

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
(CDBG)
PROGRAM INCOME (PI) REUSE AGREEMENT

Execution of the this PI Reuse Agreement by both the Jurisdiction and the California, State Department of Housing and Community Development (Department) provides official notification of the Department's approval for the Jurisdiction to expend PI funds under the State's administration of the federal Community Development Block Grant Program (CDBG) for (1) state non-entitlement jurisdictions; and (2) former state non-entitlement jurisdictions that are now entitlement jurisdictions; pursuant to the provisions of 42 U.S. Code (U.S.C.) 5301 et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I, and 25 California Code of Regulations (CCR), Sections 7050 et seq. CDBG funding is listed in the Catalog of Federal Domestic Assistance as 14.228 - CDBG Community Development Block Grant Program. The Agreement also includes asset repayments from activities administered under DRI contracts.

By completing this PI Reuse Agreement and signing the end of this document, the Authorized Representative certifies the Jurisdiction has read, understands and will adhere to the Program Income (PI) Reuse Overview and Process discussed in the first section of this document, the Jurisdictional Certifications in the second section of this document, and Department of Housing and Community Development (hereinafter Department) terms and conditions in the third section of this document.

SECTION ONE: OVERVIEW AND PROCESS

JURISDICTION:

GOVERNING BODY ADOPTED ON:

This PI Reuse Agreement establishes policies and procedures for the administration and utilization of PI received as a direct result of eligible activities funded under CDBG and DRI contracts with the Department. *For payments generated under DRI contracts, while the funding was loaned under DRI, when a payment is received, per DRI regulation, the payment becomes CDBG program income.*

Applicability of this Agreement:

This PI Reuse Agreement between the Jurisdiction and Department is required by CDBG federal regulation. This Agreement allows Jurisdictions receiving repayments from CDBG and DRI assets to spend those PI funds in the absence of an active Department CDBG grant contract. This Agreement applies to all current Department-eligible Non-Entitlement Jurisdictions and HUD Entitlement Jurisdictions that are still receiving Non-Entitlement PI revenue from previous State grants (CDBG and/or DRI).

RECEIPT OF PROGRAM INCOME

Pursuant to the definition of program income found at 24 CFR 570.489(e)(2), repayments of assets generated from use of CDBG funds received by the Jurisdiction from the Department are PI. These repayments of loans, lease payments, and proceeds of asset sales will be deposited into one of three separate local PI accounts depending on what activity generated the PI. It is possible that the Jurisdiction may have up to three separate accounts with which to manage PI.

1. If the Jurisdiction has a Department approved Revolving Loan Fund (RLF) for Housing and/or ED, any PI from Housing or ED activities must be deposited into the RLF associated with the activity that generated the PI.

This means:

- a. Housing PI must be deposited into the Housing RLF.
- b. ED PI must be deposited into the ED RLF.

Note: *The accounts for each RLF must be separate accounts, however they both must be interest bearing.*

2. If RLF(s) are not approved for use, the Jurisdiction must deposit all CDBG repayments into a single regular PI account which must be separate from either of the RLF accounts, but it must also be interest bearing.
3. If repayment comes from a loan or asset that was originally paid with CDBG and non-CDBG funds, the PI accounting and reporting must reflect the correct amounts and proportions of CDBG PI and non-CDBG funds invested in the asset. Only the CDBG portion of the repayment is deposited into one of the three PI accounts.

OVERVIEW OF WAYS TO USE PROGRAM INCOME

There are five (5) ways to manage PI under the Agreement.

They are:

1. *Expend PI and RLF monies first on active grant contract activities;*
2. *Expend PI General Administration (PI GA) for GA Activities (up to allowable limits)*
3. *Expend through an approved PI Revolving Loan Fund (RLF)*
4. *Expend PI on an approved waiver activity when no active contract is in force;*
5. *Return PI annually to the Department.*

The undersigned Jurisdiction certifies that PI will be expended first when there is an active grant contract with the Department. PI being received when there is no active grant contract will be deposited into separate accounts for approved activities under this Agreement (via GA, PI Waiver or RLF) and only be distributed and expended, as follows:

- 1. Expend PI and RLF Monies First on Active Grant Contract Activities:**

If the undersigned Jurisdiction has an active grant contract with the Department, all PI on hand must be expended on open grant activities, prior to requesting grant funds from the Department.

If the undersigned Jurisdiction has a Department approved PI Revolving Loan Fund (RLF) per this Agreement, and has an active grant contract which includes the same eligible CDBG activity as the RLF, the RLF monies must be expended first before requesting any contract funds from the Department. PI must always be expended first on active contract activities, prior to requesting grant contract funds.

See the Chapter on Program Income and Revolving Loan Funds in the Department's CDBG Grant Management Manual for additional information regarding use of PI to pay costs for activities under an active grant contract in the Department.

2. Expend PI General Administration (PI GA) for GA Activities (up to allowable limits)

The undersigned Jurisdiction must track a calculation of up to seventeen percent (17%) of PI received annually for eligible GA costs. However, the seventeen percent (17%) PI GA only applies to PI received that is **not** generated by a RLF activity.

Since all PI must be expended first, GA funds cannot be held and used only as PI GA costs are incurred. All PI must be spent on the next funds request submitted. Thus, the Jurisdiction can choose to keep an accounting of the total amount of PI GA available for use based on all regular PI received.

PI GA funds cannot be used for planning studies or technical assistance activities, these activities can only be funded under awarded grant contracts. See the Program Income Chapter for further details on eligible PI GA activities under this Agreement.

3. Expend PI through an approved PI Revolving Loan Fund (RLF):

To establish one or both of the RLFs discussed below, the undersigned Jurisdiction must submit formal written request for Department approval using the required process included with this Agreement.

The undersigned Jurisdiction agrees to all the Department's RLF requirements as stated in this Agreement and detailed in the GMM Chapter.

The two RLFs and their corresponding definitions, as permitted by this agreement, are:

1) **Housing Revolving Loan Fund (RLF)**

Eligible housing activities under this RLF include:

- I. Housing Rehabilitation - Single Unit Residence program for **owner and/or tenant occupied** properties. Matrix code **14A**.
- II. Housing Rehabilitation - 2-4 Units program for **tenant occupied** properties. Matrix code **14B**.
- III. Housing Acquisition - Single Family program for homebuyer assistance. Matrix code **13**.

2) **Economic Development (ED) Revolving Loan Funds (RLF)**

Eligible ED activities under this RLF include:

- i. Business Assistance program (direct financial assistance to a for-profit business). Matrix code **18A**; and
- ii. Microenterprise Financial Assistance (loans). Matrix code **18C**.

The undersigned Jurisdiction will provide program guidelines for all eligible RLF activities as part of the approval process when obtaining Department approval of a RLF. Department written approval must be received before incurring any activity or activity delivery costs associated with implementing any activities under the approved RLF. All approved RLF projects, will be required to be reported to the Department via the applicable CDBG Set-up/Completion reports.

4. **Expend PI on an Approved PI Waiver Activity when no active contract is in force.**

The undersigned Jurisdiction may only utilize the Department's PI Waiver process when it has no active grant contracts with the Department. Once there are no active contracts with the Department, the undersigned Jurisdiction can have up to two active eligible CDBG activities approved by the Department, for which PI may be expended. Waivers will consist of a single program, service or single project activity. If it is a single program activity, it cannot be the same program activity as funded under an approved RLF.

The undersigned Jurisdiction will follow all PI Waiver procedural requirements as stated in the Program Income Chapter of the Grant Management Manual (GMM).

Written Department approval is required before expending any PI funds on a Waiver activity. Each Waiver activity must clear the activity General and any Special Conditions which include federal overlays as posted on Department's webpage.

A PI Waiver project can only be approved if the total project / program cost for

the proposed activity is on hand in the Jurisdiction's PI account. Future PI may not be committed for PI Waivers.

The undersigned Jurisdiction understands that PI Waiver activities are limited to two active projects, services and/or programs, and will remain active until close out has been completed and approved by the Department. Each approved Waiver activity will be set up with the Department using current Set-Up Report.

The undersigned Jurisdiction understands if they receive a subsequent award of CDBG funds, upon execution of the new grant contract all waiver activities are to be completed first, after which, PI must be expended first on the active grant contract activities. PI Waivers will not be included in the grant, because Supplemental activities will be included in contracts.

5. Return PI to the Department

The undersigned Jurisdiction has the option to return PI back to the Department. However, semi-annual and annual reports are still required to confirm PI being returned.

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SECTION TWO: CERTIFICATION FOR PROCESS AND USE OF PROGRAM INCOME

Since CDBG is a federal funding source, Citizen Participation is required when utilizing any of the five (5) ways to use PI listed above. Those requirements are incorporated below.

The _____ certifies that:

1. Resolution:

The PI Reuse Agreement was formally adopted via resolution on _____ by the Jurisdiction's Governing Body, executed by the Authorized Representative and submitted to Department with certified copy of the approving resolution attached for full execution.

2. Citizen Participation:

Each of the processes discussed in this Agreement will be carried out in compliance with the CDBG Citizen Participation process as specified in federal regulations at 24 CFR 570.486, and Jurisdiction's public hearing requirements.

3. Governing Compliance:

The undersigned Jurisdiction certifies the administration of all CDBG eligible activities conducted under the above described Ways to Spend PI, will be conducted in compliance with all current State and federal regulations and policies, including all applicable Grant Management Manual (GMM) chapters and Department Management Memos.

4. Ineligible Activities and Costs:

The undersigned Jurisdiction acknowledges that if ineligible activities or costs are paid for with CDBG PI, those funds must be returned to the Jurisdiction's PI or RLF account (whichever account expended ineligible funds) using local Jurisdiction funds.

The undersigned Jurisdiction acknowledges that ineligible activities or costs paid for with PI under an active grant contract must be repaid to the Department using local non-federal funds.

5. Jurisdictions Leaving the State Non-Entitlement Program and Jurisdictions Entering the State Non-Entitlement Program:

The undersigned Jurisdiction certifies that it will follow these procedures when leaving or entering the State CDBG Program:

A. 24 CFR 570.489(e)(3)(iii) Transfer of program income to Entitlement program.

Jurisdictions that are entitlement communities or part of an urban agreement, or grantees that at a later date become an entitlement community or join a urban agreement, have the following options for PI and RLFs:

PI not associated with a RLF, the jurisdiction must:

- 1) Complete the process to certify they will be reporting the State PI into the Entitlement Programs process, including receipting the CDBG proceeds into IDIS, or,
- 2) Return all State CDBG Program Income to the Department, the amounts on hand once the HUD agreement is signed and as it is received until all PI generated by State CDBG funding has been returned.

PI in an approved RLF:

Entitlement jurisdictions and those who are part of an urban agreement may keep their RLF(s) and monies within an RLF as long as the following is met:

- 1) They have a State Reuse Plan (Agreement) signed by the Department and the City/County Authorized Representative.
- 2) Agree to operate the RLF under the Department's RLF rules going forward
- 3) Report all expenditure, and accounting of RLF(s) as required by the Department.
- 4) The Jurisdiction shall be required to have loan servicing policies and asset management policies and procedures, pursuant to the Department's Grant Management Manual Chapter on Asset and Real Property Management

B. 24 CFR 570.489(e)(3) (iv) Transfer of program income of grantees losing Entitlement status.

Upon entry into the State CDBG program, a unit of general local

government that has lost or relinquished its Entitlement status must submit a letter to the department, signed by the Authorized Representative stating which of the following options the jurisdiction will be implementing. Keep in mind, that retaining Entitlement PI while participating in the State CDBG program will require PI reporting for both sets of funding. Entitlement PI and any PI generated by State CDBG fund cannot be comingled.

Within 90 days of leaving the Entitlement Program to join the State CDBG program, the jurisdiction must certify that it will either:

- 1) Retain program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income, including reporting it into IDIS or the urban county; or
- 2) Retain the program income and transfer it to the State CDBG program, in which case the jurisdiction must comply with the State's rules for PI and RLF address within this Memo, the Reuse Plan and Chapter 14 of the Grant Management Memo.

6. Requirements of Program Income

This PI Reuse Agreement is intended to satisfy the requirements specified in federal statute and regulation at Section 104(j) of the Housing and Community Development Act ("the Act"), as amended in 1992 and 24 CFR 570.489(e) and (f). These statutory and regulatory sections permit a unit of local government to retain PI for CDBG-eligible activities, with Department approval. Under federal guidelines adopted by the State of California's CDBG Program, local governments are permitted to retain PI as long as the local government has received advance approval from the State of a local Agreement that will govern the expenditure of the PI. This Agreement has been developed to meet that requirement when an active contract between the Department and the undersigned Jurisdiction is not in force.

The undersigned Jurisdiction certifies their PI will be used to fund eligible CDBG activities that meet a National Objective and any public benefit requirements. Eligible activities, National Objective and public benefit requirements are specified in Federal Statute at Sections 104(b), 105(a) of The Housing and Community Development Act of 1974, and in Federal Regulations at 24 CFR 570.482 and 24 CFR 570.483. The Jurisdiction understands, if it is determined that an activity/project funded with PI that does not meet a National Objective and/or meet the public benefit requirement, the Jurisdiction will be required to use its own local funds to repay the PI Account.

7. Definition of Program Income

"Program Income" means gross income earned by the Jurisdiction from grant-funded activities and is subject to CDBG regulatory requirements pursuant to

24 CFR, Part 570.489(e) - Program Administrative Requirements as amended in the CDBG Final Rule, 24 CFR, Part 570.504 - Program Income, 24 CFR Part 85 – Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, and OMB Circulars A-87 and A-122 as applicable. These regulations include the requirement that the Jurisdiction record the receipt and expenditure of PI as part of the financial transactions of the grant activity(ies).

For activities generating PI that are only partially funded with CDBG funds, such income is prorated to reflect the actual percentage of CDBG participation. Examples of PI include but are not limited to: payments of principal and interest on housing rehabilitation or business loans made using CDBG funds; interest earned on PI pending its disposition; interest earned on funds that have been placed in a revolving loan account; net proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds; and, income (net of costs that are incidental to the generation of the income) from the use or rental of real property that has been acquired, constructed or improved with CDBG funds and that is owned (in whole or in part) by the participating Jurisdiction or Sub-recipient.

8. Fiscal Reporting of Program Income Receipts, Deposits and Disbursements

The undersigned Jurisdiction certifies that CDBG PI will be accounted for using the Department's fiscal year timeframe (July 1 to June 30). All receipts of PI or RLF revenue (and the depositing of those funds into separate account(s)) and expenditures of PI in accordance with this PI Reuse Agreement will be monitored and reported per the Department's fiscal year cycle. The undersigned Jurisdiction certifies that they will report using the Department's reports/forms and will submit them in a timely manner.

9. Duration of This Program Income Reuse Agreement

The undersigned Jurisdiction certifies that it and its Governing Body understand that this document is effective for five (5) years from the execution date by the authorized CDBG Representative listed in this Agreement. At that time unless here are no further CDBG PI assets generating repayments, or the Jurisdiction has become a HUD entitlement Jurisdiction and uses these funds for entitlement activities, a new PI Reuse Agreement will be submitted to the Department. The Department has the Authority to void the Agreement with notice for cause.

10. Program Income General Administration (PI GA)

- A. After the PI Reuse Agreement is executed, the Jurisdiction reserves the right to calculate and track up to seventeen percent (17%) of PI received pursuant to Section 1, item 2 above, for payment of eligible PI GA costs. PI GA will not

be calculated for any RLF deposits. PI GA funds will not be used until General Conditions for PI GA are cleared and Departmental written approval is received. As noted above, these funds cannot be set aside since all PI must be expended first on whatever CDBG cost must be paid next, however tracking the amount of PI GA generated by the Jurisdiction's PI revenue permits the Jurisdiction to use that amount on eligible CDBG costs that don't have to meet a national objective, and ensures the Department is not exceeding the administrative funding cap of twenty percent (20%), as set by federal statute.

- B. If more funds are expended than what is available under PI GA calculation, the Jurisdiction will be required to return the over-expended PI GA amount back into their PI Account.
- C. Ineligible PI GA costs will be required to be returned to their PI Account.
- D. PI GA funds, once approved for use, may be used to pay for costs associated with receiving Department approval of PI activities funded under this agreement. Before submitting any proposed PI activities (Waivers or RLF) for Department approval, the Jurisdiction must hold at least one formal public hearing to discuss eligible activities and proposed PI activities. Department recommends that this public hearing be conducted to review current fiscal year PI activities and proposed and possible activities for future Department applications.

11. Revolving Loan Funds (RLFs)

- A. Pursuant to the criteria noted below, the undersigned Jurisdiction may be eligible to apply for the Housing RLF and/or the ED RLF.
- B. RLFs listed under the Agreement will only be utilized after the Jurisdiction submits written certification as well as the required guideline documents, and receives written Departmental approval certifying that the proposed RLF meets the Department's definition as follows:
 - 1) There are existing loans and assets from past RLF eligible activities that can be reasonable expected to generate repayments.
 - 2) The existing loans and assets have generated at least one loan repayment in the current fiscal year.
- C. The two RLFs and their respective CDBG eligible activities listed in this Agreement will be administered under the guidance and requirements provided in this Agreement and in the Department's current GMM Chapter on Program Income, and any subsequent policy, regulation, or statutory guidance, from the Department.
- D. Pursuant to Management Memorandum 14-05, the undersigned Jurisdiction

certifies acknowledgement that the Department reserves the right to cancel the grantee's RLF and require the funds to be returned to the Department as a corrective action for significant, ongoing non-compliance with RLF rules.

- E. The two (2) RLFs listed below each have a multiple eligible CDBG program activities. All CDBG rules pertaining to eligible RLF program activities will be followed.

1) Housing Revolving Loan Fund

There are three (3) housing programs that must be made available under this RLF. The Jurisdiction will get written Department approval for all three programs as part of Housing RLF approval.

Eligible housing activities under this RLF include:

- i. Housing Rehabilitation - Single Unit Residence program for owner and/or tenant occupied properties. Matrix code **14A**.
- ii. Housing Rehabilitation - 2-4 Units program for owner and/or tenant occupied properties. Matrix code **14B**.
- iii. Housing Acquisition - Single Family program for homebuyer assistance. Matrix code **13**.

2) Economic Development (ED) Revolving Loan Funds (RLF)

Eligible ED activities under this RLF include:

- i. Business Assistance program (direct financial assistance to a for-profit business). Matrix code **18A**; and
- ii. Microenterprise Financial Assistance. Matrix code **18C**.

- F. Each approved RLF will offer all eligible activities under the RLF definition.
- G. Separate and formally adopted program guidelines for each eligible activity will be provided to the Department as part of General Conditions for all eligible RLF activities when obtaining Department approval of a RLF.
- H. The undersigned Jurisdiction acknowledges that although all eligible activities under each approved RLF must be available, the Jurisdiction has the discretion to fund RLF loans for the activity or activities they deem to address the greatest need in their community.
- I. RLF receipts on deposit may be used for one or both single family housing program activities. Although both activities are required to be approved by the Department for use under the RLF, the Jurisdiction may choose to only operate one program at time or both simultaneously.
- J. In addition, each approved RLF will meet the following criteria:

- 1) RLFs will operate on a fiscal year of July 1 to June 30 for accounting and performance reporting.
- 2) Jurisdictions will set up RLFs as separate accounts (Housing and ED RLF accounts must be separate) with separate fund and transaction numbers. All other CDBG funds received as PI must be accounted for in a separate account.
- 3) All accounts set up pursuant to 2.G.2 will be interest bearing.
- 4) RLF monies will be expended first when the same RLF activity is funded under an awarded active grant contract.
- 5) RLF projects may be funded with both RLF monies and an active grant contract.
- 6) RLFs will be expended primarily on loans since RLFs must revolve. Thus, activities under an active contract that are funded using only grants rather than loans, will use contract funds not RLF monies to pay for the activity. Microenterprise grants, home repair grants and closing cost grants, that do not have loans associated with them, will not become RLF assets and therefore will not require RLF funds to be spent first on the active grant activities.
- 7) The RLFs will primarily provide financing instruments that will revolve, (i.e. loans), RLFs cannot fund projects primarily or solely with grants or forgivable loans.
- 8) RLF receipts from loans or assets generated from the same program activity, (i.e. single family housing rehabilitation loan repayments will only be deposited into a Housing RLF). Thus, repayments from the same program activities that go into an RLF must be used for originating loans for the same program activities.
- 9) RLF PI balances will not be moved to another approved RLF account or to the Jurisdiction's regular PI account. The Department may use a state or federal disaster declaration to formally allow for re-purposing of PI funds by the Jurisdiction. Funds approved by the Department for re-purposing to meet an urgent need are considered PI and must be expended first under active grant contracts or under approved waivers if there is no active contract.
- 10) RLFs that become depleted of funds and do not have additional asset repayments to sustain revolving activities, such that no longer meeting the Departments RLF definition, will be canceled by the Department.
- 11) RLF PI received and deposited is not allowable for PI GA expenses thus, seventeen percent (17%) cannot be set aside as with Jurisdictions with separate PI accounts.
- 12) RLFs with no annual revolving activities, (i.e. approved loans), are not able to be used by the Jurisdiction for reimbursement of non-revolving

costs therefore, activity delivery (AD) costs are not eligible. **AD costs are only eligible if one or more projects are funded and accomplishment data (i.e. beneficiaries), for those activity(ies), on an annual basis, are reported.**

- 13) RLF projects must be documented as meeting a national objective. If a project does not meet a national objective, then all expenses associated with the project (activity and activity delivery funds) must be repaid to the RLF with non-federal funds.
- 14) Given that RLF revenue cannot be “banked”, to remain eligible, a RLF must revolve. To meet the definition of revolving, the undersigned Jurisdiction will not have more than \$100,000 on deposit in an RLF within a fiscal year without making at least one loan. Nor will the undersigned Jurisdiction have more than \$500,000 on hand even if making loans, each fiscal year.
- 15) The undersigned Jurisdiction certifies they are aware that the Department will address excess funds and revolving compliance by issuing finding letters to the grantee which could result in the Department cancelling the grantee’s RLF, which immediately converts the funds to PI; and, therefore, must be used prior to drawing down grant funds.
- 16) RLF activity delivery funds (AD) may be used to pay for loan servicing costs.
- 17) Citizens of the Jurisdiction must be the primary beneficiaries of all RLF program activities.
- 18) Financial and performance reporting, on RLF projects will be done using current eligible activity set up, performance and completion reports for National Objective data and beneficiary demographics as HUD required accomplishment information.
- 19) Additional financial reports for RLF PI deposits and expenditures will be done twice a year using the Department’s current PI fiscal reporting forms.
- 20) The Jurisdiction will be required to repay the RLF account for ineligible costs or activities with local non-federal funds.
- 21) RLF programs will meet the CDBG National Objective of benefit to Low/Moderate-income (Low/Mod) households. per 24 CFR Part 5, and in accordance with the Department’s Income Manual.
- 22) Loan servicing costs under the RLFs are not eligible as PI GA costs but are eligible AD costs. As such, loan servicing costs are only eligible if one or more loans are made fiscally.

K. Activity Specific Requirements:

1) **Housing RLF:**

- a. All Housing Rehabilitation and Homeownership Assistance programs will only fund projects that meet a National Objective and comply with other State and federal requirements, including Department Management Memorandums and GMM Chapters on Housing Rehabilitation, Multi-Family Rehabilitation (2-4 units), and Homeownership Assistance.
- b. No more than nineteen percent (19%) of funds expended for **Housing Rehabilitation** in the RLF will be used for AD costs on an annual fiscal basis.
- c. No more than eight percent (8%) of funds expended in a fiscal year for **Homeownership Assistance** will be used to reimburse eligible AD costs.
- d. AD costs are not eligible until one loan is approved, closed and project beneficiary information is submitted.
- e. Projects cannot be solely funded as a grant.

2) **ED RLF:**

- a. Both ED programs will only fund projects that meet a National Objective and comply with other State and federal requirements, including Department Management Memorandums and GMM Chapters on Microenterprise and BA program.
- b. Income eligibility must be met per 24 CFR Part 5 and in accordance with the Department's Income Manual.
- c. No more than 15 percent (15%) of the total funds expended for **BA or Microenterprise financial assistance** activities shall be used to reimburse Jurisdiction for eligible activity delivery (AD) costs on an annual fiscal basis.
- d. Annual AD costs are not eligible until one loan is approved, closed and project beneficiary information is submitted.
- e. For **Business Assistance (BA)**, local review and underwriting of business assistance projects requesting a CDBG loan under this RLF shall be conducted under the Business Assistance Program Guidelines that have been adopted by the Governing Body of the undersigned Jurisdiction and approved in writing by the Department, as part of RLF approval.
- f. For **Microenterprise Assistance (ME)** The CDBG eligible activity

of direct financial assistance to eligible Microenterprise businesses will be conducted under this RLF. Local review and approval of microenterprise business assistance projects requesting a CDBG loan under this RLF shall be conducted under the Microenterprise Financial Assistance Program Guidelines that have been adopted by the Governing Body of the undersigned Jurisdiction and approved in writing by the Department as part of the General Conditions clearance. **Note:** *this subsection applies to ME loans only, not ME grants. Financial Assistance that is solely a grant cannot be made through an RLF.*

12. Loan Portfolio and Asset Management Policies and Costs

- A. The undersigned Jurisdiction certifies that it has asset management policies and loan portfolio servicing policies that are in compliance with HUD standards per 24 CFR Part 570, OMB Circulars A-87, A-122 A-133, and 24 CFR Part 85.
- B. The use of CDBG funds creates public financial assets. The public financial assets created can be in the form of loans or other repayment instruments which result in PI. Financial assets may also be in the form of real property or chattel (equipment and fixtures). All assets created from the use of CDBG funds must be administered in compliance with OMB Circulars A-87, A-122 A-133, 24 CFR Part 85. These policies will be used for managing all CDBG assets, including those which generate PI and RLF PI.
- C. General Administration PI funds may be used to reimburse the Jurisdiction for loan servicing and asset management costs. If the Jurisdiction has no PI GA available, GA funds from active grant contracts may be used to pay for eligible loan servicing costs.

13. Program Income Waivers

- A. The PI Waiver Submission Process will only be conducted when the undersigned Jurisdiction has no active grant contract(s) with the Department.
- B. The process below will be followed if a PI Waiver is to be requested:
 - 1) All PI Waiver requests will be submitted on approved Departmental forms for the Department's written approval.
 - 2) After the Department's review of the activity for eligibility and national objective compliance, the PI Waiver will be formally adopted via public hearing and resolution of the Jurisdiction's Governing Body, as part of the PI Waiver General (and Special Conditions if applicable) Clearance process.
 - 3) Expenditure of PI Waiver funds will not commence until clearance of all

required General and Special Conditions have been met, and written Departmental approval has been issued to the Jurisdiction.

- 4) Possible Waiver activities will be discussed at a properly noticed public hearing, held in front of the Jurisdiction's Governing Body, prior to submission of a Certified Resolution as part of a PI Waiver Request to the Department.
 - 5) The PI Waiver request must be submitted in accordance with current Department policy, and any subsequent policy, regulation, or statutory guidance.
 - 6) PI Waiver activity reporting will be submitted per current Departmental policies and includes financial accounting of all PI received and expended, including PI Waivers and PI Waiver activity performance.
 - 7) PI Waiver activities must be fully funded with program income already on hand.
 - 8) Only two (2) PI Waivers may be open and active at any one time.
 - 9) RLF funds will not be used for PI Waivers, since RLF monies must be expended on the activity that generated the payments.
 - 10) PI Waivers will not be approved for the same program activities for approved RLFs.
- C. PI GA and PI Waiver financial and performance reporting will be done using current eligible activity set up and completion reports which will collect national objective data and beneficiary demographics for HUD required accomplishment information.
- D. Additional financial reports for PI GA, PI Waivers, PI deposits and expenditures will be done semi-annually using the Department's current PI fiscal reporting forms.
- E. Ineligible costs will be required to be repaid to the PI Account. In some cases with ongoing significant compliance issues, the Department reserves the right to require the jurisdiction return all PI to the Department until it is satisfied that the jurisdiction has resolved all compliance issues.

14. Program Income Not Associated with an RLF

- A. Provided the undersigned Jurisdiction has made the Department aware at the beginning of the fiscal year they intend to exercise the \$35,000 rule, PI which is received annually that has a cumulative amount up to \$35,000 (RLF receipts are not included in the \$35,000 calculation) may be "re-categorized" as non-CDBG funds. In electing to exercise the \$35,000 rule, the Jurisdiction agrees not to expend CDBG revenue until either the fiscal year ends or the amount received goes above \$35,000, at which point the jurisdiction must consider the revenue as CDBG PI and must use it, first prior to drawing CDBG contract funds.

- B. The undersigned Jurisdiction certifies that it acknowledges if it has PI on hand and has not applied for or been awarded CDBG funds with the past three NOFAs, the Jurisdiction will be required to submit a PI Expenditure Plan for its PI on hand. The plan must be submitted via the CDBG PI Waiver process. If the Jurisdiction does not initiate the request, the Department will send the Jurisdiction a letter requiring submission of the plan within a set time frame. If the Jurisdiction does not respond to the Department's letter, the Jurisdiction will be required to return all PI on hand to the Department, regardless of the amount of PI.

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SECTION THREE: DEPARTMENT TERMS, CONDITIONS AND AUTHORIZATION

TERMS AND CONDITIONS: The undersigned Jurisdiction certifies that all terms and conditions listed below have been read and understood, and will be implemented and followed:

1. Authority & Purpose

This Agreement provides official notification of the Jurisdiction's PI Reuse Agreement's approval under the State's administration of the Federal CDBG for Non-entitlement Jurisdictions pursuant to the provisions of 42 U.S. Code (U.S.C.) 5301 et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I, and 25 California Code of Regulations (CCR), Sections 7050 et seq. The Program is listed in the Catalog of Federal Domestic Assistance as 14.228 - CDBG Community Development Block Grant Program.

In accepting the PI Reuse Agreement approval, the Jurisdiction agrees to comply with the terms and conditions of this Agreement, all exhibits hereto and the representations contained in the Jurisdiction's PI Reuse Agreement. Any changes made to the PI Reuse Agreement after this Agreement is accepted must receive prior written approval from the Department.

2. Distribution for Reuse of PI

A. The Jurisdiction shall perform PI funded activities as described in the Distribution for Reuse in the PI Reuse Agreement. All written materials or alterations submitted as addenda to the original PI Reuse Agreement and which are approved in writing by the Department are hereby incorporated as part of the PI Reuse Agreement.

The Department reserves the right to require the Jurisdiction to modify any or all parts of the PI Reuse Agreement in order to comply with CDBG requirements. The Department reserves the right to review and approve all work to be performed by the Jurisdiction in relation to this Agreement. Any proposed revision to the work must be submitted in writing for review and approval by the Department and may require an amendment to this Agreement. Approval shall not be presumed unless such approval is made in writing by the Department.

B. The PI funded activities shall principally benefit Low/Mod-income persons or households residing in the Jurisdiction. HUD defines Low/Mod as having an annual income that is no more than 80 percent (80%) of the

county median area income, adjusted for household size.

3. Sufficiency of Funds and Termination

The Department may terminate this Agreement at any time for cause. . The Jurisdiction will have at least 14 days upon receipt of the Departments written notice. Termination shall consist of violations of any terms and/or conditions of this Agreement, upon the request of HUD, or withdrawal of the Department's expenditure authority.

The Department reserves the right, for any significant on-going non-compliance with RLF or Program Income rules, to cancel any RLF and require, all RLF and PI funds, to be returned to the Department.

4. Meeting National Objectives

All activities performed under this Agreement must meet one of the National Objectives determined by the HUD regulations as included in the Application authorized under Title I of the Housing and Community Development Act of 1974, as amended.

- A. Benefit to HUD defined Low/Mod-income person or household (LMI). The term Low/Mod-income is defined under CDBG as no more than 80 percent (80%) of the median area income, as determined by HUD, per Federal Regulation 24 CFR, Part 570.483(b); and/or;
- B. Prevention or elimination of slums or blight. In order for an activity to meet the National Objective of elimination of slums and blight, the activity must take place in an area that meets the definition of a blighted area and the project must be shown to eliminate blight or prevent further blight per Federal Regulation 24 CFR, Part 570.483(c).
- C. For Microenterprise Assistance activities, the Jurisdiction must only meet the benefit to Low/Mod-income person or household (LMI) National Objective.

5. Inspections of Activities

- A. The Department reserves the right to inspect any activity(ies) performed hereunder to verify that the activity(ies) is in accordance with the applicable federal, State and/or local requirements and this Agreement.
- B. The Jurisdiction shall inspect any activity performed by contractors and subrecipients hereunder to ensure that the activity(ies) is in accordance with the applicable federal, State and/or local requirements and this Agreement.

The Jurisdiction agrees to require that all activity(ies) found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to its contractor or subcontractor, respectively, until it is so corrected.

6. Insurance

The Jurisdiction shall have and maintain in full force and effect during the term of this Agreement such forms of insurance, at such levels as may be determined by the Jurisdiction and the Department to be necessary for specific components of the activity(ies) described in this Reuse Agreement.

7. Contractors and Subrecipients

A. The Jurisdiction shall not enter into any agreement, written or oral, with any contractor or subrecipient without the prior determination that the contractor or subrecipient is eligible to receive CDBG funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

- 1) Contractors are defined as program operators or construction contractors who are procured competitively.
- 2) Subrecipients are defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive CDBG funds from an awarded Jurisdiction to undertake eligible activities.

B. An agreement between the Jurisdiction and any contractor or subrecipient shall require:

- 1) Compliance with the applicable State and federal requirements of this Agreement, which pertain to, among other things, labor standards, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace; and, Compliance with the applicable provisions relating to Labor Standards/Prevailing Wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
- 2) Maintenance of, at minimum, the State-required Workers' Compensation Insurance for those employees who will perform the activity(ies) or any part of it.
- 3) Maintenance of, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured

or damaged by the contractor, or any subcontractor in performing the activity(ies) or any part of it.

- 4) Compliance with the applicable Equal Opportunity Requirements described in this Agreement.

C. Contractors shall:

- 1) Perform the activity(ies) in accordance with federal, State and local housing and building codes, as are applicable.
- 2) Provide security to assure completion of the project by furnishing the borrower and construction lenders with Performance and Payment Bonds, or other security approved in advance in writing by the Department.

D. Subrecipients shall:

- 1) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of five (5) years from date of termination of this Agreement, or five (5) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement, and any amendments, whichever is later.
- 2) Permit the State, federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

8. Obligations of the Jurisdiction with Respect to Certain Third Party Relationships

The Jurisdiction shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Activities funded under this agreement with respect to which assistance is being provided under this Agreement to the Jurisdiction.

The Jurisdiction shall comply with all lawful requirements of the Department necessary to ensure that the Program, with respect to which assistance is being provided under this Agreement to the Jurisdiction, is carried out in accordance with the Department's Assurance and Certifications, including those with respect

to the assumption of environmental responsibilities of the Department under Section 104(g) of the Housing and Community Development Act of 1974.

9. Periodic Reporting Requirements

During the term of this Agreement, the Jurisdiction must submit the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. The Jurisdiction's performance under this Agreement will be based, in part, on whether it has submitted the reports on a timely basis.

- A. Semi-Annual PI Expenditure/Performance Report: Submit by January 31 and July 31 of each year regardless of whether or not the Jurisdiction has any unexpended PI. PI Waivers or open Grants with no accomplishment are not excluded to the reporting requirement.
- B. Annual Federal Overlay Reporting: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State Fiscal Year. Annual Reporting includes but is not limited to: Section 3, and Minority Owned Business/Women Owned Business (MBE/WBE).
- C. Wage Compliance Reports: Semi-annual Wage Compliance Reports are to be submitted by October 7 and April 7 during the entire construction period. The final Wage Compliance Report is to be submitted thirty (30) days after construction is completed.
- D. Any other reports that may be required as a Special Condition of this Agreement.

10. Monitoring Requirements

The Department shall perform a program and/or fiscal monitoring of the activity(ies). The Jurisdiction shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. If findings are not adequately resolved in a timely manner, the Department may deduct points from the Jurisdiction's performance score on future applications.

Additionally, the Department reserve the right to suspend a Jurisdiction's authority to expend PI (Waiver, RLF and/or PI attached to an open grant) based on significant compliance issues, reporting concerns or serious lack of cooperation in clearing PI monitoring findings.

11. Signs

If the Jurisdiction places signs stating that the Department is providing financing, it shall indicate in a typeface and size commensurate with the Department's

funding portion of the project that the Department is a source of financing through the CDBG Program.

12. Audit/Retention and Inspection of Records

- A. The Jurisdiction must have intact, auditable fiscal records at all times. If the Jurisdiction is found to have missing audit reports from the SCO during the term of this Agreement, the Jurisdiction will be required to submit a Agreement to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Jurisdiction will be subject to termination of this Agreement and disencumbrance of the funds awarded. The Jurisdiction's audit completion Agreement is subject to prior review and approval by the Department.
- B. The Jurisdiction agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Jurisdiction agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. The Jurisdiction further agrees to maintain such records for a period of five (5) years after final payment under this Agreement. The Jurisdiction shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.
- C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Jurisdiction.
- D. Absent fraud or mistake on the part of the Department, the determination by the Department of allowable expenditures shall be final.
- E. For the purposes of annual audits under OMB Circular A-133 (The United States Office of Management and Budget Circular for Audits of States and Local Governments), Jurisdiction shall use the Federal Catalog Number 14.228 for the State CDBG Program.
- F. Notwithstanding the foregoing, the Department will not reimburse the Jurisdiction for any audit cost incurred after the expenditure deadline of this Agreement.

- G. The Jurisdiction understands that the expenditure of PI is covered under the OMB A-133 Single Audit Requirements and will meet all these requirements and report said PI Expenditure along with grant funds each fiscal year.

13. Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials

Pursuant to 24 CFR 570.611, no member, officer, or employee of the Jurisdiction, or its designees or agents, no member of the Governing Body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. The Jurisdiction shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this Section.

14. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Jurisdiction of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

15. Litigation

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent Jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Jurisdiction shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

16. Lead-Based Paint Hazards

Activity(ies) performed with assistance provided under this Agreement are subject to lead-based paint hazard regulations contained in Title 8 (Industrial Relations) and Title 17 (Public Health) of the CCR and 24 CFR, Part 35 (Lead Disclosure). Any grants or loans made by the Jurisdiction with assistance provided under this Agreement shall be made subject to the provisions for the elimination or mitigation of lead-based paint hazards under these Regulations. The Jurisdiction shall be responsible for the notifications, inspections, and clearance certifications required under these Regulations.

17. Prevailing Wages

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Jurisdiction shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- B. For the purposes of this requirement “construction work” includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the “construction contract”). Where the construction contract will be between the Jurisdiction and a licensed building contractor, the Jurisdiction shall serve as the “awarding body” as that term is defined in the LC. Where the Jurisdiction will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the “awarding body.” Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

18. Compliance with State and Federal Laws and Regulations

- A. The Jurisdiction agrees to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Jurisdiction, its subcontractors, contractors or subcontractors, and the Reuse activity(ies), and any other State provisions as set forth in this Agreement.
- B. The Jurisdiction agrees to comply with all federal laws and regulations applicable to the CDBG Program and to the activity(ies), and with any other federal provisions as set forth in this Agreement.

19. Anti-Lobbying Certification

The Jurisdiction shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this activity(ies) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

"The undersigned certifies, to the best of his or her knowledge or belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and,
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions."

20. Bonus or Commission, Prohibition Against Payments of

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- A. Obtaining the Department's approval of the Application for such assistance; or,
- B. The Department's approval of the Applications for additional assistance; or,
- C. Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of

1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

21. Citizen Participation

The Jurisdiction is subject to the requirements concerning citizen participation contained in Federal Regulations at 24 CFR, Part 570.486, Local Government Requirements, Part 91.105 and 91.115.

22. Clean Air and Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR, Part 15, as amended from time to time.

23. Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same. The Jurisdiction shall report all perceived or actual conflicts of interest cases to the State for review before financial benefits are given.

24. Environmental Requirements

The Jurisdiction shall comply with the provisions of the National Environmental Policy Act (NEPA) by following the procedures contained in 24 CFR, Part 58. The Jurisdiction shall not undertake any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives under 24 CFR, Part 58.22 until HUD or the Department has issued an environmental clearance.

25. Equal Opportunity

A. The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances

During the performance of this agreement, the Jurisdiction assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status, or religious preference, under any activity funded by this Agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the

Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

B. Rehabilitation Act of 1973 and the "504 Coordinator"

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

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

- 1) The activity(ies) to be performed under this Agreement are subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 U.S.C. 1701u. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in 24 CFR, Part 135.34(a)(2).
- 2) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- 3) The Jurisdiction will include these Section 3 clauses in every contract and subcontract for Work in connection with the activity(ies) and will, at the direction of the Department, take appropriate action pursuant to the contract or subcontract upon a finding that the Jurisdiction or any contractor or subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR, Part 135 and, will not let any contract unless the Jurisdiction or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- 4) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the activity(ies), binding upon the Jurisdiction, its successors, and assigns. Failure to fulfill these requirements shall

subject the Jurisdiction, its contractors and subcontractors and its successors, to such sanctions as are specified by 24 CFR, Part 135 and those sanctions specified by this Agreement.

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

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

26. Flood Disaster Protection

- A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3 (a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to FDPA, Section 102(d) of said Act.
- B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said Act.
- C. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

27. **Federal Labor Standards Provisions**

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

- A. Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- B. "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) prohibits any person from (1) providing, attempting to provide, or offering to provide any kickback; (2) soliciting, accepting, or attempting to accept any kickback; or (3) including directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.
- C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that workers receive "overtime" compensation at a rate of one to one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.
- D. Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1, 3 and 5) are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

The Jurisdiction shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

28. **Procurement**

The Jurisdiction shall comply with the procurement provisions in 24 CFR, Part 85.36: Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

29. **Non-Performance**

The Department shall review the actual National Objective and/or Public Benefit achievements of the Jurisdiction. In the event that the National Objective and/or Public Benefit requirements are not met, the Department will require the recapture of the entire PI expended on that project/activity. Additional remedies

may include suspending the Jurisdiction's authority to use PI funds until the Jurisdiction has developed capacity to ensure future PI funds will be used for eligible activities that will meet a National Objective.

30. Relocation, Displacement, and Acquisition

The provisions of the Uniform Relocation Act, as amended, 49 CFR, Part 24, and Section 104(d) of the Housing and Community Development Act of 1974 shall be followed where any acquisition of real property is carried out by the Jurisdiction and assisted in whole or in part by funds allocated by CDBG.

31. Uniform Administrative Requirements

The Jurisdiction shall comply with applicable Uniform Administrative Requirements as described in 24 CFR, Section 570.502, including cited Sections of 24 CFR, Part 85.

32. Section 3

The Jurisdiction will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing Regulations at 24 CFR, Part 135.

33. Affirmatively Furthering Fair Housing

The Jurisdiction will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the Jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

34. General Contract Conditions

The following conditions apply to all activities, including set aside activities. The Jurisdiction must meet the conditions within ninety (90) days of this Agreement's execution. Failure to meet the following Special Conditions may result in termination of this Agreement.

A. Environmental Compliance

The Jurisdiction shall have satisfied all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements. CEQA shall be approved by the Jurisdiction. The level of compliance varies by activity. NEPA review must be completed by the Jurisdiction for each activity and approved in writing by Department staff prior to incurring costs on the activity(ies).

B. Acquisition/Relocation Compliance

The Jurisdiction must document its compliance with the Uniform Relocation Act, Section 104(d) before release of funds by the Department. The Jurisdiction must submit a specific relocation assistance Agreement for each activity which may result in temporary or permanent displacement. For projects where there will be temporary or permanent displacement, the Jurisdiction must submit signed General Information Notices (GINs) from each tenant who was residing in the project at the time of Application submittal. If the Jurisdiction believes that there will be no displacement as a result of their activities, they must submit a letter explaining why no displacement or relocation will occur, which will be subject to written approval by the Department.

C. Site Control

The Jurisdiction shall demonstrate site control of the proposed project property by submitting evidence of one or more of the following to the Department:

- 1) Fee title;
- 2) A leasehold interest on the project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with all Program requirements;
- 3) An option to purchase or lease;
- 4) A disposition and development agreement with a public agency;
- 5) A land sale contract, or other enforceable agreement for the acquisition of the property; or,
- 6) All easements and right-of-ways (required for completion of the CDBG project) must be obtained.

D. Funding Commitments and Project Cost Estimates

All funding required for project completion must be documented and committed. If all funding is not committed, the Department shall terminate this Agreement. If the Jurisdiction has applied for other funding prior to the execution of this Agreement, the Jurisdiction must notify the Department as soon as that application is approved or denied. If the Jurisdiction must apply for other funding after the execution date of this Agreement, the Jurisdiction must apply at the earliest possible opportunity offered by the

other funding source(s) and notify the Department as soon as that application is approved or denied.

A current third-party cost estimate must be provided by the engineer or architect for the project.

E. Activity Administration Documentation

There are four methods of administering and/or completing RLF activities:

- 1) Use of in-house staff only;
- 2) Subrecipient agreement(s) with qualified non-profit(s);
- 3) Consultants/contractors/others obtained through federal procurement procedures; and,
- 4) Any combination of the above methods.

The Jurisdiction must provide the following documentation demonstrating that one or more of these methods were used for the GA of the RLF and for all activities carried out under this Agreement.

- 1) Use of in-house staff only: If not previously provided in the Application, submit staff resumes and duty statements that clearly identify that Jurisdiction staff has capacity and experience to complete administration of the proposed activities in the Application.
- 2) Subrecipient agreement(s) with qualified non-profit(s): Subrecipients and their respective agreements with the Jurisdiction must adhere to all Program requirements. Submit the subrecipient agreement that was executed between the non-profit and the Jurisdiction. (Submitting draft documents for review prior to execution is recommended.) The scope of work in the subrecipient agreement must match the description of activity in this Agreement. Any parts of the activity description in this Agreement not covered by the subrecipient agreement must have separate procurement information. If the subrecipient is using CDBG funds to hire other consultants or subrecipients to do part or all of the Work then the procurement documentation or additional subrecipient agreements must be provided to the Department for review and approval.
- 3) Consultants: Submit procurement documentation that all third-party consultants are procured in accordance with Federal Procurement Procedures and the Grant Management Manual, as follows:

- a. A copy of the document used to notify prospective consultants, such as a Request for Proposal or similar document.
- b. A list of all bid respondents, showing respondents' contact information and the dollar amount of each proposal.
- c. A brief description of the process used to select the consultant/ contractor/other, including the rationale for the selection.
- d. Additional information may be found in the Grant Management Manual, Program Operators.

F. Compliance With All Loans and/or Grant Agreements

Pursuant to this Agreement, the Jurisdiction must comply with State and Federal Laws and Regulations that pertain to matters applicable to the Jurisdiction. Prior to disbursement of any funds under this Agreement, the Jurisdiction shall be in compliance with all loan and/or grant agreements to which it is a party, which are administered by the Department.

G. Easements and Rights-of-Way

If required for the completion of a CDBG project, the Jurisdiction must obtain all easements and rights-of-ways required for completion of the CDBG project within twelve (12) months of execution of this Agreement. Failure to obtain these may result in termination of this Agreement.

H. Section 504 Accessibility Requirements

- 1) Section 504 Regulations apply when CDBG funds are used on a new construction housing or public facility project or when an existing public facility or housing project with fifteen (15) or more units is being purchased and/or "substantially" rehabilitated. Qualified CDBG assisted housing projects are required to have a certain percentage of the units designed for and accessible to persons with mobility and sensory impairments.
- 2) For a federally assisted new construction housing project, Section 504 requires five percent (5%) of the dwelling units, or at least one unit, whichever is greater, to meet Uniform Federal Accessibility Standards or a standard that is equivalent or stricter, for persons with mobility disabilities. An additional two percent (2%) of the dwelling units, or at least one unit, whichever is greater, must be accessible for persons with hearing or visual disabilities.

- 3) Under Section 504, alterations are substantial (i.e. substantially rehabilitated) if they are undertaken to a housing project that has 15 or more units and the cost of the alterations is seventy-five percent (75%) or more of the replacement cost of the completed facility; and require that a minimum of five percent (5%) of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with mobility disabilities and an additional two percent (2%) of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with hearing or visual disabilities.
- 4) The Jurisdiction shall provide documentation satisfactory to the Department verifying that the required housing units or public facility described in the project comply with the accessibility standards. CDBG funds will not be released until the necessary documentation is provided. All CDBG funded programs must, to the greatest degree possible, be conducted in buildings which meet Section 504 accessibility standards.

I. Grantee's Data Universal Numbering System (DUNS)

The Jurisdiction shall provide the Department with a DUNS number for any contractor or subcontractor prior to release of any funds under this Agreement.

35. Community Development Activity Conditions

A. Homeownership Assistance

If the Work to be performed under this Agreement involves Homeownership Assistance, the following additional special conditions apply:

- 1) Program Guidelines: The Jurisdiction must submit a copy of its Homeownership Assistance Program Guidelines and its PI Re-Use Agreement to the Department for review and approval within ninety (90) days of the execution date of this Agreement.
- 2) If the Jurisdiction proposed to assist homebuyers to purchase newly constructed units in its CDBG application under the Homeownership Assistance activity, the following requirements must be met:
 - a) The units must have been available for sale to the general public;

- b) Development of the new subdivision must not be dependent upon the funding of the homebuyer loan;
- c) CDBG funds shall not be used for construction; and,
- d) Homeownership Assistance loans will not be approved prior to the foundation of the housing being in place.

B. Housing Rehabilitation

If the Work to be performed under this Agreement involves Housing Rehabilitation, the following additional special conditions apply:

- 1) Program Guidelines: The Jurisdiction must submit a copy of its Housing Rehabilitation Program Guidelines and its PI Re-Use Agreement to the Department for review and approval.
- 2) Affordable Rent: If the Jurisdiction's Housing Rehabilitation Program provides for rehabilitating rental properties, the Jurisdiction must submit to the Department its provisions for assuring affordable rent for the LMI occupants. Jurisdiction may include this information as part of the Housing Rehabilitation Program Guidelines.

36. Economic Development Activity-Specific Conditions

A. Restrictions on CDBG-Assisted Public Property

CDBG funds can be used by the Jurisdiction to purchase or rehabilitate public property. The change of use of real property provisions contained in 24 CFR 570.489(i) apply to real property within the unit of general local government's control (including activities undertaken by subrecipients), which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (currently \$100,000). The restrictions shall apply from the date CDBG funds are first expended for the property until five (5) years after completion of the project. See the Federal Regulations for the full text of this regulation. The Jurisdiction must provide documentation of proper restriction on assisted property.

B. Business Assistance Activity

- 1) Jurisdictions implementing Business Assistance (BA) Loans, shall submit program guidelines that ensure compliance with CDBG underwriting requirements as described in 24 CFR 570, Appendix

A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements" and with public benefit requirements contained in 24 CFR 570.482(f).

- 2) Jurisdictions implementing a BA loan shall provide a written Employment Agreement required to be executed between the Jurisdiction and the business owner [requirements of the Employment Agreement are described in 24 CFR 570.506 (b), (5), and (6)]. The written Employment Agreement must include a commitment by the business that the jobs are to be created or retained by the termination date of this Agreement and that at least fifty-one percent (51%) of all jobs created or retained (on a FTE basis) will be held by LMI persons. The Employment Agreement shall specify that, prior to receiving assistance, the business shall agree to:
 - a) Provide a listing, by job title, of the permanent jobs projected to be created;
 - b) Identify which jobs, if any, are part-time and the annual hours of work for each position;
 - c) Identify which jobs are projected to be filled by LMI; and,
 - d) Provide periodic reporting (semi-annual) not limited to: listing jobs, by job title, of all the permanent jobs actually filled, and which of those jobs are held by members of the LMI.

C. Microenterprise Assistance Activities

- 1) Jurisdictions implementing a Microenterprise Assistance activity for technical assistance and/or microenterprise loans, shall submit program guidelines that ensure compliance with CDBG requirements. Specifically, guidelines must ensure that all beneficiaries of the program are eligible micro enterprises, per HUD definitions. A microenterprise must:
 - a) Have all owners of the business documented as meeting HUD family income eligibility standards; and,
 - b) Have documentation that the business's owners and employees are five (5) or fewer in number.
- 2) When implementing a Microenterprise Program, the program guidelines shall include the proposed benefits, eligible activities and ongoing evaluation of program services. The guidelines will include

a Beneficiary Tracking Agreement, which defines the goals; identifies the roles and responsibilities of the service providers; identifies the market and focuses the outreach; defines the screening and referral process; and, tracks the beneficiaries through the program's level of service. The Beneficiary Tracking Agreement shall also describe the roles and responsibilities of the Jurisdiction and/or program operator for meeting the reporting requirements of the State CDBG Program.

- 3) When implementing a Microenterprise Program that is part of an integrally-related component of a larger project where non-LMI persons will be extended training and supportive services, shall submit guidelines including the methodology describing how CDBG funds will only be used towards the assistance of LMI to LMI persons under the Jurisdiction's activity.
- 4) Jurisdictions implementing a Microenterprise activity for loans to microenterprises made with Grant funds or PI funds, shall submit guidelines that ensure compliance with CDBG underwriting requirements as described in 24 CFR, Part 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements."
- 5) If under this Agreement, a Microenterprise Façade Improvement activity is being implemented, the Jurisdiction shall submit program guidelines that ensure compliance with CDBG National Objective requirements, as described in 24 CFR 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements."

D. Required Agreements for Assisted Businesses

The Jurisdiction shall execute a written agreement between the Jurisdiction and the business receiving CDBG funds (loans or grants) under this Agreement to ensure compliance with CDBG State and federal regulations. The written agreement shall contain language to ensure each business complies with the terms of this Agreement, Exhibit A, as well as each of the criteria as set forth in 24 CFR 570.506 (b)(4) and (c).

- 1) Each agreement between the Jurisdiction and the business(es) shall be submitted to the Department for review and written approval, prior to execution by the business and the Jurisdiction.
- 2) Each agreement shall require the business to report employee information periodically to the Jurisdiction, so that the Jurisdiction can comply with its reporting requirements to the Department. The

report shall list each job position by job title and number of annual hours worked and LMI status. The report shall list all the permanent jobs actually created or retained, and identify which of those job positions are held by members of the LMI. Additionally, the report shall include the demographics of job holders (ethnicity/race, disability, status, gender, and head of household status).

- 3) Each agreement shall require the business(es) submit a Data Universal Numbering System (DUNS) number and be verified as not being on the current federal debarred list, prior to receiving any CDBG financial assistance. The agreement shall require proof of proper insurance for secured collateral and protecting the Jurisdiction. The agreement shall reference this Agreement between the Department and the Jurisdiction. The agreement shall contain all other special conditions as directed by the Department or local loan committee.

37. Community and Economic Development Agreement Activities

Non Implementation Activities and Planning activities are not allowed under this agreement using PI.

A. Implementation Activity

Implementation Activities are not permitted under this Agreement using PI GA funds.

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Certified Approving Resolution Is Attached

I certify that the foregoing is true and correct and the will follow all requirements of this agreement. I understand that my certification also acknowledges that serious compliance issue with the above requirements could result in the State suspending the authority of the to expend PI or may require the State until the to return unused PI to clears the serious compliance issues.

Signature of Authorized Representative

Date Signed

Name and Title of Authorized Representative

Signature of CDBG Section Chief

Date Signed

Name of CDBG Section Chief