/or multi-unit rental apartments. All housing units developed with HOME assistance (homeownership and rental) must be affordable to buyer and renter households earning 80% of Area Median Income (AMI) or below.
- 9.2.2. Construction may be one or a combination of several methods including stick-built, panelized, or modular. Mobile and manufactured homes are not eligible for HOME funding assistance. For the purposes of this manual, the following definitions apply:
- 9.2.2.1.** Stick-Built - a house that is constructed primarily on-site from raw materials. This construction method may utilize some pre-constructed elements such as roof framing.
- 9.2.2.2.** Panelized - a house that is brought to the construction site in pre-built panels (wall sections), assembled on-site, and finished. Panelized houses are stick built houses with some of the components constructed off-site.
- 9.2.2.3.** Modular - a home which is stick-built in modules (two or more boxes) in a factory, transported to the site by truck, and placed on a permanent basement or crawl space foundation.. The modules are bolted together, finished and may also involve on-site additions i.e. porches, garages, and other customization. These houses are essentially the same as stick-built on-site only the majority of the construction is accomplished in a controlled factory environment.
- 9.2.2.4.** Mobile- a house that is fully constructed in a factory on a steel chassis, brought to the site on wheels, but not permanently affixed to a foundation.

- 9.2.2.5. Manufactured - a house that is fully constructed as a single unit in a factory, brought to the site by truck and placed on a fixed foundation.

9.3. Expenditure Time Frames

- 9.3.1. Unless otherwise noted, all HOME funds for a project must be expended within twelve (12) months of project commitment (see information above relative to project commitment).
- 9.3.2. Exceptions may be made by the City of Modesto HOME program under special circumstances. Projects must be closed out (completion and demographic data submitted) within 90 days of the final HOME request for funds.

9.4. PROJECT MAXIMUMS

9.4.1. Rent Limits

- 9.4.1.1. HOME rent limits apply to all rental housing projects. HOME rent limits are published each year by HUD. The current rent limits can be found at <https://onecpd.info/resource-library/home-rent-limits/>.

9.4.2. Per Unit Subsidy - Rental

- 9.4.2.1. HUD establishes maximum per unit subsidy, known as the 221(d)3 limits. The maximum per unit subsidy can be requested from CDD staff. HOME funding may not be utilized on projects that exceed these maximum per unit subsidies.

9.4.3. Homeownership Value Limit

- 9.4.3.1. HUD establishes, and updates periodically, the maximum allowable value for homeownership housing units. This is the after-rehab value for units that are either acquired or rehabilitated utilizing HOME funding. This is called the Homeownership Value Limits or the 95% limit. Section 92.254(a)(2)(iii) states that two (2) values will be established for the median purchase price/after rehab value. One is for newly constructed housing and one for existing housing. HOME funds may not be utilized on any property that exceeds these values. The current limits can be accessed at: <https://www.onecpd.info/resource/2312/home-maximum-purchase-price-after-rehab-value/>.

9.4.4. SECTION 504 AND FAIR HOUSING ACT

- 9.4.4.1. All projects receiving HOME funds must comply with section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act of 1988. It is the applicant's responsibility to become familiar with these legislative acts. The applicant may be asked to submit certification from a certified access specialist that the funded project design and construction complies with this requirement.

9.4.5. MONITORING

9.4.5.1. Quarterly Status Reports

- 9.4.5.1.1. Quarterly progress reports must be submitted to the City of Modesto by the tenth (10th) working day of October, January, April, and July . Completion Reports

must be provided to the City of Modesto within ninety (90) days of the final draw of funds allocated for a project. Failure to submit reports in a timely manner could result in retention of future funds.

9.4.5.2. Annual Monitoring

9.4.5.2.1. At a minimum, City of Modesto staff will conduct a "desk monitoring" of all HOME funded projects on an annual basis. Rental Projects, in accordance with the updated 2013 Final Rule, will be monitored a minimum of every 3 years. Construction projects will be monitored more frequently at the discretion of City of Modesto. Follow-up monitoring and inspections will be completed in accordance with HUD guidelines. There will be a physical inspection of all HOME projects every 3 years.

9.4.5.2.2. During the Affordability Period, rental projects that contain 10 or more HOME-assisted units will be required to submit financial reports annually to the City of Modesto. Financial reports may include copies of the Operating Budget, Balance Sheet and Profit and Loss Statement, Rent Roll, as well as certified Audits. The City will assess the financial condition of the project to ensure continued compliance with HOME Program requirements and to prevent project failure and repayment of HOME funds. Where feasible, the City is required to take action to correct problems that threaten the project's financial viability. City of Modesto actions may consist of technical assistance, increased oversight, financial modifications, consultations with HUD and other project stakeholders, foreclosure, transfer of project ownership, or receivership.

9.4.6. Payment Requests

9.4.6.1. At a minimum, entities receiving HOME funding commitments must submit requests for payment on a quarterly basis, or as such time as specified in funding agreement. Failure to draw funds in a timely manner could result in a reduction of funding. Requests for payment may be made as often as needed (i.e. does not necessarily need to be done by the 1st of the month).

9.4.6.2. Requests for payment must be on the prescribed City of Modesto form or forms acceptable to the City of Modesto.

9.4.7. Income Determination and Eligibility

9.4.7.1. Individuals receiving assistance through the HOME program must be determined income eligible using the most current definition of IRS Form 1040 Adjusted Annual Gross Income. Individuals receiving rental assistance must be determined income eligible using the most current definition of the "Part

- 5" Annual Income as defined at 24 CFR 5.609. The income eligibility determination is the responsibility of the entity providing the assistance, not that of the City of Modesto.
- 9.4.7.2. Initial income must be verified via third-party documentation. Income must be re-certified annually in accordance with HOME regulations, utilizing third-party documentation. A minimum of three (3) months of income source documentation shall be reviewed when determining income.
- 9.4.7.3. Applicant requirements and documentation must be consistent for all participants of a project (i.e. criminal history checks, credit reports, etc.)
- 9.4.8. Record Retention
- 9.4.8.1. All records must be maintained and accessible for a minimum of five (5) years beyond the end of the affordability period.
- 9.4.9. General
- 9.4.9.1. The City of Modesto will not accept proposals from any applicant for previously approved projects that have not commenced and that received previous years' City of Modesto HOME funding commitments.
- 9.4.10. In the event there is a turnover in agency staff administering any HOME funded project, the City of Modesto must be notified within thirty (30) days in order to provide technical assistance to new and/or reassigned staff to ensure program compliance.
- 9.4.11. All applications for either homeownership projects containing more than one unit or rental projects, must be accompanied by a 10-year (or longer) operating Pro Forma, as well as, a "Sources and Uses Statement". Applications not containing this information may not be reviewed or funded.
- 9.5. Match Requirements
- 9.5.1. All projects for HOME assistance must provide a minimum of 25% match. Homebuyer projects will be subject to Section 92.221(d).
- 9.5.2. Eligible forms of project match include:
- 9.5.2.1. Cash contributions from non-federal sources
- 9.5.2.2. Participation of Federal Home Loan Bank Affordable Housing Program, Trust Fund, State and other public or private sources
- 9.5.2.3. Grants contributing to a below-market interest rate loan
- 9.5.2.4. Waived fees for a HOME-eligible project
- 9.5.2.5. Donation of real property
- 9.5.2.6. Donated labor and/or sweat equity
- 9.5.3. Ineligible forms of match include:
- 9.5.3.1. Owner equity or investment in a project
- 9.5.3.2. Interest rate subsidy attributable to the Federal tax-exemption on financing or Federal tax credits
- 9.5.3.3. Cash or other forms of contributions from applicants or recipients of HOME assistance (with the exception of sweat equity).
- 9.5.3.4. Documentation of match must be submitted to the City of Modesto upon

9.5.4. Agencies must also maintain documentation of match for a minimum of five (5) years after the completion of the project.

9.6. Affordability Period

9.6.1. HOME project owners/buyers are required to maintain HOME funded properties as affordable for a minimum affordability period based on the amount of HOME funds spent on the project. The guidelines are as follows:

Under \$15,000 per unit	5 years
\$15,000 - \$40,000 per unit	10 years
Over \$40,000	15 years
New construction or acquisition within one year of construction (for rental)	20 years

HOME rental project owners are subject to a minimum 15 year affordability period (but more typically 20 years), regardless of funds invested, (See 92.206(b)(2)).

9.6.2. A deed restriction and/or restrictive covenant will be prepared by the City of Modesto, a subrecipient, or a CHDO, and must be signed by the owner/buyer. The agreement will establish the occupancy and affordability requirements for the property as well as the owner's obligations to the City of Modesto.

9.6.3. In signing the agreement, the owner will agree to the restrictions on the use of the property set forth in the document. This agreement will be recorded by the City of Modesto, its sub-recipient, or CHDO, in the office of the Stanislaus County Clerk Recorder and bind the project owner and all subsequent owners for the full term of the agreement.

9.6.4. In the event the Property or any interest therein is sold, refinanced, conveyed or transferred without advanced written consent of CITY during the period of the Affordable Housing Covenant, CITY shall be entitled to share in the sale proceeds under the recapture provision.

9.6.5. Pursuant to 24 CFR 92.254 (a) (5) (ii), CITY requires that HUD Funds be recaptured if the Property does not continue to be the principal residence of BUYER for the duration of the Affordable Housing Covenant. If all or any portion of the Property or any interest in it is sold, refinanced, conveyed or transferred the "Equity" as hereafter defined, in the Property shall be shared between BUYER and CITY on the following basis:

Number of Years After Date of Purchase	BUYER's Equity Share	CITY's Equity Share
0-5	25%	75%
6-10	50%	50%
11-15	75%	25%
Thereafter	100%	0%

- 9.6.6. If, for example, the Property is sold, rented, refinanced (outside the City's allowable terms), conveyed, or transferred in the first year of the Affordable Housing Covenant, BUYER shall receive fifty percent (50%) of the Equity in the Property and the CITY shall receive fifty percent (50%) of the Equity. "Equity" is defined as the dollar amount that constitutes the difference between the sales price of the Property and the sum of the following amounts:
- 9.6.7. a. The principal on a Promissory Note and Deed of Trust from private financing; and
- 9.6.8. b. The principal on the Promissory Note, and Deed of Trust to CITY; and
- 9.6.9. c. All costs of sale, including costs of brokers' commissions, escrow fees, title costs and fees, recording charges, etc.; and
- 9.6.10. d. Current year taxes, including all pro-rata real estate taxes calculated to the date of sale; and
- 9.6.11. e. BUYER's down payment or cash contribution not including the Assumed Debt; and
- 9.6.12. f. the costs of any improvements to the Property, provided such improvements were approved by the CITY prior to construction and provided that such improvements have been documented to the satisfaction of CITY.
- 9.6.13. In the event that no Equity exists at the time of transfer or sale, the current balance of the Debt under the Promissory Note and Deed of Trust will still be due and payable.
- 9.6.14. In the event that a negative Equity exists at the time of transfer or sale, and the full amount of the current balance of the Promissory Note is not available to be recaptured, the amount of the HUD Funds required to be repaid to CITY shall be as set forth in 24 CFR 92.254(a) (ii) (A) (3). The formulas are as follows:

$$\frac{\text{HUD Funds}}{\text{HUD Funds} + \text{BUYER'S Investment}} \times \text{Net Proceeds} = \text{HUD Funds amount to be recaptured}$$

$$\frac{\text{BUYER'S Investment}}{\text{HUD Funds} + \text{BUYER'S Investment}} \times \text{Net Proceeds} = \text{Amount to BUYER}$$

HUD Funds means the amount of Debt assumed under the Promissory Note and Deed of Trust.

9.6.15. BUYER's Investment means the amount of down payment or other cash contribution towards purchase of the Property and the amount of any capital improvements made by BUYER to the Property since BUYER's purchase. Capital improvements must be documented with receipts and provided to CITY at time of recapture proceedings.

9.7. Lead-based Paint

9.7.1. Housing that is purchased, rehabilitated or assisted in some way with HOME is subject to the Lead-based Paint Poisoning Prevention Act, the Residential Lead-based Paint Hazard Reduction Act and the implementing regulations for these Acts.

9.7.2. HUD maintains a website for the Office of Healthy Homes and Lead Hazard Control where lead-based paint requirements are described as they apply to HUD programs. The website is www.hud.gov/offices/lead/index.cfm.

9.7.3. Applicants for HOME funds shall discuss acquisition projects where units that are older than 1978 are being purchased with City of Modesto program staff prior to purchase.

9.7.4. Testing for lead, an assessment of its presence, and a plan for stabilization or removal will be required if HOME funds are used to acquire pre-1978 units. Testing for lead, an assessment of its presence, and a plan for stabilization or removal will be required if HOME funds are used to acquire pre-1978 units, and as otherwise required to comply with all applicable HUD regulations.

9.8. Useful Life of Major Systems and Capital Needs Assessments

9.8.1. The 2013 Final Rule requires a Capital Needs Assessment to estimate the useful life of major systems when HOME funds assist a project. To this extent, the City of Modesto is required to estimate the remaining useful life of major systems (based on age and current condition). Where it is estimated that the useful life is less than the affordability period, the City through project underwriting is required to ensure that a replacement reserve is established and annual payments made to the replacement reserve are adequate to replace and/or replace major systems when needed. The City reserves the right to inspect Major Life Systems and may require owner to conduct Capital Needs Assessment periodically during affordability period, as necessary to comply with HUD requirements.

9.8.2. HOME funds are not eligible to fund replacement reserve accounts, but a larger HOME subsidy may be permitted to reduce debt payments and overall operating expenses, allowing a larger share of operating revenue to fund the replacement reserves.

9.8.3. For homeowner acquisition and/or rehabilitation projects and rehabilitation of owner-occupied housing, the City of Modesto is required to ensure that each major system has a remaining useful life of at least five (5) years at the time of project completion.

9.8.4. Major systems with a useful life of less than five years after project completion would be required to be rehabilitated or replaced to meet this requirement.

10. CHDO

- 10.1. Federal regulations require a minimum of 15% of the annual HOME allocation to the City be set aside for housing projects that are owned, sponsored or developed by CHDOs. A CHDO is a non-profit organization that meets a variety of criteria outlined in the HOME regulations. HUD has specific requirements to qualify as the owner, sponsor, or developer.
- 10.2. Rental Housing
 - 10.2.1. OWNER - A CHDO that is an owner is required to own the HOME project during the development and throughout the period of affordability, and is required to hire a project manager or have a contract with a development contractor to oversee all aspects of the development.
 - 10.2.2. DEVELOPER - A CHDO that is a developer of rental housing must arrange for the construction financing and is in sole charge of the construction, and must own the HOME-assisted housing throughout the period of affordability.
 - 10.2.3. SPONSOR - A CHDO that is a sponsor of HOME-assisted rental housing "owns" and "develops" the rental housing project that it agrees to convey to a private non-profit organization at a predetermined time after completion of the development of the project.
 - 10.2.4. Homebuyer Projects
 - 10.2.4.1. DEVELOPER - Housing is developed by a CHDO if it is the owner (in fee simple absolute, or long-term ground leases) and developer of new housing that will be constructed or existing substandard housing that is owned or will be acquired by the CHDO and rehabilitated for sale to low-income families, in accordance with 92.254. The CHDO must arrange financing of the project and be in sole charge of the construction.
 - 10.2.4.2. Sole General Partner
 - 10.2.4.2.1. 24 CFR 92.300(a)(a1) requires that if a CHDO owns a project in partnership, or owns the project through its wholly-owned for-profit or non-profit subsidiary, it must be the managing general partner. This also extends to LLCs.
- 10.3. **CHDO Commitment of Funds**
 - 10.3.1. CHDO funds must be committed by City of Modesto within 24 months of the obligation of HOME funds from HUD. Funds may not be committed to a project until all necessary project financing is secured, a budget and time schedule are established and underwriting and subsidy layering review are completed, as noted in Appendix 2. Construction must commence within 12 months of the project commitment.
 - 10.3.2. The City of Modesto urges CHDOs, which plan to submit applications for projects, to plan well in advance so that all financing is secured and the budget and time schedule are completed. This ensures that HOME funding may be utilized and that no funds will be withdrawn

from the project for lack of being able to move forward and meet the HOME requirements.

- 10.3.3. The City of Modesto will not undertake the underwriting and subsidy layering review until all funding has been identified.
- 10.3.4. The CHDO and City of Modesto will enter into a written agreement which will stipulate all of the conditions of the HOME funding as well as the legal documents that will need to be signed and/or recorded for the project.
- 10.3.5. CHDOs must apply for certification as a City of Modesto CHDO at the time of project application. It is recommended to begin work on this process prior to application submission as it may take some time for the City to certify.
- 10.3.6. **CHDO Certification**
 - 10.3.6.1. An organization that meets the requirements of a CHDO found at 24 CFR 92.300 may apply for City CHDO Certification. This application must be done at the same time that application for funding is made. City of Modesto will certify only those organizations applying for CHDO set-aside funding each year. City of Modesto reserves the right to make the final determination on whether an organization meets all of the requirements of the HOME regulations.
- 10.3.7. **CHDO Policies and Procedures**
 - 10.3.7.1. CHDO Policies and Procedures are reviewed and modified as needed on an annual basis. Those policies and procedures are included as a part of the ZoomGrants application process. The applications and information should be made available to the City as well.

11. Rental Projects

- 11.1. HOME funds may be used for acquisition, new construction or rehabilitation of affordable rental housing. Owners of the rental housing may be small property owners, for-profit developers, non-profit housing providers, CHDOs or government agencies. Owners will be "desk monitored" on an annual basis by the City of Modesto to ensure compliance in occupancy, rent restrictions, affordability requirements, and property standards. Additionally, an on-site inspection will be required to be conducted a minimum of once every three (3) years.
- 11.2. **General Requirements**
 - 11.2.1. Funds may not be committed to a project until all necessary project financing is secured, a budget and time schedule are established and underwriting and subsidy layering review (if necessary) are completed, as noted in Appendix 1. Construction must commence within 12 months of the project commitment. Agreements will not be signed until this information has been submitted to and approved by the City of Modesto.
 - 11.2.2. Project records must be maintained by the owner for a minimum of five (5) years beyond the required affordability period.
 - 11.2.3. Owners must adopt a written tenant selection policy. A copy of the policy must be on file with the City of Modesto. Any changes to an

existing policy must be provided to the City of Modesto immediately.

- 11.2.4. Tenant files must be maintained on all HOME units. Files must contain a current lease signed by the tenant, documentation of income, application and household information including family composition, documentation of Section 8 subsidy showing tenant and subsidized portions and documentation of correspondence with tenant, yearly income verifications, as well as any other pertinent information on the tenant (i.e. background/criminal checks, etc.)
- 11.2.5. Third party documentation of income must be verified to determine eligibility prior to family moving in. Income documentation must be no more than three (3) months old. The tenant selection policy must conform with HUD requirements and must be approved in writing by the City.
- 11.2.6. Income must be verified annually to ensure compliance and maintained in the tenant's files. Third-party documentation must be performed every six (6) years.
- 11.2.7. Tenant files must be maintained for a minimum of five (5) years after the tenant vacates the unit.
- 11.2.8. All units must be maintained in compliance with HUD Housing Quality Standards and City of Modesto Minimum Housing Rehabilitation Standards and/or other governing jurisdiction building codes.
- 11.2.9. Owner must adhere to Equal Opportunity, Affirmative Marketing and Fair Housing (contained within these policies) practices in all marketing efforts, eligibility determinations and other transactions. Owners must solicit applications from persons in the housing market not likely to apply without special outreach efforts. All marketing efforts must be documented. The Owner may be required to complete an Affirmative Fair Housing Marketing Plan, to comply with HUD requirements.
- 11.2.10. The Equal Housing Opportunity Logo or statement must be used in all written communication and advertising of vacant units and must be displayed in the housing/ rental office.
- 11.2.11. No bidding or contracting may occur prior to written authorization of the City of Modesto. Failure to follow these requirements will cause the funding agreement to become void.
- 11.2.12. Progress inspections will be conducted by the City of Modesto in order to ensure that work is progressing in a timely manner, that the work is completed in accordance with the codes and construction contract and documents, and to initiate a progress payment. No final payment of HOME funds will be made until all construction is complete and the unit is ready for occupancy.
- 11.2.13. City of Modesto will monitor the project during the period of affordability. This will include on-site inspections to determine that the unit(s) continues to meet the property standards as well as a monitoring of files as required by HOME regulations. The Owner may be required to pay a fee that will be invoiced to the Owner by the

City of Modesto to cover the cost of on-going monitoring.

11.3. PROPERTY STANDARDS

11.3.1. New Construction

11.3.1.1. All newly constructed rental units must meet the applicable State and Local residential and building codes upon project completion.

11.3.1.2. All newly constructed rental units must also meet the accessibility requirements of 24 CFR Part 8 (implements Section 504 of the Rehabilitation Act of 1973) and Titles II and III of the Americans with Disabilities Act implemented at 28 CFR Parts 35 and 36, as applicable. Covered multifamily dwellings, (buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units) must also meet design and construction requirements at 24 CFR 100.205.

11.3.2. Rehabilitation

11.3.2.1. City of Modesto has adopted a modified version of the Minimum Housing Quality Standards (HQS) as the standard for all rehabilitation work.

11.3.2.2. Eligible projects may be existing one or more multifamily buildings with rental units on a single site; or multiple sites that are under common ownership, management and financing. In no case shall funding be provided for a unit to be converted to a rental unit if the existing use or former use was owner-occupied housing.

11.3.2.3. A Capital Needs Assessment is required for rehabilitation projects with a total of 26 or more units. The City will require that the scope of the rehabilitation work and replacement reserves deposits are sufficient to ensure the useful life of essential building components throughout the required Affordability Period.

11.3.3. Occupancy

11.3.3.1. Upon initial occupancy, renters must be at or below 50% of the Area Median Income (AMI). If after initial occupancy the family's income increases above 80% AMI, the family may continue to occupy the unit with the stipulation that they pay at least thirty percent (30%) of their adjusted monthly income as rent. An exception is made for units financed with Low Income Housing Tax Credits, in which case tax credit regulations apply.

11.3.3.2. In rental project of five (5) or more units, at least twenty percent (20%) of the HOME assisted units must be occupied by families with an annual gross income at or below fifty percent (50%) of the AMI. Rents for these units must be at or below the Low HOME rents. The City of Modesto's current policy is that all HOME assisted units in rental projects are subject to Low HOME rents.

- 11.3.3.3. All HOME assisted units must be fully occupied within 18 months of construction/rehab completion. Project completion is specified below. If a unit is not occupied within 18 months, the Owner will be required to repay the HOME funds that have been invested on that unit.
- 11.3.3.4. All tenants in HOME assisted units must have a lease that meets all of the requirements of the HOME program.
- 11.3.3.5. Leases
 - 11.3.3.5.1. Lease must be for at least one year
 - 11.3.3.5.2. Lease may not contain any of the following provisions:
 - 11.3.3.5.2.1. Agreement to be sued: Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
 - 11.3.3.5.2.2. Treatment of property: Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.
 - 11.3.3.5.2.3. Excusing owner from responsibility: Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
 - 11.3.3.5.2.4. Waiver of notice: Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.
 - 11.3.3.5.2.5. Waiver of legal proceedings: Agreement of the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
 - 11.3.3.5.2.6. Waiver of a jury trial: Agreement by the tenant to waive any right to a trial by jury.
 - 11.3.3.5.2.7. Waiver of right to appeal court decision: Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease.
 - 11.3.3.5.2.8. Tenant chargeable with cost of legal actions regardless of outcome: Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
 - 11.3.3.5.2.9. Mandatory supportive services: Agreement by

the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

- 11.3.3.5.3. Owners may terminate tenancy or refuse to renew a lease upon 30 days' written notice, and only for: serious or repeated violation of the terms and conditions of the lease; violation of applicable federal, state, or local law; completion of the tenancy period for transitional housing or for other good cause in accordance with 24 CFR 92.253(c).

11.3.4. **Tenant Selection**

- 11.3.4.1. The Owner must comply with the Affirmative Marketing Policy (Appendix 1). The Owner must also adopt and follow written tenant selection policies and criteria (24 CFR 92.253 (d)). The Owner must submit the tenant selection policies and criteria to the City of Modesto with the funding agreement. These policies and criteria must be approved by the City of Modesto prior to the leasing/renting of any properties.

11.3.5. **Fixed/Floating Units**

- 11.3.5.1. For properties with both HOME-assisted and Non-HOME-assisted units (which is usually the case in the City HOME Program's funding history), HOME regulations require that a choice between fixed and floating unit designation must be determined at the time of project commitment.
- 11.3.5.2. A fixed unit designation requires that specific units be identified for HOME rent and occupancy restrictions. A floating unit designation indicates that the HOME-assisted units may change over time as long as the total number of HOME-assisted units in the project remains constant.
- 11.3.5.3. It is the policy of the City HOME Program to always fund only floating units and this designation is to be understood in all new City HOME Program funded rental projects.

11.3.6. **Rent Restrictions**

- 11.3.6.1. Owners of HOME projects must keep units affordable to low-income tenants during the entire affordability period. Maximum rent limits are published by HUD annually and distributed to recipients of funds. Current rent limits are contained in Appendix 1. In the event that limits go below the rate published at the time of contract execution, owners will not be required to lower rents and may retain their current rates.
- 11.3.6.2. Owners may request an increase in rent as rent limits change. However, the owners may not change a tenant's rent prior to the expiration date on the lease agreement. Owners must provide tenants at least thirty (30) days notification of rent increases. The City of Modesto shall review and approve all proposed rent increases.

11.3.7. **Site and Neighborhood Standards**

- 11.3.7.1. New construction rental projects must ensure that the project conforms to the "Site and Neighborhood Standards" as described in 24CFR 983.6(b).
- 11.3.8. Project Completion
 - 11.3.8.1. Rental projects are considered complete once construction is completed and the units are ready for occupancy. All HOME units within a rental projects must be rented to an initial occupant within 18 months of project completion. All HOME funding will be required to be repaid to HUD for units not occupied within the 18 month time frame.
 - 11.3.8.2. All HOME assisted units must be completed within four (4) years of signing the funding agreement between the Owner and the City of Modesto. Funds expended on units that are not complete within the required 4 years will result in the repayment of all HOME funding to the City of Modesto for reimbursement to HUD. Funding agreements must be signed within 12 months of the beginning of the program year.
- 11.3.9. Funding Levels
 - 11.3.9.1. The minimum amount of funding that can be applied to a HOME assisted unit is \$1,000.
 - 11.3.9.2. The maximum amount of funding that can be applied to a HOME assisted unit is the 221(d)(3) limit as published each year and provided to the City of Modesto by HUD. The current limit is available upon request.

12. Homeownership Activities

12.1. Construction/Rehab of Homeownership Units for Resale

- 12.1.1. City of Modesto HOME funds may be utilized by entities for the construction or rehabilitation of units for resale for homeownership to qualified low-income (up to 80% of AMI) individuals and/or families.
- 12.1.2. Environmental and historical reviews must be conducted by City of Modesto on every project. City of Modesto will notify the agency of documentation needed to complete the review. It is the responsibility of the owner/developer to insure that City of Modesto has all information necessary to complete the reviews. Environmental and historical reviews will be completed prior to the award of a Grant Agreement.
- 12.1.3. Projects may not commence and funds may not be expended (federal or non-federal) until the review is completed and HUD releases the project.
- 12.1.4. Grant agreements will only be signed upon the submission of project timeline and final commitment and proof of all other funding sources.
- 12.1.5. Construction plans and/or work specifications must be submitted to City of Modesto to be reviewed prior to the execution of the HOME Grant Agreement between the City of Modesto and the owner/developer (non-profit). All plans must be approved prior to

commencement of construction. Any changes to the approved plans must be submitted to City of Modesto for approval.

- 12.1.6. Funds may not be committed to a project until all necessary project financing is secured, a budget and time schedule are established and underwriting and subsidy layering review (if necessary) are completed, as noted in Appendix 2. Construction must commence within 12 months of the project commitment. Grant agreements will not be signed until this information has been submitted to and approved by the City of Modesto.
- 12.1.7. The City of Modesto will not approve a grant agreement until a buyer is pre-approved to purchase the property upon completion.
- 12.1.8. HOME Grant Agreements must be signed within fourteen (14) days of the receipt of the funding agreement from the City of Modesto.
- 12.1.9. Construction must begin within three (3) months of plans and/or work specification approval by the City of Modesto.
- 12.2. **For projects that require acquisition of land or property, the agency may obtain a purchase option agreement in lieu of full ownership. The agreement must state that the purchase of the property is contingent upon the results of the environmental review and the release of funds by HUD.**
 - 12.2.1. All legal notices and advertisements pertaining to construction of the project must be reviewed by the City of Modesto prior to publication.
 - 12.2.2. All new construction projects must meet the federal energy efficiency standards and must meet or exceed building codes as established by City of Modesto.
 - 12.2.3. All rehabilitation projects must meet the City of Modesto Minimum Housing
 - 12.2.4. Quality Standards adopted by the City of Modesto and adopted local applicable building codes.
 - 12.2.5. Construction files must be maintained and accessible for a minimum of five (5) years beyond the affordability period
- 12.3. Bid Procedures
 - 12.3.1. All projects, except for CHDO projects, must be sent out for public bid regardless of other funding sources in the project. (Projects involving Low-Income Housing Tax Credit (LIHTC) funding may request a waiver of this requirement.) Bid documents must be approved by the City of Modesto prior to advertisement. Failure to receive prior approval will result the project non-compliance and termination of the funding agreement.
 - 12.3.2. Bid packets must be available for pickup for a minimum of two (2) weeks.
 - 12.3.3. Bids must be sealed when submitted to the agency. All bids will be opened by the agency at a pre-designated date and time.
 - 12.3.4. City of Modesto staff and all bidders must be notified of date and time of bid opening.
 - 12.3.5. Normally the lowest, responsive bidder will be awarded the contract. In the event the agency selects a bid other than the lowest, they must submit the bids along with documentation to support the

selection to the City of Modesto for approval. This may or may not be approved by the City of Modesto.

12.4. Payment/Release of funds

- 12.4.1. Funds are disbursed on a reimbursement basis. If the Agency is unable to meet the cost of construction and/or services on a reimbursement basis, payment terms must be discussed and approved by City of Modesto CDD staff prior to construction.
- 12.4.2. Agencies must submit one copy of a CDD Request for Payment form along with copies of the invoice from the contractor or service provider. Claims submitted without proper back-up documentation will be returned to the Agency. No faxed copies of the "Request for Payment" form will be accepted. However, a scanned copy with an original signature in blue ink will be accepted.
- 12.4.3. The City of Modesto may hold payment including final payment for the project pending inspection and approval by the City of Modesto for possible Davis Bacon and all other federal requirements as well as requirements of the Grant Agreement. The funds will not be released until the City of Modesto has received and approved all required documentation. All new construction projects must have a Certificate of Occupancy from City of Modesto or other governing jurisdiction. All rehab projects must be inspected by a City of Modesto housing inspector and have documentation indicating the property complies with building code regulations.

12.5. Relocation

- 12.5.1. HOME projects must comply with the Uniform Relocation Act (URA) whenever displacement occurs as a direct result of HOME-assisted rehabilitation, demolition or acquisition, including acquisition for homebuyer activities. If the proposed project is occupied at the time of application, contact the City of Modesto for detailed regulations. Failure to do so may result in disqualification of your application as you may be required to submit notifications as part of your application. It is the expressed policy of City of Modesto to strictly comply with the URA and to minimize displacement.

12.6. Cost Overruns

- 12.6.1. Applicants should make every effort to be realistic when developing the construction and development budgets. Construction budgets should be comprehensive and should consider items such as the removal of lead based paint and asbestos, the effect of cost estimating now for work to be performed some months into the future, and contingencies.
- 12.6.2. The City of Modesto does not keep a reserve account for cost overruns. Funds will not be available to pay for cost overruns. Overruns will be the responsibility of the owner or developer. The protocol for payment of HOME funds to the project is:
- 12.6.3. GAP
Cannot exceed the result of the maximum subsidy layering calculation, and the City of Modesto reserves the right to provide gap funding in an amount below the maximum subsidy layering calculation cap.

- 12.6.4. Contingency
Contingency may not exceed 12% of the total project costs.
- 12.6.5. Developer Fee
Developer fees may not exceed 15% of the total project costs. The final payment of Developer fees will be the last funds paid for a project. In the event of cost overruns, developer fees must be used as a contingency fund if no other funds are available.
- 12.7. Project Completion
 - 12.7.1. A Homeownership housing project is considered complete when:
 - 12.7.2. - all necessary title transfer requirements and construction work are complete; and
 - 12.7.3. the project complies with the property standards under 24 CFR 92.251; and the final payment of HOME funds has been disbursed; and
 - 12.7.4. all project completion data has been submitted to City of Modesto including demographic information on the homeowner and City of Modesto has approved and entered the completion data into IDIS (Integrated Disbursement Information System).
 - 12.7.5. Project must be completed within four (4) years of the signing of the Grant Agreement with the City of Modesto.
 - 12.7.6. The 2013 amended HOME Final Rule requires that all units must be sold within nine (9) months of a certificate of occupancy (6 months for projects funded with 2012 HOME funds). Units not sold within this time frame must be converted to rental units. The City's HOME policy is that homeownership units are preferred over rental units. Therefore, the City will not enter into a grant agreement until a buyer is prequalified, and there is a pool of alternate buyers (92.254).
 - 12.7.7. Owner must provide a market study to ensure that the units will be sold within the required time frame, along with documentation of a prequalified buyer and pool of alternate buyers.
- 12.8. Funding Levels
 - 12.8.1. The minimum amount of funding that can be applied to a HOME assisted unit is \$1,000.
 - 12.8.2. The maximum amount of funding that can be applied to a HOME assisted unit is determined by the HOME Homeownership Value Limits as published each year and provided to the City of Modesto by HUD. The current limit is attached as Appendix 2.
- 12.9. Labor Standards
 - 12.9.1. Davis-Bacon wage compliance and other federal laws and regulations pertaining to labor standards apply to all construction and rehabilitation contracts that are financial in whole or in part with HOME funds for residential property consisting of 12 or more assisted units.
 - 12.9.2. Davis-Bacon and Related Acts (40 USC 276a-276a-7; Contract Work Hours and Safety Standards Act (40 USC 327-333); Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 276c); Fair Labor Standards Act of 1938, as amended (29 USC 201, et.seq.)

13. Owner Occupied Housing Rehabilitation

- 13.1. The City of Modesto manages and operates an in-house owner occupied housing rehabilitation program. The Rehabilitation Loan Program provides assistance for owner-occupied single family homes to rehabilitate their homes through a deferred loan.
- 13.2. Loans up to a maximum of \$60,000, and \$10,000 (\$20,000 mobile homes) grants are available based on property equity, less any existing mortgage balances.
- 13.3. Applicants are required to have proof of Homeowner's insurance, be current with any existing mortgage payments and not be tax-delinquent. Applicants will be required to permit the City to inspect the interior and exterior of their property and to conduct a HQS assessment.
- 13.4. All identified lead paint hazards and violations of the City's Property Maintenance Code will be required to be completed through the loan program. Additionally, major building components such as roofing, windows, furnaces and water heaters will be evaluated to ensure a useful life of at least five (5) years. Where the useful life of a major building component is determined to be less than five years, replacement or repair shall be required.
- 13.5. The maximum after-rehab value of a property assisted with HOME funds may not exceed the HOME Homeownership Value Limits as published each year by HUD.
- 13.6. Repayment will not be required until the applicant no longer resides at the property or upon transfer of the property to a new owner. Repayment will consist of the principal balance of the loan, 3% deferred interest.

14. Financial Management

- 14.1.1. The City will comply with record keeping requirements as outlined in 2 CFR Part 200.302(b)(1):
 - 14.1.1.1. The financial management system of the City will provide for the following:
 - 14.1.1.1.1. Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification will include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
- 14.1.2. Vendors (this includes subrecipients, vendors, or contractors) will be paid on a reimbursement basis upon receipt of a Request for Funds reimbursement form with all supporting documentation.
- 14.1.3. All reimbursement requests must be accompanied by the "Invoice Checklist" including all required items listed on the invoice checklist for an invoice to be processed by the City's Finance Department.

- 14.1.4. Payment to Vendors and reimbursement from HUD will occur only after Community Development staff has verified that the work, for which reimbursement is being issued, has been completed.
 - 14.1.4.1. Verification of work completion will take place by conducting onsite inspections and including an inspection report (if applicable) reflecting a “pass”.
- 14.1.5. Reimbursement of funds to contractors for capital projects will be paid directly to the contractor or vendor with whom a contractual agreement has been entered into with.
- 14.1.6. Reimbursement payments will be made only upon presentation of invoices from the contractor or vendor and approved for payment by the Community Development Program Staff responsible for Labor Standards review (if applicable).
- 14.1.7. Final payments to Vendors will be made only upon submission of final program reports that document the achievement of program goals and satisfactory completion of the HOME-funded activity.
- 14.1.8. Each request for payment must have adequate documentation for the costs incurred such as payroll records, purchase orders, copies of canceled checks, timesheets reflecting time spent directly on HOME activities, etc. Requests must be only for costs directly related to the approved activity and included in the approved budget attached to the contract.
- 14.1.9. Subrecipients will be required to submit requests for reimbursement on a quarterly basis, unless otherwise approved by Community Development Division staff.
- 14.1.10. The City will not request HOME funds in advance or as "float" funds from the U.S. Treasury.

Appendix 1

1. Affirmative Marketing Policy

1.1 Policy:

14.1.11. The City shall use a variety of public service announcements to inform persons of all genders, races, ages, ethnic groups, religious orientation, employment status, sources of income, marital status and sexual orientation of the availability of the housing opportunities made under the HOME Program

1.2 Actions:

1.2.1 By virtue of the above policy, the City of Modesto:

1.2.1.1 Will continue to periodically publish information about programs it is implementing. Such information will include reference to the Affirmative Marketing Policy; Federal, State and local fair housing laws; and contain information on the program and housing units. New programs are introduced to the community through special news releases and as such call attention and impart information about them.

1.2.1.2 Does include in its contractual agreement with sub-recipients in the HOME Program, the requirements of an Affirmative Marketing Policy for a period of time equal to their HOME loan term.

1.2.1.2.1 This policy is to include the following requirements:

1.2.1.2.1.1 Inform the Housing Authority of the County of Stanislaus (HACS) and those community organizations offering referral services when a unit becomes available.

1.2.1.2.1.2 Maintain a log of all households and applications received for occupancy in vacant units and to assess marketing effectiveness.

1.2.1.2.1.3 Use the Equal Housing Opportunity logo, slogan, or statement in all advertising:

1.2.1.2.1.3.1 Equal Opportunity Logo

1.2.1.2.1.3.2 Slogan: "Equal Housing Opportunity"

1.2.1.2.1.3.3 Statement: "We are pledged to the letter and spirit of US policy for achievement of equal housing opportunity throughout the nation.

1.2.1.2.1.4 We encourage and support an affirmative advertising and

marketing program in which there are no barriers to obtaining housing because of race, color, religion or national origin."

1.2.1.2.1.5 This information will be provided individually unless the advertisement appears in publication which carries a blanket Equal Opportunity logo, slogan, or statement.

1.2.1.2.1.6 Maintain a nondiscriminatory hiring policy.

1.2.1.3 Display the Equal Housing Opportunity logo (in office or where there is a project sign).

1.2.2 Requires that in support of the Affirmative Marketing Policy, the sub-recipient makes every effort to solicit applications from persons not likely to apply for the housing without special outreach.

1.2.3 This shall include in addition to notifying the HACS of occurring vacancies, and any other community organizations the City identifies as providing housing referral services.

1.2.4 Review sub-recipient efforts to affirmatively market their units on an annual basis and suggest corrective action for sub-recipients who fail to follow the affirmative marketing requirements.

1.2.5 Through the Community Development Division, the City will develop and distribute informative materials through community outlets to aid in the affirmative marketing effort of these units.

1.3 Records

1.3.1 As a result of the Affirmative Marketing Policy and the actions outlined above, the City of Modesto will:

1.3.1.1 document its good faith efforts to inform persons about vacant units and how they can be occupied.

1.3.1.2 Conduct evaluations of assisted units to ensure compliance with the Affirmative Marketing Policy and to determine the policy's impact.

1.3.1.3 Maintain and make available records which will detail affirmative marketing actions by the City of Modesto. The City also maintains documentation and communication with the Equal Housing and Equal Opportunity Office of the Milwaukee Area HUD office.

1.3.1.4 Maintain and make available the following data from each program-assisted project:

1.3.1.4.1 The race, family size, gender, and income of households moving into assisted projects.

1.3.1.4.2 The race, gender family size, and income of any household displaced as a result of program activities.

1.3.1.5 This data will be reviewed annually or periodically as determined by the City to effectively and efficiently report

such information to HUD. This data will be used to assess the program's impact, households benefiting from program activities and the sub-recipients efforts to affirmatively market the assisted units. Any sub-recipient found not marketing the units in an affirmative manner will face actions outlined in this policy.

1.4 Affirmative Marketing And Outreach To Minority And Women Owned Businesses Policy

1.4.1 The City of Modesto shall administer its HOME Program in a manner that will further the purposes of federal, state, and local affirmative marketing and equal opportunity requirements. To that end, the City of Modesto will:

- 1.4.1.1** Conduct its affirmative marketing and outreach to minority (MBE) and women owned businesses (WBE) in conformance with 24 CFR Part 85.36 (e).
- 1.4.1.2** Compile and utilize a listing of all known MBE;s and WBE's, their capabilities, services, supplies and/or products in the Modesto area.
- 1.4.1.3** Encourage MBE's and WBE's to participate in the City of Modesto's HOME Program.
- 1.4.1.4** Require HOME sub-recipients to take affirmative steps to use MBE's and/or WBE's in HOME funded projects.
- 1.4.1.5** Require HOME sub-recipients to maintain appropriate records to document the number and types of contracts and subcontracts it awards, the dollar value of each award, and the gender and ethnic/racial status of the management/ownership of the business.
- 1.4.1.6** Compile an annual record of MBE's and WBE's participating in the HOME Program and conduct an annual review to assess the effectiveness of efforts to encourage participation by minority and women owned businesses.
- 1.4.1.7** Section 3: Requires that employment and other opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very low income persons, particularly those who are recipients of government assistance by the City of Modesto.

Appendix 2

1. Subsidy Layering Review and Underwriting Guidelines:

- 1.1. As described in 24 CFR 92.250, the City of Modesto is required to:
 - 1.1.1. Evaluate subsidy layering and conduct or examine the underwriting of all projects to ensure that the HOME subsidy is not excessive and does not result in an undue or excessive return to the owner; and
 - 1.1.2. Assess, at a minimum, the current market demand in the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer, and firm financial commitments for the project.
- 1.2. Underwriting capacity does not apply to owner-occupied rehabilitation projects where assistance is provided as a grant or deferred, forgivable loans to owner-occupants, or to homebuyer assistance projects that do not involve development or rehabilitation of housing, such as down payment assistance.
- 1.3. Underwriting capacity does apply to owner-occupied rehabilitation projects with an amortizing HOME-funded rehabilitation loan.
- 1.4. The City of Modesto also will not be required to perform neighborhood market analyses or evaluate developer capacity for owner-occupied rehabilitation projects, or projects involving HOME-funded down payment assistance, but no HOME-funded development.
- 1.5. The City of Modesto will use the following types of subsidy layering review before committing HOME program funds to any project:
 - 1.5.1. A subsidy layering review produced by HUD, when the source of funding is provided by HUD, and HUD conducts a subsidy layering review;
 - 1.5.2. Subsidy layering analysis produced when Low-Income Housing Tax Credit (LIHTC) is used, and an evaluation to determine whether there are excess tax subsidies;
 - 1.5.3. A subsidy layering analysis produced by the developer and reviewed by the City of Modesto in accordance with the guidelines in HUD Notice CPD 98-1
- 1.6. Documentation Needed:**
 - 1.6.1. Project Pro Forma including sources and uses of funds statement, operating pro forma (rate of return on equity investment) that covers the entire HOME affordability period of the proposed
 - 1.6.2. project, project development budget along with certification of federal assistance. The pro forma should include achievable rent levels, market vacancies, and operating expenses.
- 1.7. Sources of Funds**
 - 1.7.1. Commitment letters with all terms and conditions for all mortgages, grants, subordination agreements, bridge (interim) loans and investment tax credits (historical, low-income, if applicable); and
 - 1.7.2. If a partnership, a copy of the partnership agreement, which indicates the cash contribution by the general partner(s) and/or limited partner(s)
 - 1.7.3. Documentation of owner cash equity and any deferred developer fees
- 1.8. Uses of Funds**
 - 1.8.1. Earnest money agreement; option or closing statement for land and/or buildings
 - 1.8.2. Construction cost estimate including acquisition costs, rehabilitation or new

- 1.8.3. construction costs, financing costs and professional fees
- 1.8.4. Construction contract or preliminary bid(s)
- 1.8.5. Agreements governing the various reserves which are capitalized at closing (to verify
- 1.8.6. that the reserves cannot be withdrawn later as fees or distributions)
- 1.8.7. Appraisal (to substantiate the value of the land and the value of the property after
- 1.8.8. rehabilitation or construction of the structure being built)
- 1.8.9. If low-income tax credits are utilized, documentation on the syndication costs (legal,
- 1.8.10. accounting, tax opinion, etc) from the organization/individual who will syndicate and sell the offering to ensure that the project can support the fees necessary to syndicate/fund the project
- 1.8.11. Supporting documentation for all other costs specified in the Sources/Uses of Funds statement

1.9. Certification of Federal Assistance

- 1.9.1. Formal certification concerning any other governmental assistance provided or to be provided to the project - one certification for each funding source
- 1.9.2. If no other governmental assistance, certification to this affect
- 1.9.3. If this changes during the course of the project, the City of Modesto needs to be informed immediately in the form of a new certification.

1.10. Project Development Budget

- 1.10.1. The City of Modesto will review the project development budget to determine that the development costs are necessary and "reasonable". The budget will include all costs associated with the development, regardless of the funding sources.
- 1.10.2. "Reasonableness" of costs shall be based on the following factors:
 - 1.10.2.1. Cost of comparable projects in the same geographical area;
 - 1.10.2.2. The qualifications of the cost estimators for the various budget line items; and
 - 1.10.2.3. Comparable costs published by recognized industry cost index services.

1.11. Underwriting Standards

- 1.11.1. City of Modesto HOME projects will utilize the underwriting criteria as set forth below. Generally underwriting will review the risk analysis of the project including: market risk, developer risk, and project risk. Market risk is defined as the likelihood that the units can be sold. Developer risk is defined as the likelihood that the developer can complete the project on-time and budget. Project risk is defined as the adequacy and reasonableness of the costs and sources to complete and sell the project.
 - 1.11.1.1. Developer fees & overhead and any consultant fees may not exceed the sum of:
 - 1.11.1.1.1. 15% of total rehabilitation and new construction eligible basis; and
 - 1.11.1.1.2. 5% of total acquisition eligible basis; however a fee up to 10% of total acquisition eligible basis will be permitted for projects that require the approval of HUD for the transfer of

the property.

- 1.11.1.2. Limits for Contractor Fee, Contractor Overhead and General Requirements will be calculated as follows:
 - 1.11.1.2.1.1. Contractor Fee = 6% of hard construction costs
 - 1.11.1.2.1.2. Contractor Overhead = 2% of hard construction costs
 - 1.11.1.2.1.3. General Requirements = 6% of hard construction costs.
- 1.11.1.2.2. Total soft costs may not exceed 35% of total eligible basis. Total soft costs equal the sum of general requirements, contractor overhead, contractor profit, architectural fees, survey costs, engineering fees, permanent loan fees, cost of tax-exempt bond issuance, taxes, appraisal, market study, environmental report, rent-up/marketing costs, title & recording fees, non-syndication legal fees, accounting fees, developer fees & overhead, consultant fees, organizational fees, and syndication expenses.