

STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev. 4/2020)

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 44 PAGES

AGREEMENT NUMBER

16-NDR-11291

AMENDMENT NUMBER

3

Purchasing Authority Number

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR NAME

County of Tuolumne

2. The term of this Agreement is:

START DATE

05/09/2017

THROUGH END DATE

02/29/2024

3. The maximum amount of this Agreement after this Amendment is:

\$25,811,125

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

The term of this agreement is hereby changed from May 29, 2017 through September 30, 2023 to May 29, 2017 to February 29, 2024 Exhibit(s) A, B & D shall be replaced in its entirety by the new exhibit(s) A, B & D- Amendment #3

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

County of Tuolumne

CONTRACTOR BUSINESS ADDRESS

2 South Green Street

CITY

Sonora

STATE

CA

ZIP

95370

PRINTED NAME OF PERSON SIGNING

CONTRACTOR AUTHORIZED SIGNATURE

TITLE

DATE SIGNED

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTING AGENCY ADDRESS

2020 W El Camino Ave

CITY

Sacramento

STATE

CA

ZIP

95833

PRINTED NAME OF PERSON SIGNING

Crystal Alvarez

CONTRACTING AGENCY AUTHORIZED SIGNATURE

TITLE

Contract Services Section Manager

DATE SIGNED

9/19/2023

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Exempt per; SCM Vol. 1 4.04.A.3 (DGS memo dated 06/12/1981)

APPROVED AS TO LEGAL FORM:

COUNTY COUNSEL
COUNTY OF TUOLUMNE

CHRISTOPHER J. SCHMIDT

DATE

EXHIBIT A

RECITALS, AUTHORITY, PURPOSE AND SCOPE OF WORK

RECITALS

On June 22, 2015, U. S. Department of Housing and Urban Development ("HUD") Secretary Julián Castro invited California and 39 other states and communities to compete in the second and final phase of the National Disaster Resilience Competition ("NDRC"). These finalists, representing areas that experienced a presidentially declared major disaster in 2011, 2012, and/or 2013, competed for a portion of almost \$1 billion in funding for disaster recovery and long-term community resilience.

The CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT ("HCD" or "Department") submitted an NDRC application to HUD on behalf of the State of California. This application included three (3) activities to address unmet recovery needs related to the December 13, 2013 presidentially declared disaster known as the California Rim Fire ("DR-4158") that occurred in Tuolumne County. In response to the NDRC NOFA (defined below), HCD, in conjunction with other partners, developed a program known as The Community and Watershed Resilience Program ("State Program" or "Program"). The Program has three (3) separate activities located in Tuolumne County that are interconnected. Development of the Program and associated activities requires HCD to continue working with partners identified in the NDRC application approved by HUD.

Funding for the competition is from the Community Development Block Grant-National Disaster Resilience ("CDBG-NDR") appropriation provided by the Disaster Relief Appropriations Act, 2013 (PL 113-2), which made emergency funds available for Hurricane Sandy and other Presidentially-declared disasters occurring in 2011-2013. The competition focused states' and local jurisdictions' efforts to prepare their communities for the impacts of climate change and to support investments in more resilient infrastructure. HCD's NDRC application requested \$117,000,000 for the three (3) projects activities and HUD awarded \$70,359,459 on January 21, 2016. The HUD award included approximately \$19,755,000 for the development and implementation of a Community Resilience Center ("CRC") to be carried out by Tuolumne County, \$22,000,000 for a proposed Biomass Utilization Fund ("BUF") project(s) with the development and initial implementation to be coordinated by Sierra Nevada Conservancy ("SNC") and administered by Rural Community Assistance Corporation ("RCAC"), and \$28,604,459 for the Forest and Watershed Health Program ("FWHP") implementation to be administered by the United States Forest Service ("USFS") and coordinated by SNC. General administration funding not to exceed five (5) percent of the total award will be allocated from within each awarded activity budget.

HUD announced the NDRC funding in a Notice of Funding Availability ("NOFA") publication, attached in Exhibit E (Funding Opportunity Number: FR-5800-N-29, Opportunity Title: National Disaster Resilience Competition).

The NDRC is a response to requests for funding from states and local communities to address the unmet recovery needs from past presidentially declared disasters while improving their ability to withstand future environmental shocks and stresses through strategic community resilience investments.

HUD has awarded NDRC funds for innovative approaches that address unmet recovery needs from past disasters while also addressing the vulnerabilities that could put Americans in harm's way during future disasters. The competition encouraged communities to consider how they can recover from a past disaster and how to avoid and mitigate future disaster losses.

Applicants (i.e., the State of California) had to link or "tie-back" their proposals to the disaster from which

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they are recovering, as well as demonstrate how they are reducing future risks and advancing broader community development goals within their target geographic area(s).

1. NDRC Competition Objectives

The Competition sought to meet the following six objectives:

- A. Fairly and effectively, allocate \$1 billion in CDBG-NDR funds.
- B. Create multiple examples of modern disaster recovery that apply science-based and forward-looking risk analysis to address recovery, resilience, and revitalization needs.
- C. Leave a legacy of institutionalizing, in as many states and local jurisdictions as possible, the implementation of thoughtful, sound, and resilient approaches to addressing future risks.
- D. Provide resources to help communities plan and implement disaster recovery that makes them more resilient to future extreme weather events or other shocks, while also improving quality of life for existing residents.
- E. Fully engage community stakeholders to inform them about the impacts of climate change and develop pathways to resilience based on sound science.
- F. Leverage investments from the philanthropic community to help communities define problems, set policy goals, explore options, and craft solutions to inform their own local and regional resilient recovery strategies.

The aforementioned objectives are memorialized so all parties to this Agreement, and those involved with carrying out this Agreement, better understand the purpose of the NDRC funds and fully implement the intent of the NDRC.

The NDRC NOFA included a definition of Partner which means a state, a unit of local government, a nonprofit entity, a private developer, a financial institution, or other entity chosen by the applicant to assist the applicant in applying for funding or in carrying out a funding award or project under this NOFA, and which submits a letter of intent and signs a partnership agreement to assist in that capacity, and which may be referenced by the applicant for purposes of demonstrating additional capacity for planning, design, financing, or implementation in applying for funding under the NOFA.

As part of the NDRC application, HCD provided executed partnership letters of intent and agreements, signed by the executive of the Partner entity, demonstrating a commitment to work collaboratively throughout the entirety of the grant application and implementation process and to undertake specified actions (see Exhibit F for copy of partnership agreements of those entities receiving NDR funding for completion of project activities under this Agreement). HCD has one formal partnership for the CRC project(s) with the County of Tuolumne. HCD has four (4) separate formal partnership agreements for the FWHP with: 1) SNC; 2) USFS, and 3) California Department of Forestry and Fire Protection ("CAL FIRE") and 4) California Conservation Corps ("CCC"). HCD has one partnership agreement for the BUF project with SNC. HCD completed a selection process for a Community Based Development Organization (CBDO), selected RCAC,

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and entered into a subrecipient agreement. HCD entered into a number of other partnerships with other state agencies but those agencies will not be a party to the HCD NDR agreements. These less formal partnerships with Governor's Office of Planning and Research ("OPR") and California Environmental Protection Agency ("CalEPA") continue to participate with other partners via the "Core Team." The Core Team is composed of HCD, SNC, USFS, and County of Tuolumne, CAL FIRE, RCAC and others as needed, representatives of OPR, CalEPA or other Partners. The Core Team oversees HCD administration and Partner's coordination of project development to ensure the Program becomes operational, scalable and replicable.

This Agreement supplements the partnership agreement with County of Tuolumne after the HUD award of funding. This Agreement will ensure all the financial and performance requirements related to NDR project development and implementation are met. The Agreement must be executed before any CDBG-NDR project implementation. Per Federal Register Notice FR-5936-N-01, Section V.A.1.g. (v), this Agreement and other associated partnership agreements require parties to comply with CDBG-NDR requirements, including requirements found in the Disaster Relief Appropriations Act, 2013 PL 113-2, Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5302, et seq.), the CDBG program federal regulations at 24 CFR part 570, Federal Register Notice FR-59-N-01 and any other applicable Federal Register Notices, and commitments made in HCD's Phase 1 and Phase 2 NDRC applications.

As a condition of HCD, on behalf of the State of California, applying for CDBG-NDR funds, HCD made certain certifications, as shown in Exhibit F (Certifications), which involve a minimum:

- A. HCD and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG-NDR funds, certifying that such entities possess the legal authority to carry out the project activities, in accordance with all applicable HUD regulations and requirements.
- B. HCD and its Partners certifying that project activities to be administered with funds under the NDRC are consistent with HCD's application.

HCD and HUD have entered into a federal grant agreement for CDBG-NDR funding. Under that agreement, HCD is the sole entity that will have access to HUD's Line of Credit Control System ("LOCCS") through the Disaster Recovery Grant Reporting ("DRGR") system. HCD will use DRGR to draw down CDBG-NDR funding. Under PL113-2, HCD is legally and financially accountable for the use of all funds and may not delegate or contract to any other party any inherently governmental responsibilities related to the federal grant management of the funds, such as oversight, policy development, and financial management.

CDBG-NDR regulations and requirements impose specific funding restrictions (described in Exhibit D), which apply to HCD and to any partners under this Agreement and their subrecipients or contractors in conjunction with any NDRC project activities.

2. Use of Neighborhood Stabilization Program (NSP1) Funding:

The Department is currently operating a HUD NSP1 grant as authorized in the Unified NSP1 and NSP3 Notice published in the Federal Register on October 19, 2010. The NSP1 grant allows for funding of certain public facility projects in eligible target areas. The Groveland CRC project is in

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need of gap financing to allow for full development of that project. HCD has determined that NSP1 funding is appropriate for the Groveland CRC. Therefore, HCD has completed an NSP1 Action Plan Amendment to identify Groveland as an eligible target area. The additional NSP1 funding will be used to ensure the Groveland CRC project meets all the NDR requirements for providing ongoing public services for use as an emergency shelter, as well as meeting the required NPS1 objectives and service the required beneficiaries.

3. **California's Approach: The Community & Watershed Resilience Program (CWRP)**

The CWRP has three different but interrelated activities. The Program is designated to create partnerships and practices needed to support resilience in the communities and natural systems in California's upper watersheds, which provide sixty (60) percent of the developed water resources.

The following generally describes the project activities selected for funding for the CWRP:

A. Community Resilience Center (CRC) Projects Activities

The development and operation of two CRC facilities in Tuolumne County that will serve multiple purposes including year-round needed services, such as, education and job training facilities, commercial kitchen for local senior meals types of programs, and other local service programs. On a limited basis, the CRCs can serve as an evacuation center/emergency shelter, as well as an events, and first responder operations facility. CRC location selections and design process include robust public participation and feasibility analysis.

B. Biomass Utilization Fund (BUF) Projects Activities

The BUF activity was originally proposed in the NDRC application as one economic development project with multiple businesses sharing a campus facility. Based on the feasibility analysis completed in 2019, the activity changed to a scattered site economic development program. Regardless, the BUF is intended to provide options for clean disposal of un-merchantable biomass removed from the forest, clean power, and wood products facilities for repurposing any merchantable biomass. This is a two (2) phase development process, with the first phase including an area wide analysis of feedstock availability and costs, along with an overall economic development market and feasibility analysis of a number of different biomass businesses with a review of areas where sites can be located. The second phase includes selection of a BUF operator, RCAC. RCAC will solicit project proposals, conduct a detailed project specific feasibility analysis, and if feasible, facilitate build-out and operations of through the BUF. In addition, this activity can be expanded to include public facility projects that do not utilize biomass, but serve a similar purpose by utilizing alternative energy systems that meet the same renewable energy goals as the BUF activity proposed in the NDRC funding application.

C. Forest & Watershed Health Program (FWHP) Projects

This green infrastructure program includes restoration of forest, meadows, watersheds and rangelands within the Rim Fire burn area, as well as expansion of existing fuel breaks and the creation of one new fuel break. Given the uncertain future of drought, climate

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change and wildfire, FWHP activities are designed to improve forest and watershed health and resilience against further environmental disturbances.

The foregoing recitals are a part of this Agreement.

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1. Authority and Purpose

This Agreement provides official notification of the conditional reservation of funding made available by the federal Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013) ("Appropriations Act") and awarded under the National Disaster Resilience Competition as CDBG-NDR grants, Catalog of Federal Domestic Assistance number 14.272 – National Disaster Resilience Competition.

HCD, on behalf of the State of California, also administers the federal CDBG Program for non-entitlement jurisdictions ("CDBG" or "the Federal Program") 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 the California State CDBG Regulations, pursuant to 25 California Code of Regulations (CCR), Sections 7050 et seq. The Federal Program is listed in the Catalog of Federal Domestic Assistance as 14.228 - CDBG - Community Development Block Grant Program.

HCD oversees other federal funding allocated by Congress and administered by HUD on an as-needed basis. The Housing and Economic Recovery Act of 2008 allocated funds to the State to help address the impacts of the 2008 mortgage crisis. Authority for these funds, identified as Neighborhood Stabilization Program (NSP) funding was published in the October 19, 2010 Federal Register (Vol. 75, No. 201) under the Unified NSP1 and NSP3 Notice. The NSP funding is governed by the federal CDBG regulations at 24 CFR Part 570, with exceptions as detailed in the notice. The Department has met the performance criteria identified for NSP1 funding and has a small amount of the original NPS1 award unobligated, that must be used for NSP1 eligible activities. As per the NSP Action Plan Amendment, the Groveland CRC is an eligible activity and NSP1 funds may be committed exclusively to that project.

For many years, the Department has been successfully administering the federal CDBG Program for non-entitlement jurisdictions and has developed a boilerplate contract that it will use to make a CDBG-NDR award; this Agreement is built upon the aforementioned tried and tested boilerplate agreement for administering CDBG funds.

Hereinafter, CDBG-NDR refers to the CDBG National Disaster Resilience grant and all specific rules, regulations, policies and statutes related to CDBG and to specific CDBG-NDR funding. Hereinafter, NSP1 refers to the CDBG Neighborhood Stabilization Program 1 grant administered by HCD with all its specific rules, regulations, policies and statutes related to NSP1 funding.

In accepting this conditional reservation of CDBG-NDR and NSP1 funds by executing this Agreement, the Grantee agrees to comply with the terms and conditions of this Agreement, the representations contained in the CDBG-NDR application (the "Application") which contains the Grantee's letter of intent to be a partner and initial partnership Agreement (see Exhibit F) for this funding allocation, which is incorporated herein, by reference, and the requirements of the authorities cited above and any other terms and conditions imposed by HUD, HCD or the State of California.

2. Eligible Activities and Costs

Grantee shall only use funds under this Agreement for eligible CDBG-NDR activities and costs as authorized under existing Section 105(a) of Title I of the Housing and Community Development Act of 1974, as amended by the Appropriations Act as well as those specified in the

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NDRC NOFA, and awarded CDBG-NDR grants, and in compliance with other requirements or conditions which may be imposed by HUD, from time to time. The eligible activities under this Agreement are described below in Section 5.

Eligible costs are for General Administration (defined in Section 5.C. below), planning and project development activities under this Agreement, which must be in conformance with federal Office of Management and Budget ("OMB") regulations in 2 CFR Part 200, subpart E, as may be amended from time to time. No costs associated with operating any CRC public service is eligible under this current Agreement, as public service costs are associated and separate HUD eligible activities, as they are not included in this Agreement. The total amount of funds drawn by Grantee during the entire Agreement term must be for actual and reasonable costs incurred according to the United States Office of Management and Budget's Uniform Guidance (issued December 26, 2013). Grantee will maintain source documentation for all time, materials and services costs in grant administration files. Eligible costs are defined in HUD CPD Memo 13-07. Eligible planning costs are defined in 42 U.S.C. 5305(a) (12).

The OMB Uniform Guidance will supersede requirements from OMB Circulars A-87, A-133 and A-122. OMB Uniform Guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" is located at 2 CFR Chapter I, Chapter II, Part 200 et al. OMB Circular A-122, "Cost Principles for Non-Profit Organizations" is located at 2 CFR, Part 230.

If Grantee wishes to be reimbursed for indirect costs, then HCD must receive a copy of an indirect cost approval letter from the appropriate cognizant agency.

3. **Meeting CDBG National Objective**

General Administration activities and Planning Activities funded under this Agreement are assumed to meet a National Objective. Grantee must document all eligible staff time and materials used to conduct General Administration and Planning Activities funded under this Agreement, but does not need to document NSP1, or CDBG-NDR National Objective compliance with respect to General Administration and Planning Activities.

Project development costs expended by the Grantee as part of facilitating implementation of the activities under this Agreement will require documentation of eligible costs for the Work described in Section 5. However, per the NDRC application, and the NSP1 Action Plan Amendment, National Objective compliance is not achieved until the project activity is completed and residents living within the facility service area are receiving benefits from the facility. Therefore, for each project activity funded under this Agreement, the Grantee must document completion of the facility and full operation of public services and resources, including use as an emergency shelter/evacuation center. This documentation is required in order to comply with the National Objective requirement and to provide information on beneficiaries of the project. Beneficiaries must predominantly be residents of the County of Tuolumne, located in the facility's service area. See National Objective compliance under Exhibit D, Section 4, of this Agreement.

4. **Public Benefit Standards for Economic Development (ED)**

Any CRD funded pursuant to this Agreement will not support ED activities; therefore, ED public benefit requirements will not apply. However, each parcel of real property used for CRC development will have a five-year regulatory Use Restriction recorded on it for public benefit

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purposes. A five-year Use Restriction, as defined in Exhibit B, Section 1, is required to be on title of each property acquired by Grantee.

5. Scope of Work and Funding Sources with Amounts

A. The Grantee shall perform the funded activities described in the below Scope of Work (Work). These activities were included in the HCD's NDRC Application to HUD, which is on file with the Department of Housing and Community Development, Division of Financial Assistance, 2020 West El Camino Avenue, Suite 500, Sacramento, California, 95833, and which is incorporated herein by reference. All written materials or alterations submitted as addenda to the original Application and which are approved in writing by HUD are hereby incorporated as part of the Application. The Department reserves the right to require the Grantee to modify any or all parts of the Work in order to comply with CDBG-NDR requirements. HCD reserves the right to monitor all Work to be performed by the Grantee, its contractors, and subrecipients under this Agreement. Any proposed revision to the Work by the Grantee must be submitted in writing for review and approval by the Department and may require an amendment to this Agreement. Approval is not presumed and will not be formalized until provided by HCD in writing.

B. For the purposes of performing the Work, HCD agrees to reimburse Grantee up to the amounts identified below. HCD shall not be liable for any costs for Work in excess of these amounts, nor any unauthorized or ineligible costs.

C. The grant activity, as described in the Application, shall consist of:

- 1) General Administration. General Administration activities include Agreement file management, reporting, payment processing, audit/monitoring, grant closeout, and compliance with federal overlays not specific to any project activity, for example, citizen participation, fair housing, equal opportunity, etc. Grantee shall work closely with HCD staff and HCD's technical assistance consultant as part of implementing General Administration activities.

Grantee shall be responsible for producing and maintaining any reports and reviewing and processing all Funds Requests required for activities under this Agreement. Grantee shall establish and maintain adequate record keeping systems in accordance with all CDBG and OMB regulations cited in this Agreement. Grantee will use current HCD grant management software. Grantee will work with HCD's technical assistance consultant as part of carrying out the CDBG-NDR funded work. Grantee administration files shall allow for compliance monitoring by outside agencies, as well as for annual audit purposes.

- 2) Phase 1, Planning. Planning activities are completed. No further Phase 1 Planning Activities are in this Agreement.
- 3) Phase 2, Final Project Design and Construction. On November 19, 2019, HCD provided written approval to the Grantee for development of two CRC projects. Grantee shall develop one CRC in the unincorporated community of Tuolumne. Grantee shall develop one CRC in the unincorporated community of Groveland.

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HCD approval for two CRCs was based on securing HUD approval for use of NSP1 grant funds, specifically for development on the Groveland site.

HCD has released Phase 2 project funding for use on architectural final plans and specifications and for grant administration and labor standards consulting services. The Grantee has agreed to move forward with these consultant contracts for Phase 2 work. In addition, HCD is requiring Grantee to use NSP1 grant administration funding to hire a consultant to provide Groveland project development and regulatory compliance capacity. HCD will review and approve scopes of work developed by grantee for all consultants as part of assisting Grantee with federal procurement standards.

For CRC approved project(s), prior to HCD written release of funding for Phase 2 hard costs, the Grantee shall first document, to HCD's satisfaction, compliance with all items on the CRC General Conditions Checklist. Grantee will shall work with HCD and HCD's consultants in documenting compliance with all General Conditions for each project. HCD will provide a written release funding for Phase 2 project development costs after satisfactory Clearance documentation is provided.

Clearance of General Conditions is required for funding of project development costs including: acquisition of real property and construction. Furthermore, each CRC project will require a separate clearance and written release of funds for acquisition and construction. Therefore, prior to expending any funding on acquisition costs, Grantee shall submit executed General Conditions Checklist with supporting documents. HCD will review and if approved, provide a release of funds letter. This same release of funds process will take place for project construction funding on each CRC. Grantee will secure all CRC project properties either voluntary purchase or donation. Grantee shall obtain HCD approval on URA policies and procedures as well as documents used to conduct the acquisitions in order to ensure federal acquisition compliance. Clearance of General Conditions shall also be required prior to release bidding out each project's construction, onsite and offsite improvements. Per Section 25 of Exhibit D, the level of insurance required by the Grantee for each CRC project will be determined and included as one of the General Conditions. This process will ensure projects completion in accordance with the NDRC Application standards, as well as all CDBG-NDR and other applicable requirements and any requirements associated with NSP1 funding included in this Agreement. Grantee shall hire a third-party consultant to support NSP1 federal compliance work for the Groveland CRC project.

Grantee will work with all service providers to ensure that they are prepared to begin operations as of the CRC occupancy permit date. Grantee will develop detailed CRC operations and maintenance plans and identify, in writing, staff that will be assigned to manage and oversee CRC operations and tenant leases. Ninety (90) days prior to construction completion of each CRC, project service providers (Tenants) will sign formal leases or agreements for occupancy. Thirty (30) days after occupancy permit is issued, Tenants will complete necessary tenant improvements, install equipment and provide staff and supplies for the facility to begin full operations. After each CRC is fully operational, the Grantee shall begin

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monitoring long-term use of the CRC and document beneficiaries of services as required by the five (5) year CRC facility Use Restriction. Grantee acknowledges that in addition to the foregoing restriction relating to the provision of required services, the Use Restriction will include a covenant requiring Grantee to operate, fund, and maintain each facility as a CRC.

In addition to working with procured consultants associated with the project's development, Grantee and all procured consultants shall work with and be assisted by HCD staff and HCD's technical assistance consultant as part of implementing Phase 2 of the CRC project. Grantee is responsible for and shall ensure the completion of the Work in accordance with the criteria set forth above. HCD reserves the right to review and approve all performed or contracted Work when HCD monitors Grantee under this Agreement. Any proposed revisions to the Phase 2 Work that is not in conformance with the NDRC Application or HCD written Phase 1 approval, specifically the project final design standards, shall be submitted in writing for review and approval by HCD and the Core Team as described above, in their discretion. If HCD approves these revisions, HCD will generate a formal amendment and Grantee sign it. In the event that there are excess funds remaining in the budget after the completion of the approved CRC facility or facilities, all such excess funds shall be retained by or returned to HCD, as the case may be, so that HCD may reallocate such funds to other CDBG-NDR project activities, if HUD so approves.

6. Budget

CDBG-NDR funding for General Administration, Phase 1 Planning and Phase 2 project development costs for both Tuolumne and Groveland CRC facilities collectively cannot exceed \$19,261,125.

Matrix Code	Activity Description	National Objective	Activity Amount
21A	General Administration	None	\$493,875
20A	Planning and Feasibility	None	\$566,240
17C	Tuolumne and Groveland CRC Facilities	LMA	\$18,201,010
Total			\$19,261,125

NSP1 Funding General Administration and Phase 2 project development costs for only Groveland CRC facility cannot exceed \$6,550,000.

Matrix Code	Activity Description	National Objective	Activity Amount
21A	General Administration	None	\$250,000
17C	Groveland Public Facility	LMA	\$6,300,000

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Total	\$6,550,000
<u>Total Funding Under this Agreement</u>	<u>\$25,811,125</u>

7. **Budget Line Item Adjustments**

Line item adjustments made in accordance with the following:

- A. The Department may approve a request from the Grantee to reallocate funds between the authorized activities and itemized amounts stated in Section 6 of this Exhibit A, except that no additional grant funds moved into CDBG-NDR General Administration given the five percent (5%) cap on administration funding required by HUD and the Stanford Act. Furthermore, no NSP1 funding shall be moved from Groveland CRC into budget for Tuolumne CRC. Any changes in budget line items during the term of this Agreement will be made with the Department's prior written approval in its sole discretion.
- B. If HUD changes an activity matrix code(s) or if there is an error in recording the activity code, the HCD will inform the Grantee in writing and the correction shall not require an amendment to this Agreement.

8. **Other Funding Sources**

Grantee shall report on the value of other local and state funding contributions included as leverage-match for each CRC project via the Project Set-Up/Completion Report. The Project Set-Up/Completion Report is the report, which conveys the information needed to establish a project-specific account in the DRGR system. Grantee will enter data into HCD's web-based grant management software system, pursuant to instructions from HCD's technical advisory consultant. Grantee shall validate eligibility of match and leverage with HCD's CDBG-NDR technical assistance provider. The Project Set-up/Completion Report is used to convey any changes to the project-specific accounts and report the final project-specific information into DRGR.

9. **Term of Agreement, Period of Performance and Deadlines, Date of Completion**

The term of this Agreement shall commence on May 9, 2017 and shall end on ~~September 30, 2023~~ **February 29, 2024**, the date listed on the first page of this Agreement. With the exception of the Grant Closing Requirements set forth in Exhibit B, Section 6, the Grantee shall complete the project and General Administration activities by the deadlines set forth below.

Community Resilience Center (CRC):

- A. Two CRCs shall be completed and operational by: ~~06/30/2023~~ **10/31/2023**.
- B. ~~HUD federal expenditure date requires a~~ **HUD federal expenditure date requires a** All CRC construction funds to be invoiced by: ~~05/31/2023~~ **12/08/2023**.
- C. ~~HUD federal expenditure date requires All~~ **HUD federal expenditure date requires All** General Administration funds to be expended by: ~~08/30/2023~~ **12/30/2023**.

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D. Final Funds Request submitted 30 days after the expenditure date listed in above.

Performance measure requirements during the period of performance are provided in Exhibit B, Section 7. This Section also includes language relating to penalties for non-performance.

10. State Grant Manager

The State CDBG-NDR Grant Manager for this Agreement represents the Department and its Division of Financial Assistance. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be in writing and sent via first class mail to the State Contract Manager at the following address:

Grant Manager, CDBG-NDR
Division of Financial Assistance, Suite 200
Department of Housing and Community Development
P.O. Box 952054
Sacramento, California 94252-2054

11. Contract Administrator

The Grantee's Contract Administrator (must be a Grantee employee) for this Agreement is listed below. Unless otherwise informed, Grantee shall send any notice, report, or other communication required by this Agreement by first class mail to the following address:

Grantee:	County of Tuolumne
Contract Administrator:	Maureen Frank County Administrative Officer Administrative Office 2 South Green Street Sonora, CA 95370
Phone:	(209) 533-5511
Email:	mfrank@co.tuolumne.ca.us

EXHIBIT B

SET-UP/COMPLETION AND PAYMENT PROVISIONS

1. Definitions

- A. "Activity" includes, without limitation, the following HUD eligible activities as per the Act:
 - 1) Planning (Section 105(a))
 - 2) Public Facilities (Section 105(a)(2) and (5))
- B. "General Administration" refers to eligible administrative expenses as provided in Section 105(a)(13) of the Act [42 USC 5305(a)(12)].
- C. "Funds Disbursement" refers to the HCD Funds Request form, supporting documents and processes required to request the drawdown of CDBG-NDR funds.
- D. "CWRP or Program" means the Community and Watershed Resilience Program as outlined in Phase 1 and Phase 2 of the Application submitted by HCD on behalf of the State of California.
- E. "Use Restriction" means HCD approved regulatory agreement secured on each parcel of property used for CRC development. Grantee records Use Restriction on title at time of property acquisition in first lien position. Use Restriction will remain in effect for five years from the date of issuance of CRC occupancy permit. Use Restriction shall contain all regulatory requirements required by NDR and NSP1 federal funding as well as HCD required operational standards.
- F. "Project means the HUD approved, CDBG-NDR eligible activity carried out at an approved site with an approved scope of work.
- G. "General Conditions Checklist" means HCD form used to document each CRC project's compliance with federal and state regulations and requirements.
- H. "Default" means an omission or a failure to do that which is anticipated, expected, or required in a given situation. It is an intentional omission or nonperformance of a duty.
- I. "Project Set-Up" refers to the forms and processes required to reserve funds associated with specific Projects for CDBG-NDR funds in DRGR.
- J. "Project Completion" refers to the form and processes required to report a Project as "complete." Grantee must submit a Project Set-Up/Completion Report to the Department with, or prior to, the final disbursement request. For any activity that is not finished or completed, or does not meet a National Objective, or for which a Project Completion Report representing the full amount of funds drawn cannot be submitted in DRGR, all CDBG-NDR activity funds for the Project must be repaid to the Department.

Each Project or Program Activity must meet a National Objective, pursuant to 24 CFR 570.483 and CDBG-NDR regulations to be eligible. For CRC facility projects, each CRC must be fully occupied and providing services to local area residents to meet the HUD Low/Moderate- Income National Objective.

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2. General Conditions Clearance and Set-Up Requirements

Grantee shall submit the following for the Department's approval prior to Project Set-Up:

- A. The General Conditions Clearance Checklist ("Checklist") for each funded CRC shall be submitted on a form provided by the Department with all necessary supporting documentation. Each CRC shall have an executed Checklist submitted to HXD prior to real property acquisition and construction bidding. HCD shall provide a written release of funding on each time Grantee submits a completed Checklist that meets all requirements.
- B. Any other documents, certifications, or evidence deemed necessary by the Department prior to Project Set-Up.

3. Individual Project or Activity Set-Up/Completion Requirements

Grantee shall submit the following documentation to the Department:

- A. A Project Set-Up/Completion Report for each individual project after HCD provides written release of funds.
- B. All other documents, certification, or evidence deemed necessary by the Department as part of clearing general conditions for the ~~pr40ject~~ **project**, i.e., prior to Project Set-Up/Completion Report.
- C. The Grantee shall use HCD's Use Restriction to ensure long term public benefit for each CRC. The Use Restriction requires that each CRC facility be used in accordance with NDRC application standards, federal regulations and NSP1 requirements for a minimum of five (5) years. The form and content of the Use Restriction will be provided by HCD to Grantee for review and approval. Final HCD approved version will be used for recordation.
- D. A Project Set-Up/Completion Report for each individual CRC project will be submitted after full occupancy is achieved and required public services are in place.

4. Expenditure of Funds

A. General Administration

Costs for General Administration may neither be incurred nor funds expended until execution of this Agreement by the Department, unless the Grantee has received prior written approval from the Department. If such approval is desired before execution of this Agreement by the Department, the Grantee shall make the request for approval in writing, but the Grantee will expend these funds at its own risk.

B. Compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR 200

Funds will not be disbursed to Grantee if, at any time during the term of this Agreement, it is identified by the State Controller's Office ("SCO") as non-compliant with the Federal Single Audit Act, as described in 2 CFR 200.501, 505, and 511 and Uniform Administrative

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Requirements, until such compliance is demonstrated to the satisfaction of the Department.

C. Grant Administration

The Grantee shall administer this Agreement in accordance with the Uniform Administrative Requirements at 2 CFR Part 200. Grantee shall ensure and certify that all Grant Administration costs are eligible per Exhibit A, Section 2 of this Agreement. Grantee, in execution of this Agreement adopts all applicable parts of 2 CFR Part 200 for use in Grantee day to day federal funding administration and compliance.

Any funds disbursed under this Agreement which are deemed ineligible shall be repaid to HCD and HCD will repay funding to federal Treasury. NDR funds shall be returned to HCD in accordance with the current State CDBG DR/NDR Grant Administration Manual ("GAM"), see current version posted on HCD NDR webpage. NSP1 funds shall be returned per the remedies for noncompliance at 2 CFR 200.338.

5. Method of Payment

The Grantee shall submit all Funds Request forms, along with all required source documentation, to HCD via grant management software and specify State Grant Manager specified in Exhibit A, Section 10, or to any other address of which HCD has notified the Grantee. The Department shall not authorize payments to Grantee unless Department has determined the activity costs have been incurred, the represented work has been performed and completed, any lien releases are in place and the costs are eligible and in compliance with the terms of this Agreement.

At a minimum, Funds Requests will be at least \$1,000 and submitted on the current version of the Department's CDBG-NDR forms, final Funds Request can be less than \$1,000. Grantee shall use Reimbursement payments under this Agreement. Advance payments are only allowed upon HCD written approval, after advance payment system documentation is provided by Grantee.

A. Reimbursements

- 1) Grantee shall work with HCD's technical assistance consultant to set up accounting and recordkeeping systems for Grantee and other agencies involved in CDBG-NDR activity implementation to ensure documentation of all eligible costs is on file prior to submitting a Funds Request.
- 2) All CDBG-NDR Program Income ("PI") on deposit with Grantee must be expended first prior to requesting grant funds under this Agreement. HCD payment shall be made as progress payments for Work performed. Grantee shall request payment for Work completed on forms provided by the Department and subject to such documentation as the Department may require.
- 3) HCD payments for construction work shall be made at no more than ninety percent (90%) of construction invoiced amount, requiring a minimum ten percent (10%) retention amount, unless the payment is the final retention payment.

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- 4) The Department shall not authorize payments to Grantee unless HCD determines that the CDBG-NDR funds were expended in compliance with the terms and provisions of the CDBG-NDR NOFA, Federal Register Notice FR-5936-N-1, and this Agreement.

B. Advance Payments

Uniform Administrative Requirements, 2 CFR §200.3 defines an advance payment as a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

- 1) "Advance Payments" is defined as any requests for funds to pay for invoiced, completed and inspected work that has not yet been paid by the Grantee. Work that is not completed, regardless of Grantee payment status, is not eligible for Advance Payment.
- 2) Advance Payments for construction work shall be made at no more than ninety percent (90%) of invoiced amount, requiring a minimum ten percent (10%) retention amount, unless the payment is the final retention payment. Any Advance Payment request shall not be for more than the net amount (maximum of 90%); the invoice less the retention amount.
- 3) Grantee may only request advance of activity funds from this Agreement if they have adequately demonstrated the willingness and ability to minimize the time lapsing between the receipt of Department funds and the Grantee's disbursement [2 CFR §215.2 (b)(5)] and [24 CFR §570.489 (c)(1)].
- 4) Advance Payments may only cover invoices received for work that has actually been completed, inspected and approved for payment by the Grantee, and are limited to the amount necessary to pay for actual immediate cash needs, all of which must be documented prior to submitting an advance Funds Request. Advances will not be processed for work that has not been completed or invoiced. Grantees must have internal policies and procedures in place that sufficiently document when invoices are received, as well as when the invoiced work was completed and inspected.
- 5) Within two (2) business days of receipt of the State of California's warrant for the CDBG-NDR payment, the Grantee must place all advanced funds into an interest-bearing account, where the funds must remain until expended.
- 6) Grantees must pay all invoices identified in the Advance Payment request within five (5) business days of receipt of funds from the Department.
- 7) Interest earned on advanced funds, prior to expenditure, is not considered program income and must be returned to HCD each month.

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- 8) Grantees are required to complete and submit the reconciliation of each advance within 30 days of the date the warrant for the advanced funds was received. Grantees must complete the "Advance Reconciliation" section of Funds Request to include the date the warrant was received, details of the expenditures covered by the advanced funds, adequately identify the source and uses of all advanced funds and must identify any excess cash on hand. Unspent funds (i.e., excess cash on hand) shall be returned to the Department immediately. Any earned interest and any excess cash shall be returned to HCD with the Advance Reconciliation, no later than 30 days from the date Grantee receives the warrant. Note: Excess cash should rarely occur, since the advance request shall be based on actual invoices received for completed work already inspected by the Grantee.

Reconciliations are not completed until HCD has issued the Grantee a "reconciliation approved" copy of the Funds Request, which must be maintained in Grantee's program records.

- 9) Per the Uniform Administrative Requirements (2 CFR Part 200) standards for financial management systems, accounting records shall be supported by source documentation such as cancelled checks, invoices and demands, payrolls, time and attendance records, contract and sub-grant award documents, etc.
- 10) Grantee's development partners are required to maintain financial records and submit the financial reports sufficient to ensure that all grantees, sub-grantees and/or development partners comply with all recordkeeping and reporting requirements.

C. Timing Final Payment Requests

- 1) Grantees Final Reimbursement Request: Grantee shall submit a final Funds Request for reimbursement (no advance allowed) of final costs no later than thirty (30) calendar days after performance deadlines shown in Exhibit A, Section 9.
- 2) Return of Unexpended Funds: All funds received by the Grantee but not expended by the expenditure deadlines in Exhibit A, Section 9 of this Agreement must be accounted for and returned. Funds shall be returned to HCD in accordance with the current State CDBG DR/NDR Grant Administration Manual ("GAM"), see current version posted on HCD NDR webpage. All funds returned after an expenditure deadline or after Agreement expiration will be disencumbered.
- 3) All Funds Not Previously Requested: If the final payment request for activity costs expended during the term of this Agreement has not been received by the Department by the expenditure deadline in Exhibit A, Section 9, the Department shall disencumber any funds remaining and grant funds will no longer be available for payments to Grantee. Thus, time

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is of the essence with respect to Grantee's submittal of the final payment request.

6. Grant Closing Requirements

- A. Grantee shall work with HCD's technical assistance consultant, at HCD's direction, to ensure Grantee submits the following close-out documents prior to expiration of this Agreement.
- 1) Final Set-Up/Completion Report, received and approved by the Department;
 - 2) Closeout Certification Letter;
 - 3) Final Monthly Activity ~~Quarterly Performance and Expenditure~~ Report (QPER);
 - 4) ~~Final Annual Performance Report (APR);~~
 - 5) 4) Final Labor Standard Reports; and,
 - 6) 5) Evidence, satisfactory to the Department, of compliance with any other Special Conditions or compliance requirements of this Agreement.
 - 7) 6) Evidence of a properly noticed public hearing that was conducted in front of the governing body to notify the public of accomplishments funded by the grant.

7. Performance Measures and Penalties

- A. Per Federal Register Notice FR-5936-N-01, all agreements which are paid for with CDBG-NDR funding must have performance measures and penalties. If there are circumstances that arise where the performance measures cannot be met, then Grantee must work closely with HCD and HCD's technical assistance consultant to ensure both CRC facilities proceed to completion prior to expiration of this Agreement. The following performance measures apply to both proposed CRC facilities funded under this Agreement:
- 1) No later than three (3) months after execution of this Agreement, Grantee will execute agreements with three consultants for Phase 2 development: a professional architect, a labor standards coordinator and a NSP1 compliance coordinator. Grantee will work with HCD on procurement process to meet federal procurement standards.
 - 2) No later than Six (6) months after execution of this Agreement, Grantee will get HCD release of funding for completion of real property for two CRCs and take title to all required properties and record Use Restrictions.

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- 3) No later than Thirteen (13) months from execution of this Agreement, Grantee will procure all remaining consultants required to bid and construct two CRCs.
 - 4) No later than Ten (10) months from execution of this Agreement, Grantee shall have final plans and specifications completed and be ready to bid out two CRCs.
 - 5) No later than Thirteen (13) months from execution of the Agreement, Grantee shall have construction contracts in place for starting construction of two CRCs.
 - 6) Grantee will have two CRC projects completed with occupancy permits issued by ~~April 30, 2023~~ **October 31, 2023** with 30-day Notice of Completion filing, so a final Funds Request can be submitted to HCD for processing.
 - 7) Grantee will have two CRCs fully occupied and providing services, including use of facilities as emergency shelter by ~~June 30, 2023~~ **October 31, 2023, per Exhibit A, 9.A.**
 - 8) Grantee will ~~disburse~~ **expend** all funding by ~~May 31, 2023~~ **December 30, 2023**
- B. Penalties. If any CRC performance measures, which relate to any CRC projects funded under this Agreement, are not met, and are not due to delay by Department, as a penalty (within 30 days of being missed) Grantee shall submit to the Department a mitigation plan specifying the reason for the delay, the actions to be taken to complete the task that is the subject of the missed deadline, and the date by which the completion of said task will occur. The Department reserves the right to withhold further payments until such time as a satisfactory mitigation plan is approved. Furthermore, the Department shall reserve all rights and remedies available to it on account of a Default by Grantee under the terms of this Agreement.
- C. Grantee Requirement to Use Performance Measures and Penalties. Under Federal Register Notice FR-5936-N-01, all agreements which are paid for with CDBG-NDR funding must have performance measures and penalties. Grantee agrees to include performance measures and penalties in all contracts, agreements in which NDR funding are being used.

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1. Effective Date and Commencement of Work

This Agreement is effective upon approval by the Department.

- A. Grantee cannot incur any costs until the execution of this Agreement, unless prior written approval has been given by HCD.
- B. For certain project activities, HCD must receive the Authority to Use Grant Funds from HUD prior to the commitment and/or commencement of project work.
- C. A Grantee cannot be reimbursed for any project costs until the Department has issued written clearance of all general conditions and any special conditions required.

2. Sufficiency of Funds

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays, which would occur if this Agreement were executed after the determination was made.
- B. As noted in Section 38 below, this Agreement is valid and enforceable only if sufficient funds are available to the Department by the United States Government for the purposes of the CDBG-NDR Program. In the event there is a withdrawal of, or any limitation on, the Department's expenditure authority or any funding of the Program, the Department may elect to terminate this Agreement, in whole or in part, in its sole discretion and upon ten (10) days written note to Grantee. In addition, this Agreement is subject to any additional restrictions, limitations, conditions or statute enacted by the Congress or State Legislature, promulgated in State or federal regulations or any State or federal statute, as now in effect and as may be amended from time to time which may affect the provisions, terms, or funding of this Agreement in any manner.

3. Litigation

- A. If any provision of this Agreement, or any 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. Grantee 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.
- C. In the event that any legal or administrative claim or action ("Claim") is taken, filed, or asserted by or against any party to this Agreement, or any contractor or

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subcontractor thereof, or with respect to the NDR project(s), the Department may, in its sole and absolute discretion, and in addition to any other rights or remedies it may have hereunder, elect to either suspend or terminate this Agreement, in whole or in part, or to proceed forward under this Agreement. The Department shall have a period of ninety (90) days from its receipt of notice of a Claim to notify Grantee in writing of its decision to either suspend, terminate, or proceed forward. In the event the Department elects to terminate this Agreement, Grantee shall promptly submit its final Funds Request, together with those of its contractors and subcontractors, to the Department for processing, and upon payment thereof, the parties shall have no further rights or obligations under this Agreement, except for those rights and obligations which are expressly stated as surviving such a termination. Grantee shall ensure that all contracts or agreements with its contractors or subcontractors shall contain a provision similar to this section 4(C).

4. National Objectives

All grant project activities performed under this Agreement must be CDBG-NDR eligible, have eligible costs and be documented as meeting one of the National Objectives of the HUD regulations as included in the Application authorized by HUD. For the CRC project activities under this Agreement, HUD must provide a waiver before it will be considered eligible as a low-moderate income area benefit project. National Objective standards are found under Title I of the Housing and Community Development Act of 1974, Section 104(b)(3), as amended and 24 CFR Part 570.483. Waivers of National Objective Standards are published over the course of the CDBG-NDR Program. For the purposes of the NDR grant, General Administration and Planning Activities are assumed to meet a CDBG National Objective.

- A. Activity primarily benefits HUD defined low- or moderate-income ("LMI") person (family) or household. The term low- or moderate-income is defined as a family or household having an annual income of no more than 80% of the median area income on a county level, which is annually determined by HUD, per 24 CFR, Part 570.483(b); unless a formal waiver is provided in a CDBG-NDR federal register notice.
- B. Activity eliminates conditions of Slum or Blight (on a spot or area basis) is an eligible CDBG National Objective. Slum and Blight's definition is found in 24 CFR, Part 570.483(c). The use of Slum or Blight is not eligible under CDBG-NDR without prior Departmental written approval.
- C. Meeting an Urgent Need is an eligible CDBG National Objective under 24 CFR, Part 570.483(d). This National Objective was provided a waiver under Federal Register Notice FR-5936-N-01, Section V. A. 1. d. for activities using Urgent Need.

5. Public Benefit Standards for Special Economic Development (ED) Activities

Per 24 CFR 570.482(f), (g) and 570.483(b)(4), the Grantee is responsible for providing fulfillment of HUD required public benefit standards when activities under this agreement qualify as special ED activities. The NDRC NOFA and Federal Register Notice FR-5936-N-01 waives the public benefit subsidy standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or

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retain jobs when assisting for profit businesses (including, but not limited to, long-term loans, short-term loans, and grants for infrastructure projects). However, grantees shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. HUD is also waiving 570.482(g) and 570.209(c) and (d) to the extent these provisions are related to public benefit.

These special ED activities must also comply with CDBG's six (6) underwriting standards, per 24 CFR Part 570.482(e).

6. **Waivers**

No waiver or 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 Grantee 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.

7. **Uniform Administrative Requirements**

The Grantee, its contractors and subrecipients shall comply with the policies, guidelines and requirements of OMB Uniform guidance at 2 CFR 200 the Uniform Administrative Requirements, effective July 1, 2015.

8. **Non-Performance**

In the event that the National Objective requirements are not met due to any action or inaction of Grantee, the Department may, in its sole discretion, require reimbursement of part or all project funding disbursed to Grantee under this Agreement, whether before or after the date of non-compliance.

Prior to closing out this Agreement, the Department will review the actual National Objective and/or Public Benefit achievements of the project activities with Grantee.

9. **Affirmatively Furthering Fair Housing**

Per Federal Register Notice FR-5936-N-01, Section 3: V.C.1.b., all activities under this Agreement and under any and all associated agreements, shall be carried out in a manner that affirmatively furthers fair housing, as required by section 808 (e) (5) of the Fair Housing Act, as amended (42 U.S.C. 3608 (e) (5)).

10. **Equal Opportunity Requirements and Responsibilities**

Grantee and its contractors and subrecipients shall comply with all of the following:

- A. **Title VI of the Civil Rights Act of 1964:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination

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based on race, color, and/or national origin under any program or activity receiving federal financial assistance.

- B. Title VII of the Civil Rights Act of 1968 (The Fair Housing Act): This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing. Grantee will meet all civil rights related requirements pursuant to 24 CFR 570.503(b)(5).C. Restoration Act of 1987: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- D. Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- E. The Fair Housing Amendment Act of 1988: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- F. The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that the housing facilities must have one person who is 55 years of age or older living in at least 80% of its occupied units. The act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 or older.
- G. The Age Discrimination Act of 1975: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7.
- H. Section 504 of the Rehabilitation Act of 1973: It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multifamily dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.

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- I. Americans with Disabilities Act of 1990 (ADA): This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- J. Executive Order 11063: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- K. Executive Order 11259: This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- L. Equal Employment Opportunity Act: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
- M. Immigration Reform and Control Act (IRCA) of 1986: Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (19).
- N. Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.
- O. Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002): This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- P. Executive Order 11246: This executive order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

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11. Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance ("Section 3"):

The Grantee will comply with Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u), and implementing 24 CFR, Part 135. The responsibilities of the Grantee are outlined in 24 CFR Part 135.32 as follows:

- A. Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- B. Notifying potential contractors for Section 3 covered projects of the requirements of this part and incorporating the Section 3 clause set forth in Section 135.38 in all solicitations and contracts.
- C. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the appendix to this part, as appropriate, to reach the goals set forth in Section 135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in Section 135.30.
- D. Assisting and actively cooperating with HUD/HCD in obtaining the compliance of contractors and subcontractors with the requirements of this part and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR Part 135.
- E. Documenting actions taken to comply with the requirements of this part, the results of those actions taken and impediments, if any.
- F. If Grantee distributes funds for Section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in Section 135.30 regardless of the number of local governments receiving funds from the Section 3 covered assistance which meet the thresholds for applicability set forth at Section 135.30. The State must inform units of local government to whom funds are distributed of the requirements of this part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

12. Environmental Compliance

The Grantee shall work with HCD, HCD technical assistance consultant and any environmental compliance consultant/engineer, should one be procured, to ensure that all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements are met.

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13. Clean Air and Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 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.

14. 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 assistance is carried out by the Grantee and assisted in whole or in part by funds allocated by CDBG. For projects where there will be temporary or permanent displacement, the Grantee must submit signed General Information Notices from each tenant who was residing in the project at the time of Application submittal.

15. Compliance with State and Federal Laws and Regulations

- A. The Grantee, its contractors and subrecipients shall comply with the policies, guidelines and requirements of OMB Uniform guidance at 2 CFR 200 the Uniform Administrative Requirements, effective July 1, 2015, as well as all state laws, regulations and Department guidelines applicable to the activities set forth in this Agreement.
- B. Grantee agrees to comply with all state/federal laws and regulations applicable to the CDBG-NDR Program and to the grant activities, and with any other federal provisions as set forth in the Department's agreement with HUD.

16. Federal Labor Standards Provisions

Grantee and its contractors and subrecipients shall comply with all of the following:

- A. Davis Bacon Act (40 U.S.C. 31413148) 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. 5158) The act prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The act also provides that the inclusion of kickback amounts in contract prices is prohibited conduct in itself. This act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.
- 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 and one half (1 1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

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- 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.

17. State Labor Standards Provisions

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Grantee shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [California Labor Code Section 17201743] (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 Grantee and a licensed building contractor, the Grantee shall serve as the "awarding body" as that term is defined in the LC. Where the Grantee 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. 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 Grantee 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 Grantee shall be responsible for the notifications, inspections, and clearance certifications required under these regulations.

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

Pursuant to 24 CFR 570.489(h), no member, officer, or employee of the Grantee, 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-NDR 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-NDR assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-NDR 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 Grantee shall

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incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

20. 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. Grantee shall report all perceived, potential or actual conflicts of interest to HCD for review before entering into any agreements or providing financial assistance.

21. Anti-Job Pirating Certification

Pursuant to 24 CFR 570.482(h) CDBG-NDR funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area to another labor market area if the relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs. Job loss of more than 500 employees is always considered significant. Job loss of 25 or fewer positions is never considered significant. A waiver has been granted by HUD for this regulation in the Federal Register Notice FR-5936-N-01, but Grantee must request permission to use the waiver in writing from the Department.

22. Anti-Lobbying Certification

The Grantee shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant 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.

- 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 cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Grantee shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

23. Bonus or Commission, Prohibition Against Payments of

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The assistance provided under this Agreement shall not be used in the payment of any bonus or commissions 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.

24. Contractors and Subrecipients

- A. HCD has adopted procurement standards under 2 CFR 200.318-326. The Grantee shall follow these same standards. In addition, Grantee 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-NDR funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.
 - 1) Contractors are defined as consultants (for-profit or non-profit) or construction contractors who are procured competitively.
 - 2) Subrecipients are defined as public agencies or public/private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive CDBG-NDR funds from an awarded jurisdiction to undertake eligible activities.
- B. An agreement between the Grantee and any contractor or subrecipient shall require:
 - 1) Compliance with the applicable State and federal requirements described in this Agreement, which pertain to, among other things, procurement, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace; and compliance with the applicable provisions relating to labor standards and Section 3 as described in Sections 11 and 16 of this Exhibit. Appendix II of 2 CFR Part 200 sets forth mandatory provisions for incorporation into non-Federal entity contracts involving federal funds awards. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
 - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the grant activities or any part of it.

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- 3) Maintenance, 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 grant activity(ies) or any part of it.
- 4) Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 11 of this Agreement.
- 5) Compliance with the policies, guidelines and requirements of OMB Uniform guidance at 2 CFR 200 the Uniform Administrative Requirements, as well as all state/federal laws, regulations and Department guidelines applicable to the activities set forth in this Agreement.

C. Contractors shall:

- 1) Perform the grant activities 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 minimum period of five (5) years after the Department notifies the Grantee that the HUD/HCD CDBG-NDR grant contract is closed.
- 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.

E. Contractors and Subrecipients: Drug-Free Workplace Act of 1988

Contractors and subrecipients shall comply with all of the following:

- 1) Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.

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- 2) Establish a drugfree awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drugfree workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- 3) Notify employees that as a condition of employment on a federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within (5) five calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- 4) Notify the contracting or granting agency within 10 (ten) days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- 5) Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- 6) Make an ongoing, good faith effort to maintain a drugfree workplace by meeting the requirements of the act.

25. Insurance

The Grantee 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 Grantee and the Department to be necessary for specific components of the grant activity(ies) described in Exhibit A.

26. Reporting Requirements

During the term of this Agreement, the Grantee must work with HCD, HCD's technical assistance consultant and other partners in submitting the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. Report forms are provided in the most current CDBG-NDR GMM Appendixes. Grant close-out reports are listed in Exhibit B, Section 6. The Grantee's performance under this Agreement will be based in part on whether it has submitted reports on a timely basis. Grantee and partners must use HCD technical assistance consultant web-based grant management software to track grant outcomes, performance, and beneficiaries.

- A. Project Set-Up / Completion Report: Submit Set-up report for review and approval by Department prior to incurring project costs. Submit amended reports as needed.
- B. ~~Weekly~~ Project Update Reporting: Grantee and other partners associated with CDBG-NDR project activity implementation must participate on a ~~Weekly~~ and/or monthly ~~Conference~~ Call(s), as needed, to provide status update on each activity. Grantee shall ~~provide notes on Weekly~~

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submit the Monthly Project Update Activity Report prior to each call through HCD's grant management system of record. Report information **includes information needed** for updating project status in DRGR reporting system.

~~C. Quarterly Performance and Expenditure Report (QPER): Submit by the end of the last month of the quarter, December 31st, March 31st, June 30th and September 30th.~~

~~D. Annual Performance Report (APR): Submit APR by July 31, starting from the contract effective date to subsequent June 30.~~

E-C. Labor Standards Wage Compliance Report: Submit Semiannual Wage Compliance Reports by October 7 and April 7 during the entire project construction period. Submit final Wage Compliance Report thirty (30) days after construction is completed.

The Department reserves the right to request any other periodic reports that may be necessary or desirable, in the opinion of the Department, for the implementation of this Agreement.

27. Monitoring Requirements

The Department shall perform a monitoring of project activities and/or fiscal monitoring of the grant in accordance with requirements of 42 U.S.C. 5304(e)(2), as amended and as modified by Federal Register Notice FR-5936-N-01. The Grantee shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. Grantee will work with HCD technical assistance consultant to conduct ongoing monitoring compliance of partners under three party agreements who are implementing CDBG-NDR project activities. Grantee shall assist HCD and HCD technical assistance consultant in complying and maintaining recordkeeping files to facilitate HUD audit reviews under 24 CFR 570.493 for all activities under this agreement.

In determining appropriate monitoring for each grant activity, the Department shall consider prior grant administration, audit findings, as well as factors such as complexity of the project and the amount of funding. The Department shall determine the areas of monitoring, the number of monitoring visits, and their frequency. Monitoring shall address program compliance with contract provisions, including to but not limited to eligible activity, eligible costs, meeting a National Objective. In addition, monitoring reviews of financial management and requirements of Disaster Relief Appropriations Act, 2013 (Public Law 113-2), Title I of Housing Community Development Act (HCDA) of 1974 (42 U.S. C. 5302 et seq.), HCDA regulations 24 CFR, Part 85, 24 CFR 570 Part I, all applicable federal overlay requirements and all CDBG-NDR published Federal Register Notices shall be conducted.

28. Inspections of Grant Activity

The Department and/or HUD reserves the right to inspect any grant activity(ies) performed hereunder to verify that the grant activity(ies) is being and/or has been performed in accordance with the applicable federal, state and/or local requirements and this Agreement.

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- A. Grantee shall inspect any grant activity performed by contractors and subrecipients hereunder to ensure past and current grant activities meet the applicable federal, state and/or local requirements per this Agreement.
- B. Grantee agrees to require that all grant activities 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.

29. Access to Records

Grantee and its contractors and subrecipients shall at all times during the term hereof provide to the Department, HUD, the State, the Comptroller General of the United States, the California State Auditor, or any of their duly authorized representatives, access to any books, documents, papers, and records for the purpose of making audit, examination, excerpts, and transcriptions pursuant to 24 CFR 85.36(i)(10).

30. Audit/Retention and Inspection of Records

- A. Grantee must have intact, auditable fiscal and program records at all times. If the Grantee is found to have missing audit reports from the California State Controller's Office ("SCO") during the term of this Agreement, the Grantee will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Grantee will be subject to termination of this Agreement and disencumbrance of the funds awarded. Grantee's audit completion plan is subject to prior review and approval by the Department.
- B. Grantee 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 Grantee agrees to provide the Department or its designee with any relevant information requested. Grantee shall permit the Department or its designee access to its premises, 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. Grantee further agrees to maintain such records for a minimum period of five (5) years after the Department notifies Grantee that the HUD/HCD CDBG-NDR grant contract has been closed. Grantee 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. A non-authorized expenditure under this Agreement shall be disallowed if not adequately documented. If this determination is made after reimbursement was made to Grantee, then expenditure must be reimbursed to the Department or its designee by the Grantee. Expenditures for grant activity(ies) not described in Exhibit A shall be deemed authorized if the performance of such grant activity(ies) is approved in writing by the Department prior to the commencement of such grant activity(ies).

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- D. Absent fraud or mistake on the part of the Department, the determination by the Department of the allowability of any expenditure shall be final.
- E. For the purposes of annual audits under OMB Uniform Guidance, Grantee shall use the Federal Catalog number 14.272 for the CDBG-NDR Program.
- F. Pursuant to OMB Uniform Guidance 2 CFR 200, the Grantee shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. Audit costs for this Agreement are a general administration expense and are subject to the general administration expenditure limits associated with this Agreement. The costs of the CDBG-NDR related portion of the audit may be charged to the program in accordance with Public Law 98502, Uniform Guidance, and Section 7122 of Title 25 CCR.
- G. Notwithstanding the foregoing, the Department will not reimburse the Grantee for any audit cost incurred after the expenditure deadline of this Agreement.
 - 1) The audit shall be performed by a qualified State, department, local or independent auditor. The agreement/contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
 - 2) If there are audit findings, the Grantee must submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends and the Department will notify the Grantee in writing. If the Department is not in agreement, the Grantee will be contacted in writing and informed what corrective actions must be taken. This action may include the repayment of disallowed costs or other remediation.
 - 3) The Department shall not approve reimbursement for any expenditures for the audit, prior to receiving an acceptable audit report.
 - 4) If so directed by the Department upon termination of this Agreement, the Grantee shall cause all records, accounts, documentation and all other materials relevant to the grant activities to be delivered to the Department as depository.

31. Signs

If the Grantee places signs stating that the activity is funded with private or public dollars and the Department is also 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-NDR Program.

32. Citizen Participation

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The Grantee 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. Grantee must follow a detailed citizen participation plan that satisfies 24 CFR, Part 70.486.

33. Flood Disaster Protection

- A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93234). 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.

34. Procurement

The Grantee shall comply with the procurement provisions, administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian tribal governments and 2 CFR 200.318 through 200.326, per the Department's certification of these procurement standards.

In accordance with federal register notice FR-5936-N-01, a Data Universal Numbering System (DUNS) number must be collected and reported in the Disaster Recovery Grants Reporting (DRGR) system.

35. Program Income

Pursuant to Federal Register Notice FR-5936-N-01 Section 3, V. A. 17 - HUD has waived applicable program income rules at 42 U.S.C 5304(j), 24 CFR 570.500(a) and (b), 570.504, and

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570.489(e) to the extent necessary to provide additional flexibility for the use of CDBG-NDR Program Income. The alternative requirements provide guidance regarding the use of program income received before and after grant closeout and address revolving loan funds. Some of the CDBG-NDR program income (CDBG-NDR PI) and the Neighborhood Stabilization Program program income (NSP-PI) rules vary slightly from standard CDBG requirements.

Program income generated by the CRCs must be tracked and maintained proportionally, based on the funding source.

The NSP program follows the CDBG regulations on program income at 24 CFR 570.504. The Notice of the Neighborhood Stabilization Program: Changes to Closeout Requirements related to Program Income (Program Income Notice), published June 14, 2016 (FR5933-N-01), provides instruction on transferring NSP-PI to CDBG-PI. Until the Department has completed the process of transferring NSP-PI to CDBG-PI, including HUD's acceptance of the request, all NSP-PI generated by each CRC must be tracked separately and remitted to the Department on a quarterly basis. Once the transfer of NSP-PI to CDBG-PI is completed, Tuolumne County must follow the Program Income Policy in place at the time the program income is received.

The Grantee may retain all CDBG-NDR PI generated during the term of this Agreement until HCD closes out the CDBG-NDR grant with HUD. Upon HUD's approval of the closeout of the Department's CDBG-NDR grant, the Grantee must transfer all program income received from completed project activities to the regular CDBG program as normal CDBG funding. At that time, CDBG-NDR exemptions and waivers no longer apply. Any CDBG-PI funding generated from CRC facility after project completion/grant close out shall fall under the Grantee's current Program Income Reuse Agreement executed with the Department. The Department and its technical assistance contractor will provide guidance as needed to ensure that the expenditure of all program income is within the regulations noted above.

36. Obligations of Grantee with Respect to Certain Third-Party Relationships

The Grantee 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 Scope of Work with respect to which assistance is being provided under this Agreement to the Grantee. The Grantee shall comply with all lawful requirements of the Department necessary to ensure that the Scope of Work, with respect to which assistance is being provided under this Agreement to the Grantee, 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 [42 U.S.C. 5304(g)] and Certifications in Exhibit H of this Agreement.

37. Energy Policy and Conservation Act

This Agreement is subject to mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163, 89 Stat. 871).

38. State Contract Manual Requirements (Section 3.11, Federally Funded Contracts (Rev. 3/03)):

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- A. All contracts, except for State construction projects that are funded in whole or in part by the Federal government, must contain a 30-day cancellation clause and the following provisions:
- 1) It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
 - 2) This contract is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the purpose of this Program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
 - 3) The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
 - 4) The Department has the option to invalidate the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction in funds.
- B. Exemptions from provisions A.1 through A.4 above may be granted by the Department of Finance provided that the director of the State agency can certify in writing that Federal funds are available for the term of the contract.
- C. GC § 8546.4(e) provides that State agencies receiving Federal funds shall be primarily responsible for arranging for Federally required financial and compliance audits, and shall immediately notify the Director of Finance, the State Auditor, and the State Controller when they are required to obtain Federally required financial and compliance audits.

39. Required Expenditure Date

In accordance with P.L. 113-2, all CDBG-NDR funds must be expended within two years of the date HUD obligates funds to the grantee (funds are obligated to a grantee upon HUD's signing of the grantee's CDBG-NDR grant agreement), unless a waiver is requested and granted by HUD. On July 18, 2016, HUD granted California a waiver of the two-year federal expenditure date, effectively setting the federal expenditure date at September 30, 2022. To meet this federal expenditure date, Grantee must submit final RFF to HCD by the dates set forth in Exhibit A, Section 9 of this Agreement. Any remaining funds under this Agreement, not included in a final RFF and processed by HCD before the federal expenditure date, will be cancelled and recaptured by the federal Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

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Per the Consolidated Appropriations Act, 2021, enacted on December 27, 2020, Congress allowed HUD to extend the expenditure deadline to September 30, 2023. Subsequently, through the 2022 Omnibus Appropriations Bill, signed by the President on March 17, 2022, the federal expenditure deadline was further extended through September 30, 2025. **Then, through the 2022 Omnibus Spending Bill, Congress has allowed all fund allocated under Public Law 113-2 to be available until expended.**

40. Grant Reduction

If, after HCD is awarded funds and enters into a grant agreement with HUD, HCD then or subsequently proposes to make a substantial amendment to any of the CDBG-NDR project activities, then HUD and HCD reserve the right to amend the award and change the budget amounts under this Agreement.

41. Withdrawal of Grant Amounts

If Grantee does not proceed within a reasonable timeframe, HUD and HCD reserve the right to withdraw any funds HCD has not obligated under the award. If funds are withdrawn prior to September 30, 2017, HUD shall redistribute any withdrawn amounts to one or more other jurisdictions eligible for CDBG-NDR funding.

42. Financial Controls

The NDRC NOFA requires that any party involved in the CDBG-NDR projects, whether directly or indirectly, must agree to provide any information HCD requires in order to maintain proficient financial controls; on a project costing over \$100 million, the magnitude of such controls will be wide and varying. HCD has developed a Grant Administration Manual ("GAM") for CDBG-NDR funding and by executing this Agreement, Grantee commits to using the manual as guidance in completing fiscal reports and maintaining accounting records.

43. Administrative and National Policy Requirements

Certain Administrative and National Policy Requirements apply to all HUD funding, including CDBG-NDR funding. See NDRC NOFA, Exhibit F, for a list of these requirements. Any party involved in a CDBG-NDR project, whether directly or indirectly, must agree to provide any information HCD requires in order to meet the aforementioned administrative and national policy requirements.

44. Reporting

HUD requires grantees under the NDRC NOFA to report the sources and uses of all amounts expended and other information for HUD's annual report to Congress or other purposes as determined by HUD. Any party involved in CDBG-NDR project implementation, whether directly or indirectly, shall report amounts shown in project sources and uses forms and all amounts expended on eligible activities under this Agreement. Parties shall provide information as requested by HCD for purposes of reporting to federal, state and local entities including but not limited to CDBG-NDR quarterly report to HUD, and HUD's annual report to Congress or other purposes as determined by HUD.

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Appendix A of the NDRC NOFA contains the requirements applicable to Community Development Block Grant (CDBG) funds made available by the Disaster Relief Appropriations Act, 2013 (PL113-2, approved January 29, 2013) Appropriations Act and awarded under the National Disaster Resilience Competition as CDBG-NDR grants. Appendix A to the NDRC NOFA was subsequently incorporated into Federal Register Notice FR-5936-N-01.

45. Use of Funds

- A. The Appropriations Act made funds available for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The Appropriations Act requires funds to be used only for these specific disaster-related purposes.
- B. All recipients of CDBG-NDR grants are subject to: (1) the requirements of the Appropriations Act; (2) the Fiscal Year (FY) 2014 Notice of Funding Availability for National Disaster Resilience Competition (NDRC NOFA), including all appendices and incorporated portions of the FY 2014 General Section (as amended); and (3) applicable regulations governing the CDBG program at 24 CFR part 570, unless modified by waivers and alternative requirements published by HUD in this NOFA or other applicable Federal Register Notice.

46. Performance Measures and Related Remedies

Performance Measures and Penalties provisions are set forth in Exhibit B Section 7.

47. Disputes

Except as otherwise provided in this Agreement, any dispute arising under or relating to the performance of this Agreement which is not disposed of by mutual agreement of the parties shall be decided by the HCD Contract Manager, who shall reduce decisions to writing in regard to the dispute and shall transmit a copy thereof to the Grantee and parties involved. The decision of the Contract Manager shall be final, conclusive and binding.

48. Award Date

Given the uniqueness of this NDRC competitive award, HCD is treating the HUD award date as the date of the award for Grantee.

As noted in item 1 above, HUD approved HCD's request to extend the expenditure deadline to September 30, 2022. As noted in Section 39 herein, per the Consolidated Appropriations Act, 2022, signed on March 17, 2022, Congress allowed HUD to extend the expenditure deadline to September 30, 2025-, then the 2022 Omnibus Spending Bill passed by Congress has allowed all fund allocated under Public Law 113-2 to be available until expended. It is important to note that only the remaining balance of the grant as of the end of the initial 24-month expenditure period will be extended.

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49. Suspension or Termination

A. Suspension of Work

The Director of HCD, the Acting Director, or any designee of either, by written notice may suspend the work of the Grantee, or any portion thereof, for any period up to ninety (90) days, as the Director, Acting Director, or their designee may deem necessary in their sole and absolute discretion.

B. Termination at Option of Department

The Director, Acting Director, or their designee may, in their sole and absolute discretion and upon ten (10) days' written notice to Grantee, terminate this Agreement in whole or in part. Upon receipt of a termination notice, Grantee shall immediately discontinue all services affected unless the notice specifies otherwise.

C. Termination for Default

The Director, Acting Director, or their designee may, upon three (3) day written notice to the Grantee, and without any prejudice to its other remedies, terminate this Agreement in whole or in part for cause. Cause shall consist of violations of any terms and/or special conditions of this Agreement and for the HUD agreement, upon the request of HUD, or the withdrawal of, or any limitation on the Department's expenditure authority. Upon receipt of any notice terminating this Agreement in whole or in part, the Grantee shall (1) immediately discontinue all services affected (unless the notice directs otherwise); and (2) deliver to the Department's Contract Manager all data, reports, summaries, and such other information and materials as may have been accumulated by the Grantee in performing under this Agreement, whether completed or in progress. At the sole discretion of the Department, the Department may offer the Grantee an opportunity to cure any breach(es) prior to terminating for a breach. If after notice of termination for failure to fulfill contract obligations, it is determined that the Grantee had not so failed, the termination shall be deemed to have been effected for the convenience of the Department.

D. Termination at Option Upon Bankruptcy of Grantee

In the event proceedings in bankruptcy are commenced against the Grantee, or the Grantee is adjudged bankrupt, or a receiver is appointed, the Grantee shall notify the Department immediately in writing and Department may terminate this Agreement and all further rights and obligations by giving three (3) days' notice in writing to Grantee in the manner specified herein.

E. Effects of Suspension and Termination

Costs incurred by or paid by Grantee relating to obligations incurred by the Grantee during a suspension or after termination of an award are not allowable

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unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other Grantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowed if:

- 1) The costs resulting from obligations which were properly incurred by the Grantee before the effective date of suspension or termination, are not in anticipation of suspension or termination; and, in the case of a termination, are non-cancellable, and
- 2) The costs would be allowable if the award was not suspended or expired normally at the end of the funding period in which the termination takes place. Notwithstanding the previous sentence, any costs incurred after this contract is terminated are not reimbursable.
- 3) Relationship to Debarment and Suspension. The enforcement remedies identified in this Section, including suspension and termination, do not preclude a Grantee from being subject to 2 CFR part 2424. CDBG funds may not be provided to excluded or disqualified persons, organizations, companies or entities per 24 CFR 570.489(i).

F. Non-Compliance

Enforcement for noncompliance may include, but is not limited to, the following remedies if Grantee materially fails to comply with any term of this Agreement, whether stated in a federal statute or regulation, an assurance in a State plan or application, a notice of award, or elsewhere:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Grantee.
- 2) Disallow (that is, deny use of funds for) all or part of the cost of the activity or action not in compliance.
- 3) Wholly or partly suspend or terminate the current award for the Grantee's program.
- 4) Exercise any other remedies or any other rights that may be legally available to the Department, including termination of this Agreement.

G. Cumulative Remedies

The rights and remedies of the Department provided in this Agreement are cumulative and are in addition to any other rights and remedies provided by law, all of which are hereby reserved.

H. Completion

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In the event of termination for default, the Department reserves the right to take over and complete the work by contract or other means; Grantee will fully cooperate with the Department and provide all information needed for a smooth transition. In such case, Grantee is liable to Department for any additional costs incurred by the Department to complete the work.

In accordance with federal register notice FR-5936-N-01, a Data Universal Numbering System (DUNS) number must be collected and reported in the Disaster Recovery Grants Reporting (DRGR) system.

50. Federal Register Notice(s)

The parties agree that in addition to complying with all other terms and conditions set forth in the Standard Agreement and the various Exhibits thereto, to the extent additional requirements or conditions are imposed upon HCD by HUD in any Federal Register Notice ("FRN") relating to the NDRC project, the parties will be required to comply with such additional requirements or conditions, as will their respective subgrantees, subrecipients, contractors, subcontractors, and partners. In connection therewith, the parties acknowledge having reviewed the following three FRNs issued by HUD prior to the date hereof: (i) 81 FRN 109, page 36557 [Docket No. FR-5936-N-01] dated June 7, 2016; (ii) 80 FRN 21, page 5570 [Docket No. FR-5831-N-03] dated February 2, 2015; and (iii) 79 FRN 202, page 62654 [Docket No. FR-5753-N-11] dated October 20, 2014. The parties further acknowledge that additional FRNs relative to the NDRC project will be issued by HUD in the future, and that each party must also comply with any requirements and conditions set forth in such subsequent FRNs.

51. HCD Disaster Recovery (DR) Grant Administration Manual (GAM)

The Grantee will utilize the most current version of the CDBG-NDR Manual in implementing CDBG-NDR activities. Grantee will work with HCD and the program technical assistance consultant(s) consulting to ensure all activities are in compliance with CDBG and CDBG-NDR rules and regulations.

52. Duplication of Benefit

Duplication of benefits (DOB) requirements in section 312 of the Stafford Act and in the Appropriations Act applies to the use of CDBG-NDR funds. HCD has developed a process for documenting any DOB for project activities. This process is based on HUD Federal Register notice published on November 16, 2011 and other HUD published guidance. Prior to release of any project activity funding, Grantee must follow HCD process for documentation of DOB. The DOB calculations must be completed and approved in writing by HCD as part of clearing general conditions for each project activity under this Agreement upon clearance of general conditions, project funding will be released.

53. Non-Discrimination Language from 41 CFR Part 60-1.4(b)

Grantee shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapters 60).

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54. Policies on Excessive Use of Force

Grantee must have and follow these policies: 1) prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstration; and 2) enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstration within its jurisdiction.

55. Project Design/Feasibility

Grantee will demonstrate that the engineering design for each project activity under this Agreement is feasible prior to obligation of funds for construction. This demonstration is satisfied if a registered professional engineer (or other design professional) certifies that the design meets the appropriate code or industry design and construction standards. Grantee will design projects that to the greatest degree possible, use construction methods that are high quality, green construction, energy and water efficient, healthy indoor environments, resilient and mitigating the impact of future disasters.

56. Use of Web Based Grant Management Software

Grantee staff shall utilize the web-based software that HCD is having developed for CDBG-NDR grant administration. The HCD technical assistance consultant shall develop such software and shall provide training and technical assistance to Grantee's staff on accessing and using the software. The software license from the consultant is extended to HCD's employees as Authorized Users and is extended to Grantee's staff as Non-HCD Authorized Users. Grantee, as Non-HCD Authorized User, acknowledges that its and its employee use of the CDBG-NDR software created for this project by the technical assistance consultant is expressly subject to the terms and conditions of the software license granted to HCD in Section 1 of Exhibit F to that certain Standard Agreement between HCD and the consultant (the "License"), which License Grantee has reviewed and agrees to be fully bound by. Grantee agrees, at its sole cost and expense, to indemnify, defend, and hold HCD harmless from any and all claims, actions, costs, losses, and damages sought by the technical assistance consultant against HCD resulting from any claimed or action al violation of the License terms by Grantee and/or any of its employees or representatives. These indemnity, defense and hold harmless obligation of Grantee shall indefinitely survive the completion or earlier termination of this Agreement.

57. Required Federal Language from 2 CFR Part 200 Appendix II

Appendix II to CFR Part 200 sets forth mandatory provisions which must be incorporated into non-Federal entity contracts involving federal funds awards. This requirement applies to the subject matter of this Agreement. Accordingly, Appendix II to CFR Part 200 is hereby incorporated into and made part of this Agreement by reference. Grantee acknowledges having reviewed such provisions and agrees to the terms thereof. Grantee further acknowledges that HCD is requiring that all other Department agencies, State, County, or Local recipients and subrecipients who are using CDBG-NDR funding incorporate Appendix II to CFR Part 200 into their agreements.

58. Procurement of Recovered Materials

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A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

59. Rights to Inventions Made Under a Contract or Agreement

If a Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of recipient or subrecipient must comply with requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulation issued by the awarding agency.

60. Ethical Standards/Code of Conduct

Grantee must develop and maintain written standards of conduct as required by 2 CFR 200.318.