

**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER <b>20-DRMHP-00005</b>
---

PURCHASING AUTHORITY NUMBER (If Applicable)
---

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

City of Santa Rosa

2. The term of this Agreement is:

START DATE

Upon HCD Approval

THROUGH END DATE

08/31/2050

3. The maximum amount of this Agreement is:

\$38,469,772

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Authority, Purpose and Scope of Work	8
Exhibit B	Budget Detail and Payment Provisions	6
Exhibit C *	State of California General Terms and Conditions	GTC 4/17
+ -	Exhibit D CDBG-DR Terms and Conditions	37
+ -	Exhibit E Special Terms and Conditions	1
+ -	Exhibit F Notice to Proceed	5
+ -	Exhibit G Subrecipient Profile	4

*Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.**These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>***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.)

City of Santa Rosa

CONTRACTOR BUSINESS ADDRESS

SEE ATTACHED

CITY

SEE ATTACHED

STATE

CA

ZIP

PRINTED NAME OF PERSON SIGNING

SEE ATTACHED

TITLE

SEE ATTACHED

CONTRACTOR AUTHORIZED SIGNATURE

SEE ATTACHED

DATE SIGNED

SEE ATTACHED

**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER <b>20-DRMHP-00005</b>	PURCHASING AUTHORITY NUMBER (If Applicable)
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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS

2020 W. El Camino Ave, Suite 130

CITY

Sacramento

STATE

CA

ZIP

95833

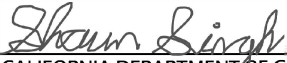
PRINTED NAME OF PERSON SIGNING

Shaun Singh

TITLE

Contract Manager, Business & Contracts Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE



DATE SIGNED

12/4/2020

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

California Department of General Services  
Exempt per; SCM Vol. 1 4.04.A.3  
(DGS memo dated 6/12/1981)

**CONTRACTOR**


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**City of Santa Rosa,**  
a public body corporate and politic

By:   
\_\_\_\_\_  
David Gouin  
Executive Director

Date: 11-30-20

Approved as to form:

By:   
\_\_\_\_\_  
Jeff Berk  
City Attorney

Date: 11/20/20

Address:

90 Santa Rosa Avenue  
Santa Rosa, CA 95404

**EXHIBIT A**

**AUTHORITY, PURPOSE AND SCOPE OF WORK**

**1. Authority & Purpose**

The California Department of Housing and Community Development (hereinafter “Department”) is the lead and responsible entity for administering the Community Development Block Grant – Disaster Recovery (hereinafter “CDBG-DR”) program funds appropriated under Public Law 115-123 and allocated to the State of California by the Department of Housing and Urban Development (hereinafter “HUD”). CDBG-DR supports the State of California’s recovery needs related to the Federal Emergency Management Agency’s Major Disaster Declaration DR-4344 in October 2017 and DR-4353 in December 2017/January 2018. CDBG-DR Multifamily Housing Program (hereinafter "DR-MHP") projects are funded to meet the unmet rental housing need, including the needs of individuals displaced from rental homes and individuals who became homeless as the result of the disasters.

**2. Scope of Agreement**

**A. Grant Funds**

Subject to the terms and conditions of this Master Standard Agreement (hereinafter “Agreement”), the Department has allocated and agrees to provide Grant Funds in the maximum amount identified below to City of Santa Rosa (hereinafter “Subrecipient”) for all Collective Work (defined below) identified in this Agreement (hereinafter “Subrecipient Allocation”). All payments made to the Subrecipient will adhere to the provisions described in Exhibit B, Section 3 (Method of Payment) herein. In no instance shall the Department be liable for any costs in excess of this amount, nor for any unauthorized or ineligible costs or expenses. The Subrecipient Allocation shall be expended as follows:

		Most Impacted and Distressed (MID)	Non-MID
Activity Funds (DR-MHP Project Funds)	\$38,353,107.00	\$38,353,107.00	\$0.00
Activity Delivery Funds	\$ 116,665.00	\$ 116,665.00	\$0.00
<b>TOTAL</b>	<b>\$38,469,772.00</b>	<b>\$38,469,772.00</b>	<b>\$0.00</b>

This Agreement governs the Subrecipient Allocation and each individual Project thereafter proposed by the Subrecipient and approved by the Department (“Approved Project”), the budget for each of which is to constitute some portion of the Subrecipient

## EXHIBIT A

Allocation. The cumulative total amount of all Approved Projects shall not exceed the total amount of the Subrecipient Allocation.

### **B. Implementation of Agreement**

By entering into this Agreement and thereby accepting the allocation of Grant Funds, the Subrecipient agrees to comply with and implement this Agreement in a manner satisfactory to the Department and HUD and consistent with all applicable guidelines and standards that may be required from time to time as a condition of the Department providing the Grant Funds, including but not limited to, all applicable CDBG-DR Program Administration and Compliance requirements set forth by this Agreement, and in accordance with the due diligence documentation previously provided by the Subrecipient and made a part hereof. The Department's providing of Grant Funds under this Agreement is specifically conditioned on Subrecipient's compliance with this provision and all terms and conditions of this Agreement, the Notice to Proceed (defined below), the most recently published version of the DR-MHP Policies and Procedures Manual ("DR-MHP Policies and Procedures"), the Department's CDBG-DR Action Plan for 2017 disasters and any amendments thereto, related Federal Register notices, and the requirements of the authorities cited above, as the same may be amended from time to time.

This Agreement is subject to written modification and termination as necessary by the Department in accordance with requirements contained in any future state or federal legislation and/or state or federal regulations. All other modifications must be in written form and approved by both parties.

### **3. Subrecipient Scope of Work**

The Subrecipient scope of work (hereinafter "Subrecipient Work") for this Agreement shall consist of the following:

- A. The Subrecipient shall develop a Project solicitation seeking the development of affordable multifamily housing projects. Subrecipient shall submit the draft Project solicitation to the Department for review and approval no less than 2 weeks prior to publication. Upon Department approval, the Subrecipient shall publish the Project solicitation to accept applications from Developers. This shall be defined as a Project Solicitation Process ("PSP") and shall be in accordance with Section 3.1 and Appendix A of the DR-MHP Policies and Procedures.
- B. The Subrecipient shall underwrite the Projects it selects to receive CDBG-DR funds in accordance with the underwriting standards it has developed and detailed in the PSP that has been approved by the Department and, at a minimum, in accordance with Section 3.6 and Appendix B of the DR-MHP

## EXHIBIT A

### Policies and Procedures.

- C. The Subrecipient shall submit individual Project applications to the Department through the Department's grant management system, Grants Network, that are consistent with the Project eligibility requirements set forth in the DR-MHP Policies and Procedures. The individual Project applications must include a projected schedule for Project completion and Project budget in addition to all other application requirements outlined in the Project application and the DR-MHP Policies and Procedures.
- D. The Department shall make individual Project approval determinations pursuant to the DR-MHP Policies and Procedures, HUD guidelines and regulations, and in conjunction with the Department's internal DR-MHP Review Board. The DR-MHP Review Board performs an underwriting analysis to verify the financial feasibility and amount of requested funds needed for a Project to arrive at an appropriate level of Grant Funds to award to a Project. The DR-MHP Review Board reserves the right to require the Subrecipient to modify any or all parts of the Project application(s) in order to comply with DR-MHP, federal and/or state regulations or requirements, as the same may change from time to time. Applications may be approved, conditioned, or denied in the sole discretion of the Department. If the Subrecipient disagrees with the finding, an appeal may be filed in accordance with the Project selection appeals process detailed in Section 3.9 of the DR-MHP Policies and Procedures Manual.
- E. Upon review and approval of a Project application, the Department will issue a Notice to Proceed (hereinafter "NTP") to obligate Activity Funds to an Approved Project. The NTP will include the Project description and Project scope of work (hereinafter "Project Work"), time of performance, Project budget, Project-specific special conditions, and Project performance measures, and shall be implemented through this Agreement and subject to the terms and conditions thereof. For each Approved Project, that Project's application, supporting materials and the NTP are thereafter incorporated into this Agreement as its own separate addendum hereto, uniquely identified for ease of monitoring and compliance purposes.
- F. Approved Projects shall meet all requirements set forth in the DR-MHP Regulatory Agreement ("DR-MHP Regulatory Agreement") for the entire affordability period set forth in such agreement. Subrecipient shall record in the applicable County Recorder's office the DR-MHP Regulatory Agreement, substantially in the form provided by the Department, against each individual property before construction begins but not more than 180 days subsequent to the issuance of an NTP by the Department. The DR-MHP Regulatory Agreement shall have priority over all other liens, encumbrances and other matters of record except as may be approved by the Department in its sole discretion. Exceptions

## EXHIBIT A

to the lien priority of the DR-MHP Regulatory Agreement must be approved in writing and in advance by the Department.

As described in the DR-MHP Policies and Procedures, the DR-MHP Regulatory Agreement to be recorded against the property will enforce requirements on affordability periods, restricted units, income targeting, rents, property standards, and records and reports, and shall run with the Project land and bind all current and future owners and successors thereof.

- G. Upon execution of an NTP, Subrecipient shall enter into a development agreement with the Project Developer (“Development Agreement.”) The Development Agreement shall include the DR-MHP Rider, substantially in the form provided by the Department. As described in the DR-MHP Policies and Procedures, the DR-MHP Rider will include all federal and state requirements, including those from HUD, CDBG-DR and the State of California, that the Project Developer must adhere to. Subrecipient shall take all reasonable and necessary measures to ensure that the Project Developer constructs or rehabilitates the affordable housing units specified in each NTP and that such units are rented affordably pursuant to the terms and conditions of the DR-MHP Regulatory Agreement for the duration specified in the DR-MHP Regulatory Agreement.
- H. Subrecipient shall collect data and submit reports to the Department in accordance with the reporting requirements detailed in section 30 of Exhibit D herein.
- I. The Subrecipient shall monitor all Approved Projects in accordance with the requirements of Section 4.9 of the DR-MHP Policies and Procedures for the required Project period of affordability set forth in the DR-MHP Regulatory Agreement.

The Department reserves the right to monitor and approve all Subrecipient Work and Project Work (together hereinafter “Collective Work”) in relation to this Agreement and the NTP(s). Any proposed waiver to the Collective Work must be submitted in writing for review and approval by the Department in its discretion. Any approval shall not be presumed unless such approval is made by the Department in writing. Substantial revisions to the Project Work may require a re-review of the Approved Project by the DR-MHP Review Board and its approval thereof.

#### 4. Other Funding Sources

- A. Other Funding Sources: All other sources of funding required to complete the Approved Project must be identified, committed and documented prior to issuance of the NTP. If at any time, those identified and secured sources change,

**EXHIBIT A**

the Subrecipient must notify the Department within 10 days of the Subrecipient's knowledge that funding sources are changing. The terms and conditions of all financing shall be subject to the Department's review and approval. The Department reserves the right to re-review a Project application at any time in the event there is a change in the amount of, or the material terms and conditions of, any third-party financing for the Project.

- B. Subsidy Limits: The amount of Grant Funds the Subrecipient may contribute to a DR-MHP assisted Project on a per unit basis may not exceed the annual per unit dollar limits established by HUD for the HOME Program, described below. If HUD has issued a regional per-unit subsidy increase for the participating Subrecipient, the alternative subsidy amount may be used, up to 240 percent of the HOME subsidy limit.

Bedrooms	2020 CDBG-DR Per Unit Limit
0	\$153,314
1	\$175,752
2	\$213,718
3	\$276,482
4+	\$303,490

**5. Effective Date and Commencement of Work**

- A. This Agreement is effective upon approval by the Department representative's signature on page one of the fully executed Standard Agreement, STD 213, (the "Effective Date").
- B. Subrecipient agrees that no Collective Work toward the implementation of the Approved Project(s) as identified in Section 3 above shall commence, nor shall any costs be paid with CDBG-DR funds incurred or obligated by any party without prior authorization from the Department via a NTP and prior to the execution of this Agreement by the Department. Additionally, proof of the recorded DR-MHP Regulatory Agreement, and Subrecipient's deed of trust, if applicable, in the appropriate lien position, must be submitted to and accepted by the Department prior to the start of construction on an Approved Project. Notwithstanding the foregoing, there are two circumstances when costs may be incurred prior to the execution of this Agreement. First, Activity Delivery expenses for development and implementation of the Subrecipient's PSP, and environmental compliance work for intended Project Applications may be incurred prior to the execution of this Agreement provided that such expenses are eligible and are supported by documentation satisfactory to the Department. Second, with Program Manager or Section Chief written approval, other costs



## EXHIBIT A

may also be incurred prior to the execution of this Agreement, such as the cost of procuring consultants and, architectural, engineering and other professional services required to prepare plans, drawings, specifications, or work write ups that are incurred not more than 24 months prior to the Approved Project being set up in DRGR, and provided these procurements are conducted in a manner consistent with 2 CFR 200.317 – 200.326, "Procurement Standards".

### 6. Term of Agreement and Performance Milestones

- A. Term of Agreement: With the exception of the grant closeout procedures set forth in Exhibit B, Section 6, the Subrecipient shall complete the Approved Project(s) activities on or before the expenditure deadline identified on the STD 213 of this Agreement and identified below. Time is of the essence in order to ensure complete and compliant Projects before grant close out.

All Project applications must be submitted to the Department by: **12/31/2021**. Upon review and approval or rejection of all Project applications, the Department reserves the right to reallocate unobligated Grant Funds within the DR-MHP program, in its sole and absolute discretion.

All Grant Funds must be expended by: **April 30, 2025**

This Agreement will expire on: **August 31, 2050**

- B. Performance Milestones: Subrecipient shall adhere to the performance milestones below. Time is of the essence with respect to all such milestones.
1. No later than six (6) months after execution of this Agreement, Subrecipient shall initiate the PSP to develop a list of qualified multifamily development Projects for submission to the Department for Project funding review and possible funding approval.
  2. No later than June 30, 2021, Subrecipient shall have at least one Project application submitted to the Department for review and possible funding approval.
  3. No later than December 31, 2021, Subrecipient shall submit all Project applications for Activity Funds.
  4. No later than December 31, 2022, Subrecipient shall satisfy all conditions required for the Department to issue NTPs for all Approved Projects.

## EXHIBIT A

5. No later than April 30, 2023, Subrecipient shall provide evidence of active construction for all Approved Projects.
6. No later than January 31, 2025, Subrecipient shall provide a copy of the Certificate of Occupancy for all Approved Projects.
7. No later than April 30, 2025, Subrecipient shall provide all required closeout documentation as detailed in Exhibit B, Section 6 herein, for all Approved Projects.
8. The Subrecipient must maintain compliance with the Housing Element requirements detailed in Health and Safety Code (HSC) 50829 and 50830 for the duration of this Agreement.

Failure to meet performance milestones:

If any performance milestones listed above are not met, the Department reserves the right to withhold further payments to Subrecipient until such time as satisfactory progress is made toward meeting the performance measures. Subrecipient shall diligently work with DR-MHP staff to submit: (a) a written mitigation plan specifying the reason for the delay; (b) the actions to be taken to complete the task that is the subject of the missed measure deadline; and, (c) the date by which the completion of said task will occur.

The Department reserves the right to reallocate unobligated Grant Funds within the DR-MHP program, in its sole and absolute discretion if the Department determines the Subrecipient is unable to meet the performance milestones in a timely manner following the failure to meet said milestones. The Department reserves all rights and remedies available to it in case of a default by Subrecipient of its responsibilities and obligations under the terms of this Agreement. All remedies available to the Department are cumulative and not exclusive.

- C. The Subrecipient and its Contractors and Developers, as applicable, shall adhere to all performance and Project milestones as established above and in each Approved Project NTP.

### 7. **Notice to Proceed Revisions**

- A. Adjustments to the Project Work that do not require an increase or reduction of Project scope or a change in the number of beneficiaries assisted may be completed as a Notice to Proceed revision ("NTP Revision"). NTP Revisions may include, but not be limited to:

## EXHIBIT A

1. Adjustments that itemize the Project Work, revise milestone deadlines, change the Project Work in a manner that does not change the overall budget, National Objective, and type and count of estimated beneficiaries.
  2. Adjustments that increase the estimated number of beneficiaries without increasing or decreasing the scope of work and without changing the overall budget.
- B. NTP Revisions must be approved by the Department in writing prior to implementation by Subrecipient. Approval shall be provided either through Grants Network, or in writing, as appropriate. The Department reserves the right to monitor and approve all Project Work in relation to this Agreement and the NTP, as modified by any NTP Revisions. NTP Revisions shall be automatically incorporated into the Agreement.

### 8. **DR-MHP Program Contract Management**

- A. Department Contract Manager: The Department Contract Manager for this Agreement is the DR-MHP Program Manager or the Program Manager's designee. Written communication regarding this Agreement shall be directed to the Department Contract Manager at the following address:
- CA Department of Housing and Community Development  
Division of Financial Assistance - DR-MHP Program  
P.O. Box 952054  
Sacramento, CA 94252-2054
- B. Contract Management: Day-to-day administration of this Agreement shall take place via Grants Network, including but not limited to:
1. Financial Reports (Funds Requests)
  2. Activity Reports
  3. Other Reports, as required
  4. Submittal of any and all requested supporting documentation
  5. NTP Issuance and Revisions
  6. Master Standard Agreement Issuance and Amendments
- C. Subrecipient Contract Administrator: The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in Exhibit G, Profile. Unless otherwise directed by the Department, any notice, report, or other communication required by this Agreement shall be directed via Grants Network or written to the Subrecipient's Contract Administrator at the contact information identified in Exhibit G, Profile.

## EXHIBIT B

### **BUDGET DETAILS AND PAYMENT PROVISIONS**

#### 1. **Availability of Funds**

- A. The Department's provision of funding to Subrecipient pursuant to this Agreement is contingent on the availability of CDBG-DR funds and continued federal and state authorization for CDBG-DR activities and is subject to amendment or termination due to lack of funds or authorization.
- B. The Department shall be relieved of any obligation for making payments to the Subrecipient if funds allocated to the State by HUD cease to be available for any reason or there is any limitation on, or withdrawal of, the Department's authority to administer the CDBG-DR program or any portion thereof.

#### 2. **Expenditure of Funds**

- A. No Activity costs may be incurred or funds reimbursed until and unless Subrecipient provides documented compliance with the National Environmental Protection Act (NEPA) requirements established in 24 CFR 50, 24 CFR 58, and 42 USC 4321, et seq. and California Environmental Quality Act (CEQA); California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000 – 15387.

Activity Delivery costs may be incurred prior to documented NEPA and CEQA compliance. See Section 3(A)(3) below for reimbursement requirements of Activity Delivery costs.

- B. **Priority of Use of Funds**

The Subrecipient and its Developers must utilize funds available under this Agreement to supplement rather than supplant funds otherwise available. To the extent available, the Subrecipient and its Developers must disburse funds available to the Approved Project from, among other sources, Subrecipient funding, third-party loans or grants, program income, rebates, refunds, contract settlements, audit recoveries, insurance and condemnation proceeds and interest earned on such funds before requesting or receiving Grant Funds.

- C. **Withholding Funds**

The Department reserves the right to withhold payments pending timely delivery of program and project reports or documents as may be required under this Agreement, and for defaults by the Subrecipient and/or Developer, as noted in Exhibit D.

## EXHIBIT B

### D. Disencumbering Funds

The Subrecipient agrees that Grant Funds determined by the Department to be surplus upon completion of an Approved Project(s) will be subject to disencumbrance by the Department. Subrecipient also agrees that if funds are not obligated to Approved Projects by milestones outlined in Section 6 of Exhibit A, the remaining funds will be subject to disencumbrance.

### E. Indirect Costs

The Department will only consider reimbursement of indirect cost expenditures from Subrecipients that have an approved Indirect Cost Rate Proposal from the Department, HUD or other cognizant federal agency. If Subrecipient does not have an approved Indirect Cost Rate Proposal, Subrecipient shall develop a proposal for determining the appropriate CDBG-DR share of indirect costs and shall submit it to the Department for approval prior to submission of Financial Reports for reimbursement of indirect cost expenditures.

### F. Compliance with the OMB Uniform Guidance Audit Requirements

Grant Funds will not be disbursed to any Subrecipients identified by the State Controller's Office (SCO) as non-compliant with the Federal Single Audit Act, as described in the OMB Uniform Guidance and 2 CFR Part 200 Sub-Part F. No funds may be disbursed until compliance with the Uniform Guidance is demonstrated to the satisfaction of the Department.

### G. Grant Administration

The Subrecipient agrees to administer this Agreement in accordance with the provisions of Section 7097 through and including Section 7126 of Title 25 of the California Code of Regulations.

## 3. Method of Payment

Payments will be made directly to Subrecipients as reimbursements based on the documented and satisfactory completion of agreed upon milestones detailed in Subrecipient Work, identified in Exhibit A, or detailed in each Approved Project NTP, incorporated in Exhibit A, and confirmation of Subrecipient's compliance with the terms of this Agreement.

Financial Reports shall be submitted electronically through Grants Network. The Department shall not authorize payments or reimbursements unless it has determined the activities indicated in the Financial Report have been performed in compliance with the terms of this Agreement and any other agreements executed by the parties in connection herewith. Financial Reports must be for a minimum of \$1,000, except for the final Financial Report, which must be marked "Final". Financial Reports shall be submitted by the Subrecipient to the Department at least once per month.

## EXHIBIT B

### A. Reimbursements for Costs Incurred

1. The Subrecipient may use Grant Funds for reimbursement by the Department of Eligible Expenses as defined herein, applied to Projects approved by the Department through the application and NTP processes described in Exhibit A Section 3. Eligible Expenses include but are not limited to, costs associated with Subrecipient program implementation including staff time and environmental reviews for Approved Projects, architectural and engineering design, permitting fees, developer, and Approved Project costs for Construction, Reconstruction and Rehabilitation, including mobilization, site prep, and clean up.
2. Subrecipient shall withhold as retainage 10% of all DR-MHP funded Developer payments. No retainage payments shall be released to the Developer or reimbursed to the Subrecipient until receipt and approval by the Department of all required Approved Project close out documents identified in Section 6 herein.
3. Approved Project Financial Reports for construction shall be made on a pro rata basis based on the percentage of construction completed.
4. Activity Delivery Financial Reports shall be paid only after such costs are incurred for Collective Work completed, provided the Department determines that the Program Performance Milestones in this Agreement and/or Approved Project Performance Milestones in the Notice to Proceed are on track. Subrecipient may expend up to the indicated Activity Delivery amount as identified in Exhibit A, Section 2 (Scope of Agreement) herein.
5. To receive reimbursement for Approved Project activities, the Subrecipient shall timely submit all required Department forms via Grants Network. Financial Reports must include the level of documentation specified by the Department in the Department's Grant Administration Manual located on the Department's website, in order to be reviewed and processed.

### B. Final Financial Reports

1. The final Financial Report for the Subrecipient Allocation must be submitted to the Department before the expenditure deadline of this Agreement.
2. If the final Financial Report for costs expended during the term of this Agreement has not been received by the Department before the expenditure deadline, the Department may disencumber any funds remaining in which case Grant Funds will no longer be available to the Subrecipient.

## EXHIBIT B

### 4. Recapture of Funds

A Subrecipient may be required to repay all or a portion of the funds received from the Department, including Activity Delivery, pursuant to this Agreement. The reasons for a recapture of funds by the Department include, but are not limited to, the following:

- A. The Subrecipient does not comply with the terms of this Agreement or any agreement executed by the Subrecipient and the Department in connection herewith;
- B. The Subrecipient withdraws from the Program prior to completion of the Approved Project(s);
- C. The Subrecipient fails to meet a National Objective; and/or
- D. The Subrecipient does not meet the affordability requirements for the period specified in Exhibit D of this Agreement and all terms and conditions in the applicable DR-MHP regulatory agreement for each Approved Project including, without limitation the affordability restrictions, rent restrictions, income restrictions, etc.

The potential recapture of funds pursuant to this provision is in addition to, and not in lieu of, any other rights and remedies of the Department under this Agreement.

### 5. Project Budget Revisions and Amendments

Budget line item adjustments may be made in accordance with the following:

- A. Project Budget Revisions: Adjustments to the Approved Project budget that do not require an increase or reduction of the total Approved Project budget, a change in National Objective, or a change in the type and/or count of estimated beneficiaries assisted, may be completed as a Project budget revision. Project budget revisions shall include but not be limited to:
  - 1) Adjustments that reallocate funds between budget line items, but that otherwise do not change the overall budget total, the Project Work, the National Objective, and type and count of estimated beneficiaries.
  - 2) Adjustments that increase or decrease the detail included in the submitted budget, including adding and removing budget line items, without increasing or decreasing the Project Work and without changing the overall budget.

Project budget revisions must be submitted through Grants Network and subsequently approved by the Department prior to implementation. Approval shall be provided

## EXHIBIT B

through Grants Network.

B. Agreement Budget Revisions: Adjustments to the Subrecipient Allocation that result in an increased or a reduced total budget shall require an Agreement amendment. Agreement amendments must be fully executed by both the Subrecipient and the Department prior to implementation.

### 6. **Project Closeout Procedures**

The Subrecipient must submit the following to the Department at the completion of each Approved Project.

- 1) A Final Activity Report (Project Completion Report) that includes all required reporting data for the Approved Project including but not limited to eligible activities, costs, beneficiaries, and National Objective;
- 2) A recorded Notice of Completion;
- 3) Relocation Report: A relocation report is required for those Approved Projects where relocation activities were undertaken pursuant to a Residential Anti-displacement and Relocation Assistance Plan (RARAP) (Section 2.11 of Policies and Procedures).
- 4) Audited Cost Certification: An Audited Cost Certification prepared by a public accountant is required for Approved Projects where such certification is prepared at Developer's expense to comply with the requirements of other funding sources, including projects receiving tax credits.
- 5) Final Labor Standards Report as described in Exhibit D(30)(A)(iii) herein.
- 6) Evidence, satisfactory to the Department, of compliance with any other Special Conditions of this Agreement; and,
- 7) A resolution from the governing body acknowledging the accomplishments of the Approved Project and confirming that the Approved Project is complete and that all Financial Reports have been processed and reimbursed.

Upon receipt of the above documentation, the Department will close the NTP and finalize the activity in DRGR for final reporting to HUD.

### 7. **Document Retention Policy**

Subrecipient shall retain all books, records, accounts, documentation, and all other

20-DRMHP-00005

Approved Date: 8/12/2020

Prep Date: 10/20/2020



**EXHIBIT B**

materials relevant to this Agreement for a minimum period of five (5) years after the Department notifies the Subrecipient that the grant agreement between HUD and the State of California has been closed.

## EXHIBIT E

### **SPECIAL TERMS AND CONDITIONS**

#### **1. Due Diligence Review**

Subrecipient has provided the Department with information about the Subrecipient's experience, processes, policies, and procedures related to the development of multifamily housing and management of federal funding in the Subrecipient's jurisdiction. These submissions, in addition to discussions with the Subrecipient, have been used to inform this Agreement and are being materially relied upon by the Department in agreeing to enter into this Agreement.

Should there be substantive changes to the organization, key personnel, methods, policies, or processes of the Subrecipient that impact the implementation of this Agreement, the Subrecipient shall promptly notify the Department of said changes.

#### **2. Capacity Assessment**

Subrecipient agrees to provide documents and information to facilitate HCD's Subrecipient capacity assessment as required in Federal Register Notice 83 FR 5867. Subrecipient further agrees to comply with the requirements, requests, and results of the Department's capacity assessment and maintain the capacity to carry out disaster recovery activities in a timely manner.

#### **3. Risk Assessment**

During the term of this Agreement, Subrecipient agrees to provide documents and information to facilitate the Department's Subrecipient monitoring risk assessment process. Subrecipient further agrees to comply with the requirements, requests, and results of the Department's risk assessment, including participation in Subrecipient monitoring events.

#### **4. Special Conditions**

Pursuant to the Due Diligence Review, Capacity Assessment and Risk Assessment, Subrecipient agrees to adhere to the following special conditions:

1. Any and all conditions set forth in a Notice to Proceed issued by the Department with respect to Approved Projects.

**EXHIBIT F**  
**NOTICE TO PROCEED**  
**[NAME OF PROJECT] [NAME OF SUBRECIPIENT]**

Pursuant to the Master Standard Agreement (“Agreement”) entered into on the \_\_\_ day of \_\_\_\_\_ 2020, by and between the California Department of Housing and Community Development (“Department”) and \_\_\_\_\_ (“Subrecipient”), this NOTICE TO PROCEED (“NTP”) is entered into on this \_\_\_ day of \_\_\_\_\_ 20\_\_\_. This NTP sets forth specific details concerning the individual project proposed by Subrecipient for the multifamily affordable housing development located at [LOCATION] consisting of [QUANTITY] affordable housing units (“Project”) and related activities undertaken for the development of affordable multifamily housing units by Subrecipient, as required. This Project is subject to, and hereby incorporates by this reference, the terms of the Agreement and is subject to the overall program funding allocation amount for Subrecipient as determined by the Department and set forth in the Agreement. There may be other projects either already existing under the Agreement, or that may be proposed in the future. The budget for this Project, when added together with the total cumulative budget of all existing Approved Projects for Subrecipient, may not exceed the total funding allocation for Subrecipient.

**1. Project Details**

Project Name:

Developer Name:

Project Address:

Project Description:

Project Approval Date:

Unit Mix:

Total Units	Total Affordable Units	Total DR-MHP Units	DR-MHP Units ONLY		
			Total Units 51%- 80% AMI	Total Units 31%- 50% AMI	Total Units below 30% AMI

**DR-MHP Units: Unit Size**

AMI Restriction	0-bed	1-bed	2-bed	3-bed	4-bed	Other:	Other:
< 30% AMI							
31% - 50% AMI							
51% - 80 % AMI							

**2. Project Budget and Project Scope of Work**

A. The Project shall follow the budget and scope of work (hereinafter “Project Work”) as described in the Project application, which is on file at the Department, Division of Financial Assistance, 2020 West El Camino Avenue, Sacramento, California and which is incorporated herein by reference.

Total Development Cost:

Total DR-MHP Allocation:

B. All written materials or alterations submitted as addenda to the original Project Application and which are approved in writing by the Department Contract Coordinator, as appropriate, are hereby incorporated as part of the Project Application. The Department reserves the right to require the Subrecipient to modify any or all parts of the Project Application in order to comply with DR-MHP, federal and/or state regulations or requirements.

C. Any proposed revision to the Project Work must be submitted in writing for review and approval by the Department and may require an amendment to this NTP. Any approval shall not be presumed unless such approval is made by the Department in writing in its sole and absolute discretion.

D. Subrecipient shall withhold as retainage 10% of all DR-MHP funded Developer payments. No retainage payments shall be released to the Developer or reimbursed to the Subrecipient until receipt and approval by the Department of all required Approved Project completion documents identified in Exhibit B, Section 6 herein.

**3. Project Schedule**

[To be imported from Project Application]

**4. Project Performance Milestones**

A. Subrecipient shall record in the applicable County Recorder’s office the DR-MHP Regulatory Agreement, substantially in the form provided by the Department, against the property before construction begins but not more than 180 days subsequent to the issuance of a Notice to Proceed by the

Department. The DR-MHP Regulatory Agreement shall have priority over other liens, encumbrances and other matters of record except as may be approved by the Department. Exceptions to the position of the DR-MHP Regulatory Agreement must be approved in writing and in advance by the Department.

- B. Subrecipient shall execute a Development Agreement (defined below) with the Developer no later than **XX/XX/XXXX**.
- C. All DR-MHP units must be leased to qualified households within 18 months of construction completion (as identified by a Certificate of Occupancy from the local permitting agency) or by March 1, 2025, whichever comes first.

[Additional Milestones to be developed based on Project Application and Schedule]

## 5. **Development Agreement**

Upon execution of this Notice to Proceed, Subrecipient shall enter into a development agreement with the Project Developer (“Development Agreement”). The Development Agreement shall include a Rider to Development Agreement, substantially in the form to be provided by the Department.

The Developer entity specified in section 1 above shall not be removed or substituted with a different Developer entity without the prior written consent of both the Department and Subrecipient, and the Development Agreement shall contain a provision to this effect. No Developer may be listed on any state or federal debarment list and must be in good standing with the Department and the State of California.

## 6. **Reporting Requirements**

- A. Subrecipient must timely submit the reports prescribed below. The Department reserves the right to request additional detail and support for any report made. Reports must be made according to the dates identified, in the formats provided by the Department and via the Department’s Grants Network unless otherwise specified at the discretion of the Department. The Subrecipient’s performance under this Agreement will be assessed in part on whether it has submitted the reports on a timely basis.
  - 1) Monthly Activity Report: Subrecipient must submit a Monthly Activity Report that addresses the following, at a minimum: (1) a description of the current status of the Collective Work, including number of units leased, and Households assisted; (2) a description

of activities to be undertaken in the next reporting period; (3) a description of problems or delays encountered in Collective Work and course of action taken to address them; (4) a description of actions taken to achieve Collective Work expenditure deadlines; and (5) a summary of Collective Work fiscal status, including award amount, funds drawn, and remaining balance. Unless otherwise waived in writing by the Department, Monthly Activity Reports must begin on the 10<sup>th</sup> calendar day of the second month following execution of this Agreement and must continue through the receipt and approval by the Department of the Project Completion Report, detailed below.

- 2) Monthly Program Income Report: Program Income, if identified as a funding source for any approved Project, must be included in the Project budget and must be substantially expended prior to drawing Grant Funds. During the term of this Agreement, if Program Income is generated, the Subrecipient must submit a Monthly Program Income Report certifying the amount of Program Income generated, retained and expended. Program Income remaining at the end of each quarter and at the expiration of this Agreement in excess of \$35,000 must be remitted to the Department.
- 3) Semi-Annual Labor Standards Report: During the term of construction for each Approved Project, each April 1<sup>st</sup> and October 1<sup>st</sup>, the Subrecipient must submit the Labor Standards Cover Memo, the HUD Form 4710 and the Davis Bacon Labor Standards Report 5.7 (if applicable). These forms are located on the Department website and are also available upon request.
- 4) Project Completion Report: At the completion of construction and once a Project is placed in service, the Subrecipient must submit a Project Completion Report that includes the total number of units built and leased, affordable units built and leased, DR-MHP units built and leased, an accomplishment narrative, and the tenants names, demographics and income for each DR-MHP unit.
- 5) Annual Beneficiary Report: Once a Project is placed in service and through the Affordability Period described in Exhibit D, section 4 of this Agreement, the Subrecipient must submit an Annual Beneficiary Report providing the tenants names, demographics, and income for each DR-MHP unit.

## 7. **Special Conditions**

[As needed based on project]

By signing below, Subrecipient acknowledges and agrees to all terms and conditions of this Notice to Proceed. All terms and conditions set forth herein are

deemed fully incorporated into and made a part of the Agreement.

Authorized Signatory:

\_\_\_\_\_  
[Subrecipient Name] \_\_\_\_\_ Date

\_\_\_\_\_  
Signatory Name and Title

Authorized Signatory:

\_\_\_\_\_  
California Department of Housing and Community Development \_\_\_\_\_ Date

\_\_\_\_\_  
Signatory Name and Title

**EXHIBIT G**  
**SUBRECIPIENT PROFILE**

City of Santa Rosa  
20-DRMHP-00005  
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**Linked Applicant**

nrathbun@srcity.org

**First name**

Nicole

**Last name**

Rathbun

**Email**

nrathbun@srcity.org

**Title**

Program Specialist II

**Company**

City of Santa Rosa

**Company Website**

srcity.org

**City**

Santa Rosa

**State**

US-CA



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**EXHIBIT G**  
**SUBRECIPIENT PROFILE**

City of Santa Rosa  
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**Organization Information**

Tell us about your organization.

**Organization Name**

City of Santa Rosa

**Organization Type**

**Employer Identification Number (EIN)**

94-6000428

**DUNS**

**Authorized Representative**

Nicole Rathbun

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**Business/Finance Representative**

Nicole Rathbun

**Organization Address**

**Address**

90 Santa Rosa Avenue

**Address 2**

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**SUBRECIPIENT PROFILE**

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**City**

Santa Rosa

**State**

US-CA

**County**

Sonoma County

**Congressional District/Region**

5

**Zip**

95404

**Phone**

707-543-4472

**Phone Extension**

**Fax**

Authorized Representative (if different from above)

## EXHIBIT D

### **CDBG-DR TERMS AND CONDITIONS**

#### **1. Definitions**

Activity Funds – means any reasonable and necessary costs that are directly related to labor and/or direct construction and/or direct Project implementation costs which will meet a national objective as defined in 42 U.S.C. 5304(b)(3), as amended and 24 CFR 570.483.

Activity Delivery Funds - means any reasonable and necessary costs for the implementation, management or oversight of a Project.

Activity Reports – Reports submitted by the Subrecipient that describe Approved Project progress and/or beneficiaries served during a given reporting period.

Affordable Rents - means rents that are at or below the “High” HOME Program rents, as defined in 24 CFR Part 92.252, published by the U.S. Department of Housing and Urban Development (HUD) for different metropolitan areas.

Affordable Units - means a housing unit that is rented at an Affordable Rent to a household that earns less than 80% of Area Median Income adjusted for household size as calculated by HUD for different metropolitan areas within the state and published annually by the Department.

Annual Income - Adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual Federal annual income tax purposes.

Approved Project – A Project that has been submitted to the Department and reviewed and approved with a Notice to Proceed to fund with the Subrecipient Allocation by the Department.

Area Median Income (AMI) - means the median family income for specific geographic areas, adjusted for household size, as calculated by HUD, and published annually by the Department at <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.

California Environmental Quality Act (CEQA) - is a state statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible.

Collective Work – the scope of work required of the Subrecipient as set forth in section 3 of Exhibit A, and the scope of work required of an Approved Project(s) as set forth in its Notice(s) to Proceed.

## EXHIBIT D

Contractor - a properly licensed person or company who is procured competitively that Subrecipients or Developers hire to undertake a contract to provide materials or labor to perform a service or do a job for a Project.

Department – means the California Department of Housing and Community Development.

Developer - A private for-profit or nonprofit organization that owns, or has adequate documented site control over, real property on which a Project is to be located, and arranges all financing, professional, technical, construction, management and maintenance services necessary to fully develop or rehabilitate affordable housing for the Project. For the purposes of this Agreement, the term Developer is inclusive of the entity that owns the Project during the affordability period and is responsible for operating the development in accordance with all of the requirements of the terms and conditions of this Agreement, including Section 7 below.

Disaster Recovery Grant Reporting System (DRGR) – The electronic system primarily used by the Department to access Grant Funds from HUD and report performance accomplishments for grant-funded activities to HUD. The DRGR system is used by HUD to review grant-funded activities, prepare reports to Congress and other interested parties, and monitor program compliance.

Duplication of Benefits (DOB) - Financial assistance received from another source that is provided for the same purpose as the CDBG-DR funds, in accordance with Federal Register Notices 84 FR 28836 and 84 FR 28848.

Eligible Expenses – Those necessary and reasonable costs under 2 CFR 200.400 through 475, and applicable notices and waivers, and as identified in Section 2.5 of the DR-MHP Policies and Procedures Manual, and as approved by the Department via a Notice to Proceed. Eligible Expenses do not include any costs which are disallowed or otherwise deemed ineligible by the State of California and/or HUD.

Financial Reports (Funds Requests) - the forms and processes required for a Subrecipient to request the drawdown of Grant Funds.

Grant Funds – The CDBG-DR funds allocated to the Subrecipient for the implementation of the DR-MHP program and the development, reconstruction, or rehabilitation of eligible, Approved Projects. Grant Funds include Activity Funds and Activity Delivery Funds.

Household - One or more persons occupying a housing unit.

Housing Unit - a residential unit that is used as a primary residence by its occupants.

HUD – The United States Department of Housing and Urban Development.

## EXHIBIT D

Indirect Costs - means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs. Indirect cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect Cost Rate Proposal - means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate as further defined in 2 CFR 200.56 and 2 CFR 200.57.

Low- to Moderate- Income (LMI) – Low to moderate income people are those having incomes not more than the “moderate-income” level (80% Area Median Family Income) set by the federal government for the HUD-assisted housing programs. This income standard changes from year to year and varies by Household size, county and the metropolitan statistical area.

Master Standard Agreement (“Agreement”) – The contractual arrangement between the Department and the Subrecipient which sets forth the terms and conditions by which CDBG-DR funds must be utilized with regards to Approved Projects.

National Environmental Protection Act (NEPA) – The federal law and associated regulations which establishes a broad national framework for protecting the environment. NEPA's basic policy is to assure that all branches of government consider the environment prior to undertaking any major federal action that could significantly affect the environment.

Notice to Proceed (NTP) – the NTP is a binding document, approved as to form as a component of the Agreement, that amends the allocation agreement between the Subrecipient and HCD by committing funds to a specific Project. The NTP includes Project details, including but not limited to: a description of the Approved Project and the permitted uses of program funds; the Approved Project development budget and sources and uses of funds and financing; the number of units and Affordable Units; the approved schedule of the Project, including land acquisition, if any, commencement and completion of construction or rehabilitation work, and occupancy by eligible Households; Performance milestones; and Performance penalties.

Program Income - In accordance with the definition found at 24 CFR 570.489(e)(2), Program Income is the repayment of assets generated from the use of CDBG-DR funds received by the Subrecipient from the Department. Program Income may consist of repayments of loans, lease payments, and proceeds of asset sales.

## EXHIBIT D

Project – A multifamily housing development with 8 or more total units of which 4 units or 30% of the units (whichever is greater) must be affordable.

Project Solicitation Process (PSP) – The process implemented by Subrecipients at the local level to solicit applications from Developers for Projects that address one or more DR-MHP program priorities, meet DR-MHP federal, state and local requirements, and that meet locally established criteria. The PSP sets forth the Project selection schedule, local requirements in addition to the requirements set forth in the DR-MHP Policies and Procedures Manual, and criteria for how Subrecipients will select Projects for submission to the Department to receive Activity Funds.

Senior Project – A project where all units are restricted to residents who are 62 years of age or older under applicable provisions of Cal. Civ. Code, Section 51.3 and the federal Fair Housing Act and further be subject to state and federal fair housing laws with respect to senior housing.

Special Needs or Special Needs Populations - means agricultural workers, individuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental disabilities, serious mental illness or substance abuse disorders; individuals who are survivors of domestic violence, sexual assault, and human trafficking; individuals who are experiencing Homelessness; individuals with HIV; homeless youth as defined in Government Code (GC) Section 12957(e)(2); families in the child welfare system for March 2020 6 whom the absence of housing is a barrier to family reunification, as certified by a county; frequent users of public health or mental health services, as identified by a public health or mental health agency; Frail Elderly Persons; or other specific groups with unique housing needs as determined by the Department. "Special Needs Populations" do not include seniors unless they otherwise qualify as a Special Needs Population.

Subrecipient – A 'Subrecipient' is a unit of local government receiving a direct allocation of Grant Funds from the Department for the purpose of funding Approved Projects to be carried out by Developers.

Subrecipient Allocation – The amount of Grant Funds allocated to the Subrecipient for Collective Work.

Supportive Housing - means housing with no limit on length of stay, that is occupied by the target population and that is linked to onsite or offsite services that assist the Supportive Housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

## 2. **National Objectives**

All Projects approved under this Agreement must be eligible and must meet the low- to

## EXHIBIT D

moderate-income households National Objective (“LMH National Objective”) of the HUD regulations authorized under Title I of the Housing and Community Development Act of 1974, Section 104(b)(3), as amended, and 24 CFR Part 570.483. While proposed projects may be mixed-income units, CDBG-DR funds must only be applied to the affordable units for occupancy by LMI households. All Senior Projects and all rehabilitation Projects must have at least 51% affordable units in order to meet the LMH National Objective, unless otherwise waived by HUD. Upon completion of the Approved Project(s) funded under this Agreement and prior to the funding expiration date of this Agreement, the Subrecipient must document that the Approved Project(s) met the LMH National Objective. The Department shall review the actual National Objective achievements of the Subrecipient. If the Subrecipient does not or cannot satisfactorily document the National Objective achievement of an Approved Project, the Approved Project may be deemed ineligible and repayment of funds may be required of the Subrecipient.

### 3. **Minimum Number of Units, Affordable Rents and Tenant Income Limits**

- A. Each Approved Project must contain a minimum of 8 units total, of which at least 30% must be affordable, but in no event shall there be less than 4 affordable units in the Approved Project.
- B. The maximum Affordable Rents (inclusive of all utility costs) must not exceed the High HOME rents, as defined in 24 CFR 92.252, as designated for the Approved Project area.
- C. DR-MHP units may only be leased to Households with an Annual Income that is not more than 80% of the AMI.

### 4. **Affordability Period and Regulatory Agreement**

- A. Approved Projects involving rehabilitation or reconstruction shall be rent and income restricted and must remain affordable for a minimum affordability period of 15 years beginning upon the Department’s receipt of the Project Completion Report as defined in Section 30(A)(4) herein.
- B. Approved Projects involving new construction shall be rent and income restricted and must remain affordable for a minimum affordability period of 20 years beginning upon the Department’s receipt of the Project Completion Report as defined in Section 30(A)(4) herein.
- C. The affordability restrictions for each Approved Project will be evidenced and enforced by way of the applicable DR-MHP Regulatory Agreement, in form and substance provided by the Department, which Subrecipient must record against each real property in the official records of the County in which each Approved

## EXHIBIT D

- Project is located and shall have priority over other liens, encumbrances and other matters of record except as may be approved by the Department. Exceptions to the position of the DR-MHP Regulatory Agreement must be approved in writing and in advance by the Department.
- D. Each DR-MHP Regulatory Agreement shall remain in effect at all times during the affordability period.
  - E. A sale or transfer of the Approved Project to another entity, in whole or in part and whether direct or indirect, during the affordability period is subject to the Department's review and approval in its sole discretion. The Department is likely to find a sale or transfer acceptable, provided any prospective purchaser or transferee acknowledges that they and the Approved Project remain subject to the affordability restrictions and all other terms and conditions of the Approved Project's DR-MHP Regulatory Agreement, which restrictions, terms, and conditions shall remain unmodified and in full force and effect during the term of that agreement and there is no change in the lien priority of that agreement.

### 5. Article XXXIV Compliance

Subrecipient must submit documentation that demonstrates the each proposed Project is in compliance with Article XXXIV, Section 1 of the California Constitution ("Article XXXIV"), or that it falls within one or more of the statutory carveouts set forth by California's Public Housing Election Implementation Law (PHEIL) (Health & Safety Code, §§ 37000 – 37002).

If a Project is subject to Article XXXIV, the Department requires an allocation letter from the relevant locality, which shows that there is Article XXXIV authority for the Project. A local government official with authority should prepare the allocation letter, and it should include the following:

- A. The name and date of the proposition and the number of units that were approved;
- B. A copy of the referendum and a certified vote tally;
- C. The number of units that remain in the locality's "bank" of Article XXXIV authority (i.e., the number of units that are still available for allocation); and
- D. The number of units that the locality will commit to this project, including the manager unit.



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If a Project is statutorily exempt from Article XXXIV, the Department requires an Article XXXIV opinion letter from the Subrecipient's legal counsel. The Article XXXIV opinion letter must demonstrate that the Subrecipient has considered both the legal requirements of Article XXXIV and the relevant facts of the Project (e.g., all funding provided by public bodies, including state, county or city sources, the number of low-income restricted units, and the general content of any regulatory restrictions). Any conclusion that a Project is exempt from Article XXXIV must be supported by facts and a specific legal theory for exemption that itself is supported by the California Constitution, statute, and/or case law.

### 6. **Duplication of Benefits**

A Duplication of Benefits (DOB) occurs when a program beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the need. It is the Department's responsibility to ensure that the DR-MHP provides assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient must report all funds obtained for the activity by the Project owner from any source from the date of the disaster until the Project is completed.

Additionally, the Department, in coordination with the Subrecipient, will perform a check for DOB prior to issuing a Notice to Proceed to ensure that duplicative assistance is not provided for multifamily housing. The Department also reserves the right to require that the Subrecipient perform additional DOB checks throughout the course of the Approved Project's period/performance, up to and through the closeout of each Approved Project, to ensure there is no duplicative assistance throughout the course of the Approved Project. Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

The Subrecipient agrees to repay to the Department any assistance later received for the same purpose as the CDBG-DR funds and that exceeds the total need for the particular recovery purpose.

### 7. **Developer Responsibilities**

- A. The Developer for each Approved Project shall be responsible for all project management functions of the Approved Project including project design and development, construction and/or rehabilitation, maintenance, selection of tenants, annual recertification of Household income and size, and management of the Approved Project and units in accordance with local requirements, the

## EXHIBIT D

- most recent version of the DR-MHP Policies and Procedures Manual, and the requirements of this Agreement for the duration of the affordability period.
- B. The Developer for each Approved Project shall be responsible for all repair and maintenance functions of the Approved Project, including ordinary maintenance and replacement of capital items. The Developer shall ensure maintenance of residential units, commercial space and common areas in accordance with local health, building, and housing codes, and the management plan.
- C. If the Developer hires a separate entity to manage the property after construction is complete, the Developer for each Approved Project shall ensure that the Approved Project is managed by an entity approved by the Subrecipient that is actively in the business of managing affordable housing. Any management contract entered into for this purpose shall be subject to Subrecipient approval and must contain a provision allowing the Developer to terminate the contract upon 30 days' notice. The Developer shall terminate said contract as directed by Subrecipient upon a determination that management does not comply with DR-MHP requirements and/or the provisions of any recorded regulatory agreement for the Approved Project.
- D. The Developer for each Approved Project shall develop a management plan for the Approved Project subject to Subrecipient approval prior to the start of construction. Any change to the plan shall be subject to the approval of Subrecipient. The plan shall be consistent with program requirements and must include provisions addressing the following:
- The role and responsibility of the Developer and the delegation of its authority;
  - Personnel policy and staffing arrangements including key personnel and lines of authority;
  - Plans and procedures for publicizing and achieving early and continued occupancy by eligible low- to moderate-income tenants;
  - Procedures for determining tenant eligibility and selecting tenants and for certifying and annually recertifying Household income and size;
  - Plans for carrying out, and budgeting for, an effective maintenance and repair program including a capital needs assessment prepared every 5 years, except that for newly constructed projects, this requirement shall apply beginning with year 10 from issuance of certificate of occupancy;
  - Rent collection policies and procedures;
  - Policies and Procedures for managing funds that meet generally accepted accounting principles;
  - A program for maintaining adequate accounting records and handling

## EXHIBIT D

- necessary forms and vouchers;
  - Plan for safe-guarding all tenant personally identifiable information (PII) such as social security numbers, names and birthdates, against possible identity theft as applicable.
  - Plans for enhancing tenant-management relations;
  - The management agreement, if any;
  - Provisions for periodic update of the management plan;
  - Appeal and grievance procedures;
  - Policies and procedures for collections for tenant-caused damages, processing evictions and terminations; and
  - A supportive services plan for Approved Projects serving Special Needs Populations, including Supportive Housing and/or providing supportive services to the general tenant population.
- E. Annually, during the term of this Agreement, Subrecipient shall perform monitoring of the Developer and Approved Projects to ensure compliance with federal and state requirements and timely project completion. The Developer shall be required to resolve any monitoring findings to the Subrecipient's satisfaction by the deadlines set by the Subrecipient.

Developers shall retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a minimum period of 5 years after the Department notifies the Subrecipient that the HUD/HCD contract has been closed according to the record retention requirements at 2 CFR 200.333.

Subrecipients may charge Developers a reasonable annual fee for compliance monitoring during the term of affordability period. The fee must be based upon the average actual cost of performing the monitoring of CDBG-DR-assisted Approved Projects. The basis for determining the amount of the fee must be documented and the fee must be included in the costs of the project as part of the project underwriting. If a monitoring fee is charged, Subrecipient shall remit 10% of the monitoring fee collected from each Approved Project to the Department not less than annually and within 90 days of receipt of the fees.

Should the Developer fail to perform its duties as described above, including a failure constituting a material default pursuant to the agreement between the Developer and Subrecipient ("Developer Agreement"), such that the Approved Project's ability to meet its stated goals under the Program is materially impaired or wholly prevented, or that materially impacts the delivery of an eligible and compliant project on a timely basis pursuant to this Agreement, such failure may constitute a default under this Agreement. Subrecipient will be responsible for curing such default, by way of corrective action or hiring a new Developer. Any proposed cure of such default must be provided to the Department in writing for approval prior to implementation. If such default is not cured timely, Subrecipient

## EXHIBIT D

will be responsible for repayment to HCD of the funding for the Approved Project.

### 8. **Remedies and Termination for Noncompliance**

**Remedies for Noncompliance:** In addition to any other rights and remedies the Department may have under this Agreement, at law, or in equity, the Department may initiate remedies for noncompliance as identified in 2 CFR 200.338-.339 at any time it has been determined that the Subrecipient is no longer meeting the terms and conditions of this Agreement. Remedies for noncompliance may be required in addition to, in lieu of, or prior to termination. Such remedies for noncompliance with a federal statute or regulation, a state statute or regulation, an assurance, in a State plan or application, a Notice to Proceed, or elsewhere may include, as appropriate:

- A. Temporarily withhold cash payments pending correction of the deficiency by the Subrecipient.
- B. Disallow all or part of the cost of the action not in compliance.
- C. Wholly or partly suspend or terminate the Subrecipient's Grant Funds.
- D. Withhold further and/or future awards for CDBG-DR funds and/or any other funds administered by the Department.
- E. Request that the Federal Awarding Agency initiate suspension or debarment proceedings.
- F. Take other remedies that may be legally available, such as:
  - 1) In the case of costs incurred without meeting a National Objective, require repayment of all funds reimbursed and/or paid to the Subrecipient, including Activity Delivery, as appropriate.
  - 2) In the case of Duplication of Benefits, require repayment of all CDBG-DR funds reimbursed and/or paid to the Subrecipient where other financial assistance was received for the same purpose or in excess of the need.
  - 3) In the case of DR-MHP units, require repayment of all CDBG-DR funds reimbursed and/or paid to the Subrecipient for any DR-MHP units that have not been rented to eligible tenants 18 months after the date of project completion.

In taking an action to remedy noncompliance, the Department will provide the Subrecipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Subrecipient is entitled under any statute or regulation applicable to the action involved as per 2 CFR 200.341. Such appeal shall be governed by, and conducted in accordance with, the appeal processes and

## EXHIBIT D

procedures set forth in section 9 of this Exhibit.

- G. Effects of suspension and termination. Subrecipient costs resulting from obligations incurred by the Subrecipient or any of the Subrecipient's Contractors or Developers during a suspension or after termination of an Agreement are not allowable unless otherwise authorized by the Department in written notice or as allowable in 2 CFR 200.342. The enforcement remedies identified in this Section do not preclude a Subrecipient or any of the Subrecipient's contractors or developers from being subject to 2 CFR Part 2424. CDBG-DR funds may not be provided to excluded or disqualified persons pursuant to 24 CFR 570.489(l) and 2 CFR 200.338-200.339.
- H. The remedies available to the Department under this Agreement are cumulative and not exclusive.

Termination for Noncompliance: Grant Funds provided by this Agreement may be terminated in whole or in part as per federal regulation at 2 CFR 200.339 by HUD or by HCD if Subrecipient fails to comply with the terms and conditions of the Agreement that include the terms and conditions of the federal award. All terminations shall include written notification setting forth the reason(s) for such termination, the effective date, and the portion to be terminated in the case of partial terminations and will follow termination notification requirements identified in 2 CFR 200.340.

- A. Termination Without Cause: This Agreement may be terminated by the Department in whole or in part at any time without cause only with the consent of the Subrecipient. In the case of a termination of the whole agreement, the parties shall agree upon termination conditions, including the effective date. In the case of a partial termination, the parties shall agree upon termination conditions, including the portion to be terminated and the effective date.
- B. Termination With Cause: This Agreement may be terminated by the Department in whole or in part at any time for cause by giving at least 14 days' prior written notice to the Subrecipient. Termination with cause includes termination prior to the end of the period of performance for failure to comply with the terms and conditions of this Agreement, and pursuant to 2 CFR 200.339(b), such termination shall be reported to the appropriate federal program integrity and performance system accessible through the System for Award Management. Termination with cause also includes, without limitation, a failure by Subrecipient to comply with the Approved Project Schedule, Approved Project Performance Milestones, Reporting Requirements, and/or Special Conditions of any Notice to Proceed issued for an Approved Project to use CDBG-DR funds.

Appeals Process for Finding of Noncompliance: If Subrecipient disagrees with a finding of noncompliance and/or any accompanying remedy and/or termination that are associated with such finding, the Subrecipient may appeal the disputed decision to the Department in writing via U.S. Mail no later than 30 calendar days from the date of

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HCD's issuance of the disputed decision. In the event the 30th day falls on a weekend or a recognized state or federal holiday, the Subrecipient's written request for appeal shall be due by 5:00 pm Pacific Time the following business day.

There are two levels of appeal available to aggrieved subrecipients:

- Level I Request for Reconsideration, and
- Level II Request for Official Review

A Subrecipient must first submit a written Level I Request for Reconsideration to the Program Manager within 30 calendar days from HCD's issuance of the underlying decision as described above. If the written request is timely submitted, the Program Manager then has 10 calendar days of receipt of such request within which to issue any stay requested by the Subrecipient, in full or in part, and 30 calendar days within which to issue a written reconsideration decision. Submitting a timely Level I Request for Reconsideration (and receiving a subsequent reconsideration decision from the Program Manager) is a necessary predicate to the Subrecipient having a right to initiate a Level II Request for Official Review.

A Subrecipient who disagrees with a Reconsideration decision may submit a Level II Request for Official Review to the Disaster Recovery Section Chief or Designee within 30 calendar days from the issuance of the underlying reconsideration decision, as described above. The Section Chief or Designee will conduct an independent review and has 30 calendar days within which to issue a written Official Review decision, which shall be final and binding and not subject to further appeal.

Time is of the essence with regards to the Subrecipient's obligation to timely file appeals or requests to the Department within the time periods set forth in this Appeals Process. As such, any appeal by Subrecipient that is not timely made in strict accordance herewith shall be void and not considered, and the initial decision or finding shall automatically remain as originally issued.

### 10. **Severability**

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Subrecipient 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.

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### 11. 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 Subrecipient 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. All waivers by the Department must be in writing in order to be valid.

### 12. Uniform Administrative Requirements

The Subrecipient, its agencies or instrumentalities, shall comply with the policies, guidelines and Administrative Requirements of 2 CFR Part 200 et al, as applicable, as they relate to the cost principles, audit requirements, acceptance and use of federal funds under this part.

- A. Single Audit Compliance: Funds will not be disbursed to any Subrecipient identified by the State Controller's Office (SCO) as non-compliant with the Federal Single Audit Act, as described in the Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards at 2 CFR 200 Sub-Part F. No funds may be disbursed until compliance with the Uniform Guidance is demonstrated to the satisfaction of the Department.
- B. Accounting Standards: The Subrecipient agrees to comply with, and administer the activity in conformance with, 2 CFR Part 200.300, et seq., and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls and maintain necessary source documentation for all costs incurred.
- C. Suspension and Debarment: By executing this Agreement, Subrecipient verifies and affirms that it has not been suspended or debarred from participating in or receiving federal government contracts, subcontracts, loans, grants, or other assistance programs. Subrecipient further agrees to verify that its Developers and Contractors have not been suspended or debarred from participating or receiving federal government contracts, subcontracts, loans, grants, or other assistance programs.

### 13. Compliance with State and Federal Laws and Regulations

- A. The Subrecipient, its agencies or instrumentalities, Contractors, and Developers shall comply with all local, state, and federal laws, statutes, and regulations, as well as policies and procedures established by the Department for the administration of the DR-MHP program, as the same may be amended from time to time

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- B. The Subrecipient shall comply with the requirements of 24 CFR 570, the HUD regulations concerning Community Development Block Grants, 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, adopted by HUD at 2 CFR 2400, Title II of the Cranston-Gonzales National Affordable Housing Act, and all federal regulations, rules, and policies issued pursuant to these regulations. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- C. The Subrecipient must maintain compliance with the Housing Element requirements detailed in Health and Safety Code (HSC) sections 50829 and 50830 for the duration of this Agreement.

### 14. **Authority to Impose Additional Special Conditions**

In accordance with 2 CFR 200.207, Department reserves the right and authority to impose additional specific conditions within any Notice to Proceed issued under this Master Standard Agreement under any of the following circumstances:

- A. When, in HCD's sole discretion, HCD finds that Subrecipient or Developer has a history of failure to comply with the general or specific terms and conditions applicable to the CDBG-DR funds allocated under this agreement or to other awards of Federally-funded grant or loan assistance passed through HCD.
- B. When Subrecipient or Developer fails to meet expected performance goals under this agreement.
- C. When Subrecipient or Developer poses an increased risk for noncompliance based on factors including, but not limited to, financial stability, quality of management systems, history of performance under Federal awards, history of timeliness under Federal awards, history of conformance with terms and conditions of previous federal awards, and reports and findings from audits.
- D. When, in HCD's sole discretion, such conditions are necessary to ensure timely and compliant performance under the Federal award.

Such specific conditions, or special conditions, may include, withholding of authority to proceed to the next phase of an Approved Project until receipt of evidence of acceptable performance within a given period of performance, requiring additional detailed financial reports, requiring additional project monitoring, requiring the Subrecipient or Developer to obtain technical or management assistance, establishing additional prior approvals, or any other condition HCD deems reasonable and necessary to safeguard Federal funds.



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Such additional specific award conditions, or special conditions, shall be included in the Notice to Proceed for Approved Projects and shall include the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the action needed to remove the additional requirement (if applicable), the time allowed for completion of the actions (if applicable), and the method for requesting reconsideration of the additional requirements imposed.

### 15. **Affirmatively Furthering Fair Housing**

The Subrecipient shall affirmatively further fair housing, in accordance with the Civil Rights Act of 1964 (42 U.S.C 2000a, et seq.), and the Fair Housing Act (42 U.S.C. 3601, et seq.), according to 42 U.S.C. 5306, et seq. and in compliance with California Gov. Code sections 65583, et seq. and 8899.5, et seq.), all as the same may be amended from time to time. Subrecipient shall also comply with the Fair Housing Amendment Act of 1988 (Public Law 100-430), as may be amended from time to time.

### 16. **Equal Opportunity Requirements and Responsibilities**

The obligations undertaken by Subrecipient include, but are not limited to, the obligation to comply with all federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

- 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 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.
- 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.

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- 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 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.
- G. **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 multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.
- H. **The 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.
- I. **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.
- J. **Executive Order 12259:** 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.

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- K. **The 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.
- L. **The 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.
- M. **The 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.
- N. **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.
17. **Assurance of Compliance with the "Violence Against Women Reauthorization Act of 2013" (VAWA) (S.47 - 113th Congress (2013-2014)) (as amended or reauthorized) Title VI - Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking – Sec. 601-603. See also 81 CFR 80724**

VAWA provides housing protections for survivors of domestic and dating violence, sexual assault, and stalking when it comes to finding and keeping a home, they can feel safe in.

VAWA applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistently with all nondiscrimination and fair housing requirements. VAWA now expands housing protections to HUD programs beyond HUD's public housing program and HUD's tenant-based and project-based Section 8 programs. VAWA now provides enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking.

During the performance of this Agreement, Subrecipient and Developer shall assure that all requirements of VAWA are complied with (including but not limited to):

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- A. Domestic Violence survivors are not denied assistance as an applicant, or evicted or have assistance terminated as a tenant, because the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, and stalking.
- B. It will implement an 'emergency transfer plan', which allows for domestic violence survivors to move to another safe and available unit if they fear for their life and safety.
- C. It will provide "Protections against denials, terminations, and evictions that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy."
- D. It will implement a 'Low-barrier certification process' where a domestic violence survivor need only to self-certify in order to document the domestic violence, dating violence, sexual assault, or stalking, ensuring third party documentation does not cause a barrier in a survivor expressing their rights and receiving the protections needed to keep themselves safe.

### 18. **Relocation, Displacement, and Acquisition**

The Subrecipient shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and regulations adopted to implement the Act in 24 CFR Part 42, 49 CFR Part 24, and Section 104(d) of the Housing and Community Development Act of 1974 as they apply to the performance of this Agreement.

### 19. **The Training, Employment, and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance (Section 3):**

The Subrecipient and the Subrecipient's Contractors and Developers shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulation at 24 CFR, Part 135. The responsibilities outlined in 24 CFR Part 135.32 include:

- 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 in excess of \$100,000.

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- 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 the Assistant Secretary 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.

### 20. **Environmental Compliance**

- A. The Subrecipient shall comply with the California Environmental Quality Act (CEQA) requirements as they apply to this Project(s).
- B. The Subrecipient shall comply with the Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. The Subrecipient shall comply with the requirements of the Clean Air Act, 42 U.S.C. 1857, *et seq.*, as amended.
- D. The Subrecipient shall comply with Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Parts 15 and 50, as amended.
- E. The Subrecipient shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- F. The Subrecipient shall comply with the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and Section 401(b) of the Lead-Based Paint Poisoning Prevention Act of 1971. The Subrecipient agrees that any

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- construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be required.
- G. The Subrecipient shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), the Archaeological and Historical Preservation Act of 1974 (Public Law 93-291), and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement. The Subrecipient shall also comply with Executive Order 11593 on the protection and enhancement of the cultural environment. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.
- H. The Subrecipient shall comply with all NEPA requirements as applicable to the performance of this Agreement as found in 24 CFR Part 50, 24 CFR Parts 58, as applicable, and 40 CFR 1500 – 1508. The Subrecipient will not receive an NTP until they have successfully documented compliance with the applicable NEPA requirements, including public noticing and publishing.

### 21. Procurement

The Subrecipient shall comply with the procurement provisions in 2 CFR Part 200.318 – 200.326, Procurement Standards as well as all other Administrative Requirements for Subrecipient and Cooperative Agreements to State, local and federally recognized Indian tribal governments as set forth in 2 CFR 200, et seq., as applicable. All procurements must be conducted in a fair, open, and competitive manner in compliance with both the spirit and the letter of applicable federal and state procurement laws.

### 22. Procurement of Recovered Materials

In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure 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. The Contractor shall procure items

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designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

This clause shall apply to items purchased under this Agreement where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

### 23. **Construction Standards**

The Subrecipient and Developer shall ensure that all Approved Projects comply with the following requirements:

A. **California Building Codes (CBC) (Cal. Code Regs., Title 24)**

All residential construction projects shall comply with the housing construction codes of the State of California, including all units developed under DR-MHP.

B. **The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157)**

The Architectural Barriers Act (ABA) stands as the first measure by Congress to ensure access to the built environment for people with disabilities. The law requires that buildings or facilities that were designed, built, or altered with federal dollars or leased by federal agencies after August 12, 1968 be accessible.

C. **California Green Buildings Standards Code (CALGreen) (Title 24, Part 11 of the California Code of Regulations)**

All new construction of residential buildings or reconstruction of substantially damaged buildings must incorporate California Green Buildings Standards Code (CALGreen).

D. **Sustainability Requirements**

All rehabilitation, reconstruction, and new construction must be designed to incorporate principles of sustainability, including water and energy efficiency,

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resilience, and mitigating the impact of future disasters. Wherever feasible, the Subrecipient, Subrecipient's Developers and Contractors must follow best practices, such as those provided by the U.S. Department of Energy, Home Energy Professionals: Professional Certifications and Standard work specifications.

### E. National Floodplain Elevation Standards

Subrecipients and Contractors must comply with the national floodplain elevation standards for new construction, repair of substantially damaged structures, or substantial improvements to residential structures in flood hazard areas. All structures designed for residential use within a 100-year (or one percent annual chance) floodplain will be elevated with the lowest floor at least two feet above the base flood elevation level and comply with the requirements of 83 FR 5850 and 83 FR 5861.

### F. Wildland-Urban Interface Building Codes (WUI Codes)

All Approved Projects under this program that are located in a CAL FIRE high fire zone must comply with applicable WUI codes, found in Title 24, Chapter 7a of the California Building Code, which offer specific material, design and construction standards to maximize ignition- resistance.

## 24. Federal Labor Standards Provisions

The Subrecipient and the Developer shall at all times comply, and cause all Project contractors to comply, with applicable federal labor standards, including without limitation, the following:

- A. Davis-Bacon Act (40 U.S.C. §§ 3141-3148), which requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- B. "Anti-Kickback Act of 1986" (41 U.S.C. §§ 51-58), which 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.



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- C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. § 3702), which 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.
- D. Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1, 3 and 5, which are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request. Subrecipient shall be responsible for monitoring Developer, contractors, and subcontractors, as applicable, for compliance with these provisions.

### 25. State Prevailing Wages

- A. The Subrecipient shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [LC Section 1720-1743] 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 Subrecipient and a licensed building contractor, the Subrecipient shall serve as the "awarding body" as that term is defined in the LC. Where the Subrecipient 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.
- C. The applicable wage rate determination on construction work will be the more restrictive of the rate prescribed in LC Section 1770-1784 or the Davis-Bacon Wage Determination.

### 26. Agreements with Developers and Contractors

- A. The Subrecipient shall not enter into any agreement, written or oral, with any Contractor, Developer or other party without the prior determination that the Contractor, Developer or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible

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Contractors.

The terms “other party” is defined as public or private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive Grant Funds from a Subrecipient to undertake Approved Projects.

- B. An agreement between the Subrecipient and any Contractor, Developer or other party shall require:
- 1) Compliance with all State and federal requirements described in this Agreement including without limitation those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
  - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Project activities.
  - 3) Maintenance, as required by law, of 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 Approved Project activities.
  - 4) Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 16 of this Agreement.
- C. Contractors shall:
- 1) Perform the Approved Project activities in accordance with federal, state and local housing and building codes, as are applicable.
  - 2) Provide security to assure completion of the Approved Project(s) by furnishing the borrower and construction lenders with proof of sufficient insurance and performance and payment bonds, or other security approved in advance in writing by the Department, as determined by the particulars of each individual Project will be required.
- D. Contractors and Subcontractors: Drug-Free Workplace Act of 1988
- 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

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violate the policy.

- 2) Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free 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 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 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 drug-free workplace by meeting the requirements of the act.

### 27. 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.

### 28. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention

- A. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any

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supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

- B. Danger Signals and Safety Devices: The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. The Contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Developer may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Developer does not relieve the Contractor of any liability incurred under these specifications or contract.
- C. Protection of Lives and Health: The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Developer may determine to be reasonably necessary.

### 29. Prohibition Against Payments of Bonus or Commission

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

- A. Obtaining the Department's approval of the Application for such assistance; or,
- B. 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.

### 30. Reporting Requirements

- A. Subrecipient must timely submit the reports prescribed below. The Department reserves the right to request additional detail and support for any report made. Reports must be made according to the dates identified, in the formats provided by the Department, and via the Department's Grants Network unless otherwise specified at the discretion of the Department. The Subrecipient's performance under this Agreement will be assessed based in part on whether it has submitted

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the reports on a timely basis.

- 1) Monthly Activity Report: Subrecipient must submit a Monthly Activity Report that addresses the following, at a minimum: (1) a description of the current status of the Collective Work, including number of units leased, and Households assisted; (2) a description of activities to be undertaken in the next reporting period; (3) a description of problems or delays encountered in Collective Work and course of action taken to address them; (4) a description of actions taken to achieve Collective Work expenditure deadlines; and (5) a summary of Collective Work fiscal status, including award amount, funds drawn, and remaining balance. Unless otherwise waived in writing by the Department, Monthly Activity Reports must begin on the 10<sup>th</sup> calendar day of the second month following execution of this Agreement and must continue through the receipt and approval by the Department of the Project Completion Report, detailed below.
- 2) Monthly Program Income Report: Program Income, if identified as a funding source for any Approved Project, must be included in the Project budget and must be substantially expended prior to drawing Grant Funds. During the term of this Agreement, if Program Income is generated, the Subrecipient must submit a Monthly Program Income Report certifying the amount of Program Income generated, retained and expended. Program Income remaining at the end of each quarter and at the expiration of this Agreement in excess of \$35,000.00 must be remitted to the Department.
- 3) Semi-Annual Labor Standards Report: During the term of construction for each Approved Project, each April 1<sup>st</sup> and October 1<sup>st</sup>, the Subrecipient must submit the Labor Standards Cover Memo, the HUD Form 4710 and the Davis Bacon Labor Standards Report 5.7 (if applicable). These forms are located on the Department's website and are also available upon request.
- 4) Project Completion Report: At the completion of construction and once an Approved Project is placed in service, the Subrecipient must submit a Project Completion Report that includes the total number of units built and leased, affordable units built and leased, DR-MHP units built and leased, an accomplishment narrative, and the tenants' names, demographics and income for each DR-MHP unit.
- 5) Annual Beneficiary Report: Once an Approved Project is placed in service and through the Affordability Period described in Exhibit D, Section 4 of this Agreement, the Subrecipient must submit an Annual Beneficiary Report providing the tenants names, demographics, and income for each DR-MHP unit.

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### 31. **Fiscal Controls**

The Subrecipient shall be responsible for the internal control and monitoring of fiscal and programmatic/operational goals and procedures. The Subrecipient shall establish and maintain such fiscal controls and fund accounting procedures as required by Federal regulations, or as may be deemed necessary by the Department to ensure the proper disbursement of, and accounting for, funds paid to the Subrecipient under this Agreement.

- A. Deposit of Funds: Subrecipient shall maintain separate accounts within established bookkeeping systems for the deposit of CDBG-DR funds and Program Income. Deposits in minority banks are encouraged.
- B. Fiscal Liability: Subrecipients shall be liable for all amounts which are determined to be due by the Department, including but not limited to, disallowed or ineligible costs which are the result of Subrecipient's, its Contractor's, or its Developer's conduct under this Agreement. Subrecipients shall also be liable for the repayment of any and all amounts it has received under this Agreement and which HUD is seeking reimbursement for from the Department. Subrecipient's obligation to repay the foregoing amounts to the Department shall survive indefinitely the expiration or earlier termination of this Agreement. Subrecipient shall be notified in writing and shall be permitted to respond regarding any controversy or proceeding between the Department and HUD arising from this Agreement.
- C. Fiscal Records: All financial transactions must be supported by complete and verifiable source documents. Records shall provide a clear audit trail and shall be maintained as specified in Exhibit D, Section 30 of this Agreement.
- D. Program Income: Any and all Program Income received during the administration of this Agreement must be receipted and maintained in a separate Program Income account. Program Income funds may not be comingled with CDBG-DR grant funds in a single account.

### 32. **Monitoring Requirements**

The Department monitors its Subrecipients based upon an assessment of risk posed by the Subrecipient and according to specific monitoring criteria per 2 CFR 200.331. During the term of this Agreement, the Department shall perform program and/or fiscal monitoring of the Subrecipient and Approved Projects to ensure compliance with federal and state requirements and timely project completion. The Subrecipient shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. In the event Subrecipient disagrees with a finding and/or any accompanying corrective actions or sanction(s) that are associated with

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such finding, Subrecipient shall follow an appeals process provided by the Department.

Subrecipient shall ensure their Developers and Approved Projects are in compliance with CDBG-DR requirements and shall perform regular, ongoing monitoring of the Developer and Approved Project for the term of this Agreement. Subrecipient shall ensure their Developers resolve any monitoring findings to the Subrecipient's satisfaction by the deadlines set by the Subrecipient. Subrecipient shall report any monitoring findings to the Department, as well as the status of those findings until they are resolved by the Developer. Subrecipients may charge Developers a reasonable annual fee for compliance monitoring during the term of affordability period. The fee must be based upon the average actual cost of performing the monitoring of CDBG-DR-assisted Approved Projects. The basis for determining the amount of the fee must be documented and the fee must be included in the costs of the project as part of the project. If a monitoring fee is charged, Subrecipient shall remit 10% of the monitoring fee collected from each Approved Project to the Department not less than annually and within 90 days of receipt of the fees.

### **33. Inspections of Project Activities**

The Department reserves the right to inspect any Approved Project activities performed hereunder to verify that the Approved Project activities are being and/or have been performed in accordance with the applicable federal, state and/or local requirements and this Agreement.

- A. The Subrecipient shall inspect any Approved Project activity performed by Developers, contractors and subcontractors hereunder to ensure that the Approved Project activities are being and have been performed in accordance with the applicable federal, State and/or local requirements and this Agreement.
- B. The Subrecipient shall require that all Approved Project activities found by such inspections that do not conform to the applicable requirements be promptly corrected, and shall withhold payment to its Developer, Contractor or subcontractor, respectively, until it is so corrected.
- C. Access by the Subrecipient, the federal grantor agency, the State, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Subrecipient, Developer, Contractor or subcontractor which are directly pertinent to that specific contract for the purpose of monitoring, making audit, examination, excerpts, and transcriptions pursuant to 2 CFR 200.336 shall be permitted. Subrecipient shall include in its agreements with Developers and Contractors, as applicable, provisions requiring such parties to provide access to its records for the purposes specified above.

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### 34. Audit/Retention and Inspection of Records

- A. The Subrecipient must have intact, auditable fiscal and program records at all times. If the Subrecipient is found to have missing audit reports from the California State Controller's Office (SCO) during the term of this Agreement, the Subrecipient will be required to submit a plan to the State for submitting the audit to the SCO. If the deadlines are not met, the Department may initiate remedies for noncompliance in accordance with Section 8 herein. The Subrecipient's audit completion plan is subject to prior review and approval by the Department.
- B. The Subrecipient 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 Subrecipient agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, 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., and other requirements of this Agreement. The Subrecipient further agrees to maintain such records for a minimum period of five (5) years after the Department notifies Subrecipient that the HUD/the Department contract has been closed according to the record retention requirements at 2 CFR 200.333. The Subrecipient shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code section 10115.10.
- C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Subrecipient.
- D. Absent fraud or material error on the part of the Department, the determination by the Department of the allowability or validity of any expenditure shall be final and conclusive.
- E. For the purposes of annual audits, Subrecipient shall comply with 2 CFR Part 200 Subpart F for the State CDBG Program. Pursuant to 2 CFR Part 200 Subpart F, the Subrecipient shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. The costs of the CDBG-DR related portion of the audit may be charged to the program in accordance with Public Law 98502, 2 CFR Part 200 Subpart F, and Title 25 CCR Section 7122.
  - 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



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auditor's working papers.

- 2) If there are audit findings, the Subrecipient 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 Subrecipient in writing. If the Department is not in agreement, the Subrecipient 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 Subrecipient shall cause all records, accounts, documentation and all other materials relevant to the grant activity(ies) to be delivered to the Department as depository.
- F. Notwithstanding the foregoing, the Department will not reimburse the Subrecipient for any audit cost incurred after the expenditure deadline of this Agreement.
- G. Subrecipient shall require Developer to submit an annual audit of the Approved Project prepared by an independent certified public accountant and in accordance with Subrecipient's audit requirements and as specified in the Department's audit handbook titled, "Audited Financial Statements for Multifamily Rental Housing", published April 2018, as periodically updated. Subrecipient must report any audit findings to the Department within 30 days of Subrecipient's review of Developer's audit.

### 35. **Signs**

If the Subrecipient places signs stating that the Approved Project 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 Approved Project that the Department is a source of financing through the CDBG-DR Program.

### 36. **Insurance**

Subrecipient, its Developers and Contractors shall comply with all requirements outlined in the (A) General Provisions section and (B) Project Insurance Requirements outlined in this section. These requirements are in addition to, and not in lieu of, any other insurance coverages required elsewhere in this Agreement. No payments will be made under this Agreement for Subrecipient Work until the Subrecipient fully complies with all requirements. No payments will be made under the terms of any Approved Project until

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the Subrecipient confirms to the Department that all Contractors on the specified Approved Project fully comply with all requirements. The Department reserves the right to waive or adjust required insurance coverages from time to time in its sole discretion.

### A. General Provisions Applying to All Policies

- 1) Coverage Term – Subrecipient’s coverage needs to be in force for the complete term of the Agreement. The Developer’s coverage needs to be in force for the complete affordability period of each Approved Project. The Contractor’s coverage needs to be in force until a certificate of occupancy is issued for each Approved Project. No work may be performed by Subrecipient, Developer, or a Contractor until and unless all insurances required by this Agreement are in full force and effect. If insurance expires during the term of the Agreement/affordability period/certificate of occupancy issuance, as applicable, a new certificate must be received by the Department at least 30 days prior to the expiration of said insurance. Any new insurance must comply with the original terms of this Agreement.
- 2) Policy Cancellation or Termination & Notice of Non-Renewal – Subrecipient is responsible to notify the Department within 15 business days prior to any actual or proposed cancellation, non-renewal or material change that affects required insurance coverage. No policy may be cancelled upon less than 30 days’ prior written notice from the insurer to the insured and the Department. New certificates of insurance are subject to the approval of the Department and the Subrecipient agrees no Collective Work or services will be commenced or performed prior to obtaining such approval. In the event Subrecipient and Contractor fails to keep in effect at all times the specified insurance coverage, the Department may, in addition to any other remedies it may have, terminate this Agreement and/or Approved Project upon the occurrence of such event, subject to the provisions of this Agreement.
- 3) Premiums, Assessments and Deductibles – Subrecipient, Developers and Contractors for each Approved Project are responsible for the payment of all premiums, policy assessments, deductibles or self-insured retentions associated with their respective insurance programs.
- 4) Primary Clause – Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the Department.

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- 5) Insurance Carrier Required Rating – All insurance companies must carry an AM Best rating of at least “A–” with a financial category rating of no lower than VII. If the Subrecipient, Developer and/or Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. Acceptance of self-insurance is within the sole discretion of the Department, and the Department reserves the right to require insurance from third-party commercial insurers.
- 6) Endorsements – Any required endorsements requested by the Department must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- 7) Inadequate Insurance – Inadequate or lack of insurance does not negate the Subrecipient’s, Developer’s, or Contractor’s obligations under this Agreement or the terms specific to the relevant Approved Project, nor does the availability or limits of any insurance policies required herein in any way limit the liability of Subrecipient, or any Developer or Contractor, to the Department hereunder, nor does it in any way limit the liability of such parties to the Department in regards to any indemnification obligations of such parties herein.
- 8) Available Coverages/Limits – All coverage and limits available to the Subrecipient, Developer, or Contractor shall also be available and applicable to the Department.
- 9) Satisfying an SIR - All insurance required by this Agreement and any required by the terms specific to the relevant Approved Project must allow the Department to pay and/or act as the Subrecipient’s, Developer’s, or Contractor’s agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the Subrecipient’s, Developer’s, or Contractor’s agent in satisfying any SIR is at the Department’s discretion.
- 10) Use of Subcontractors - In the case of Contractor’s utilization of subcontractors to complete the contracted scope of work for the relevant Approved Project, Contractor shall include all subcontractors as insureds under Contractor’s insurance or supply evidence of subcontractor’s insurance to the Department equal to policies, coverages, and limits required of Contractor.

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### B. Project Insurance Requirements

Subrecipient, Developer, and/or Contractor shall display evidence, as applicable for the relevant Approved Project, of the following on a certificate of insurance evidencing the following coverages:

- 1) Commercial General Liability – Developer or Contractor on an Approved Project shall maintain commercial general liability insurance on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Developer's or Contractor's limit of liability.

The policy must name The State of California, its officers, agents, and employees as additional insureds.

- 2) Automobile Liability – Developer or Contractor shall maintain, as applicable, business automobile liability insurance for limits not less than \$1,000,000 combined single limit. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the relevant Approved Project involve transportation of hazardous materials, evidence of an MCS-90 endorsement is required.

The policy must name The State of California, its officers, agents, and employees as additional insured.

Workers Compensation and Employer's Liability – Developer or Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of this Agreement and the relevant Approved Project. In addition, employer's liability limits of \$1,000,000 are required. By signing this Agreement, Subrecipient acknowledges compliance with these regulations. A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California must be attached to certificate.

- 3) Flood Insurance – Subrecipient shall procure and maintain flood insurance if required under Section 17.E. of this Agreement.

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### 37. Indemnification

Subrecipient, at its sole cost and expense, shall indemnify, defend, and hold the Department and its employees, representatives, attorneys, agents, and their respective successors, heirs, and assigns harmless from and against any and all claims, demands, actions, costs, losses, damages, and liabilities, whether direct or indirect, and regardless of their nature or source, which in any way relate to or arise from the actions or inactions of Subrecipient and its contractors, subcontractors, Developers, agents, and representatives in connection with this Agreement and any agreement or instruments executed in connection herewith. The obligations of Subrecipient under this Section 37 shall survive the expiration or earlier termination of this Agreement.

### 38. Anti-Lobbying Certification

The Subrecipient shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with the Approved Project(s) and 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, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

### 39. Conflict of Interest

Pursuant to 24 CFR 570.489(h), no member, officer, or employee of the Subrecipient, 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-DR activities

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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, including members and delegates to the Congress of the United States, may obtain a financial interest or benefit from a CDBG-DR assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-DR assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for 1 year thereafter. The Subrecipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

### **40. Obligations of Subrecipient with Respect to Certain Third-Party Relationships**

The Subrecipient 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 Collective Work with respect to which assistance is being provided under this Agreement to the Subrecipient. The Subrecipient shall comply with all lawful requirements of the Department necessary to ensure that the Collective Work, with respect to which assistance is being provided under this Agreement to the Subrecipient, 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)].

### **41. 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 federal Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

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

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

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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. Gov. Code § 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.