

**STANDARD AGREEMENT - AMENDMENT**

STD 213A (Rev. 4/2020)

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 46 PAGES

AGREEMENT NUMBER

16-NDR-11311

AMENDMENT NUMBER

2

Purchasing Authority Number

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

CONTRACTING AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR NAME

Sierra Nevada Conservancy

2. The term of this Agreement is:

START DATE

05/30/2017

THROUGH END DATE

12/31/2024

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

\$868,134 ( Amendment#2 will decrease this contract by \$650,000)

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

Exhibits(s) A,B & D shall be replaced in their entirety by the new Exhibits(s) A,B & D - Amendment # 2. Contract amount will be decreased by \$650,000 and the contract term will go from **5/30/2017** through 9/30/2023 to 5/30/2017 through 12/31/2024.

All other terms and conditions shall remain the same.

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

**CONTRACTOR**

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

Sierra Nevada Conservancy

CONTRACTOR BUSINESS ADDRESS

11521 Blocker Drive, Suite 205

CITY

Auburn

STATE

CA

ZIP

95603

PRINTED NAME OF PERSON SIGNING


Angela Avery

TITLE

Executive Officer

CONTRACTOR AUTHORIZED SIGNATURE

DocuSigned by:



D382EA80350B496...

DATE SIGNED

10/24/2022

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

California Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS

2020 W. El Camino Ave

CITY

Sacramento

STATE

CA

ZIP

95833

PRINTED NAME OF PERSON SIGNING

Synthia Rhinehart

TITLE

Contract Services Section Manager

CONTRACTING AGENCY AUTHORIZED SIGNATURE



DATE SIGNED

11/8/2022

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

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

## EXHIBIT A

### RECITALS, AUTHORITY, PURPOSE AND SCOPE OF WORK

#### RECITALS

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

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

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

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

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

HUD has awarded NDRC funds for innovative approaches that address unmet recovery needs from past disasters while also addressing the vulnerabilities that could put Americans in harm’s way during future disasters. The competition encourages communities to consider how they can recover from a past disaster and how to avoid and mitigate future disaster losses. Applicants (i.e., the State of California) had to link or “tie-back” their proposals to the disaster from which they were recovering, as well as demonstrate how they were reducing future risks and advancing broader community development

## EXHIBIT A

goals within their target geographic area(s).

### 1. NDRC Competition Objectives

The Competition sought to meet the following six objectives:

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

These six objectives are memorialized so that all parties to this Agreement, and all parties involved with carrying out this Agreement, better understand the purpose of the NRDC funds and fully implement the intent of the NDRC.

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

As part of the NDRC application, HCD provided executed partnership letters of intent and agreements, signed by the executive of the Partner entity, demonstrating a commitment to work collaboratively throughout the entirety of the grant application and implementation process and to undertake specified actions (see Exhibit F for copy of partnership agreements of those entities receiving NDR funding for completion of project activities under this Agreement). HCD has one formal partnership for the CRC project(s) with the County of Tuolumne. HCD has four (4) separate formal partnership agreements for the FWHP with: 1) SNC; 2) the USFS; 3) the California Department of Forestry and Fire Protection ("CAL FIRE") and 4) California Conservation Corps ("CCC"). HCD has one partnership agreement for the BUF projects with SNC. **HCD completed a selection process for a Community Based Development Organization (CBDO), selected RCAC and entered into a subrecipient agreement.** ~~HCD did not have a partnership agreement with RCAC at the time of application.~~ HCD entered into a number of other partnerships with other state agencies, but those agencies will not be a party to the HCD NDR agreements. These less-formal partnerships with Governor's Office of Planning **and Research** ("OPR") and California

### EXHIBIT A

Environmental Protection Agency (“CalEPA”) continue to participate with other partners via the “Core Team.” The Core Team is composed of HCD, SNC, USFS, and County of Tuolumne, CAL FIRE, RCAC and others as needed, representatives of OPR, CalEPA or other Partners. Core Team oversees HCD administration and Partner’s coordination of project development to ensure that the Program becomes operational, scalable, and replicable.

This Agreement supplements the partnership agreement between SNC and HCD after the HUD award of funding. This Agreement will ensure all the financial and performance requirements related to CDBG-NDR project development and implementation are met.

The Agreement must be executed before any CDBG-NDR project implementation takes place. Department certifies that **SNC, as** Grantee, may incur costs pursuant to the October 4, 2016, letter from HCD to Grantee which identifies HUD-approved pre-agreement costs incurred after January 21, 2016, in compliance with the FR 5936-N-01 and the e-mail communication from HUD to HCD received by HCD on September 28, 2016. Pursuant to FR-5936-N-01, Section V.A.1.g. (v), this Agreement and other associated partnership agreements require parties to comply with CDBG-NDR requirements, including requirements found in the Disaster Relief Appropriations Act, 2013 PL 113-2, Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5302, et seq.), the CDBG program federal regulations at 24 CFR part 570, FR-59-N-01 and any other applicable Federal Register notices, and commitments made in HCD’s Phase 1 and Phase 2 NDRC applications.

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

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

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

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

The Program is made up of three **(3)** different but interrelated activities. The Program is designed to create partnerships and practices needed to support resilience in the communities and natural systems in California’s upper watersheds, which provide sixty (60) percent of the State’s developed water resources.

## 2. California’s Approach: The Community & Watershed Resilience Program

**EXHIBIT A**

The following information describes the project activities selected for funding for the State of California's NDRC Program:

**A. Community Resilience Center ("CRC") Project Activities**

The development and operation of CRC projects in Tuolumne County that will serve multiple purposes including year-round needed services, such as education and training facilities, commercial kitchen for local Meals-on-Wheels type programs, and children's services such as the Head Start program. On a limited basis, the CRCs can serve as an evacuation center/emergency shelter as well as a facility for first responder operations. CRC location selections will include robust public participation and feasibility analysis.

**B. Biomass Utilization Fund (BUF) Project Activities**

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

**C. Forest & Watershed Health Project (FWHP) Activities**

This green infrastructure project includes five different activities that will restore forest, meadows, watersheds, and rangelands within the Rim Fire burn area, as well as provide expansion of existing fuel breaks and the creation of one new fuel break. Given the uncertain future of drought, climate change and wildfire, FWHP activities are designed to improve forest and watershed health and resilience against further environmental disturbances **while complying with all applicable environmental laws. SNC and USFS will work together to ensure the highest environmental principles are followed so sustainable forest restoration and habitat protection is accomplished.**

**The foregoing recitals are a part of this Agreement.**

**EXHIBIT A****1. Authority and Purpose**

This Standard Agreement ("Agreement") will provide official notification of the conditional reservation of funding made available by the federal Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013) ("Appropriations Act") and awarded under the National Disaster Resilience Competition as CDBG National Disaster Resilience ("CDBG-NDR") grants, Catalog of Federal Domestic Assistance number 14.272 – National Disaster Resilience Competition. This Agreement is between State of California, Department of Housing and Community Development ("HCD" or "the Department") and State of California Sierra Nevada Conservancy ("Grantee" or "Contractor").

HCD also administers the federal CDBG Program for non-entitlement jurisdictions ("CDBG" or "the Federal Program") pursuant to the provisions of 42 U.S. Code ("U.S.C.") Section 5301 et seq., 24 Code of Federal Regulations ("CFR") Part 570, Subpart I, and the California State CDBG Regulations, pursuant to 25 California Code of Regulations (CCR), Sections 7050 et seq. The Federal Program is listed in the Catalog of Federal Domestic Assistance as 14.228- CDBG-Community Development Block Grant Program.

For many years, the Department has been successfully administering the federal CDBG Program for non-entitlement jurisdictions and has developed a boilerplate contract that it will use to make a CDBG-NDR award; this Agreement is built upon the HCD established non-entitlement boilerplate agreement language. In addition, the Department has developed a Grants Administration Manual ("GAM") specifically for CDBG-NDR and CDBG Disaster Recovery (DR) grants awarded to the Department from HUD. The CDBG-DR/NDR GAM is posted on the Department's webpage and contains all the most recent HCD forms, technical assistance, and policies that Grantees need to administer CDBG-NDR or CDBG-DR grant agreements.

Hereinafter, CDBG-NDR refers to the CDBG National Disaster Resilience grant and all specific rules, regulations, policies, and statutes related to CDBG and to specific CDBG-NDR funding.

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

**2. Eligible Activities and Costs**

Grantee shall only use funds under this Agreement for eligible CDBG-NDR activities and costs as authorized under existing Section 105(a) of Title I of the Housing and Community Development Act of 1974, as amended by the Appropriations Act as well as activities specified in the NDRC NOFA, and awarded CDBG-NDR grants, as listed in October 4, 2016 letter from HCD to Grantee and the September 26, 2016 e-mail from HCD to Grantee and in compliance with other requirements or conditions which may be imposed by HUD, from time to time. The eligible activities under this Agreement are described below in Section 5, **Scope of Work**.

**EXHIBIT A**

Eligible costs for General Administration and project activities under this Agreement must comply with the provisions of federal Office of Management and Budget ("OMB") regulations in 2 CFR Part 200, subpart E, as may be amended from time to time. The total amount of funds drawn during the entire Agreement term must be for actual and reasonable costs incurred according to the United States Office of Management and Budget's Uniform Guidance (issued December 26, 2013). Source documentation for all time, materials and services costs must be maintained in the Grantee's administration files.

Eligible costs are also defined in HUD CPD Memo 13-07. Eligible planning costs are defined in 42 U.S.C. 5305(a) (12).

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

If Grantee wishes to be reimbursed for indirect costs, then HCD must receive a copy of an approval letter from the appropriate cognizant agency, or HCD can act as a cognizant agency and approve an indirect cost rate plan.

**3. Meeting CDBG National Objective**

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

Project activity costs expended by the Grantee as part of facilitating implementation of the activities under this Agreement will require documentation of eligible costs for the Work described in Section 5, however, per the NDRC application, National Objective compliance is not achieved until the project activity is completed and primarily county residents are receiving benefits from the project. Therefore, for each project activity funded under this Agreement, the Grantee must assist USFS and RCAC with documenting completion of the **activities and projects listed in Section 5, below**, and documenting proposed benefits are provided by meeting Urgent Need or by assisting low/moderate income persons. National Objective compliance is further outlined in Exhibit D, Section 4, of this Agreement.

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

For BUF projects that trigger compliance with public benefit standards, per 24 CFR 570.482(f) and (g) and 570.483(b)(4), the Grantee is responsible for assisting RCAC in documenting fulfillment of the public benefit standards on each CDBG Economic Development (ED) activity under Sections 105(a)(2), (14) and (17) of the Act. Federal Register Notice FR 5936-N-01 waives the public benefit subsidy requirements for CDBG-NDR projects. However, documentation of public benefit, creating new permanent full time equivalent job positions as a direct result of the BUF development, must be documented through the end of the HUD grant term. The FWHP will not be required to meet public benefit standards because it is not considered a CDBG economic development activity. Additional information on public benefit is included in Exhibit D, Section 6. Economic Development activities under Section 105(a)(17) and (14) must also comply with CDBG's six underwriting standards, pursuant to 24 CFR Part 570.482(e).

**EXHIBIT A****5. Scope of Work and Contract Amount**

- A. Grantee shall perform oversight coordination and management of FWHP and BUF funded activities as described in the Scope of Work (Work) below. The FWHP and BUF activities were included in the State of California's NDRC Application to HUD, which is on file with the Department of Housing and Community Development, Division of Financial Assistance, 2020 West El Camino Avenue, Suite 200, Sacramento, California, 95833, and which is incorporated herein by reference. All written materials or alterations submitted as addenda to the original Application and which are approved in by HUD are hereby incorporated as part of the Application. HCD reserves the right to require the Grantee to modify any or all parts of the Work to comply with CDBG-NDR requirements. HCD reserves the right to review and approve all Work to be performed by the Grantee, its contractors, and subrecipients under this Agreement. Any proposed revision to the Work by the Grantee must be submitted in writing for review and approval by the Department and may require an amendment to this Agreement. Approval shall not be presumed unless such approval is made by HCD in writing.
- B. For the purposes of performing the Work, HCD agrees to reimburse Grantee up to the amounts identified below in Section 6. Unless amended, HCD shall not be liable for any costs for Work more than these amounts, nor any unauthorized or ineligible costs.
- C. The grant General Administration activity, as described in the Application, shall consist of:
- 1) General Administration activities include Agreement file management, reporting, payment processing, audit/monitoring, grant closeout, and compliance with federal overlays not specific to any project activity, for example, citizen participation, fair housing, equal opportunity and others. Grantee shall work closely with HCD staff and HCD's technical assistance consultant as part of implementing General Administration activities.
- Grantee shall be responsible for producing and maintaining any reports and reviewing and processing all payment requests required for activities under this Agreement. Grantee shall establish and maintain adequate record keeping systems in accordance with all CDBG and OMB regulations cited in this Agreement, which may include or be in addition to the grant management software being used by HCD, which the Grantee is required to use as part of carrying out the CDBG-NDR funded work. Files shall allow for compliance monitoring by outside agencies, as well as for annual audit purposes.
- D. The FWHP and BUF coordination and management activities to be performed by Grantee, as generally described in the NDRC Application, Action Plan and in NDR Agreement scope of work, shall consist of items 1-2 below for FWHP activities and items 3-5 for BUF activities:
- 1) Grantee shall manage and coordinate the Forest and Watershed Health Project (FWHP), which consists of the following activities:
    - a) Restoration: site preparation, tree planting and release treatments.
    - b) Biomass removal and fuels reduction.
    - c) Expanding fuel breaks.



**EXHIBIT A**

- d) Rangeland improvements; and,
  - e) Noxious weed treatment.
- 2) With respect to the FWHP activities described in Item 1, above, HCD will enter into a three-party agreement with USFS and SNC. USFS will be responsible for performing most of the activities and SNC will support them in those implementation efforts. Approved funding for implementing the FWHP activities will flow directly from HCD to USFS. Grantee will not have any funding under the third-party agreement. USFS will be responsible for either performing or contracting for implementation of most FWHP activities.

With respect to Item 1.c), above, HCD will enter into a several three-party agreements. One with USFS and SNC, one with CAL FIRE and SNC and with other entities need for completing this work. CAL FIRE will be responsible for obtaining landowner approvals for accessing private lands, assisting in completing environmental reviews for strategic fuel break expansion and coordinating access and reviewing work during construction. Approved funding for these supportive activities will flow directly from HCD to CAL FIRE. CAL FIRE and SNC will be responsible for facilitating the fuel break expansion work that will be implemented by the USFS and any other qualified entity chosen by HCD. In addition, for fuel break expansions, HCD will hire a third-party consultant to conduct the necessary environmental reviews. Grantee will not be a party to the HCD consultant contract. However, Grantee will coordinate with all parties (BLM, USFS, HELIX) on completing all state and federal environmental review processes. Grantee will also confirm final environmental documents completed by consultant are reasonable and facilitate public noticing and release of funds.

With respect to item 1.d), above, HCD will enter into a three-party agreement with California Conservation Corps (CCC) and SNC. CCC shall be responsible for completing the designated rangeland fence replacement work and SNC shall coordinate their implementation efforts with USFS and HCD. Grantee shall not have any funding under the CCC three party agreement. Approved funding for fence replacement activities will flow directly from HCD to CCC. CCC will also have a separate agreement with USFS to allow them to work on the Stanislaus National Forest and to meet USFS fence building standards.

In general, Grantee will perform the following FWHP coordination and management activities:

- a) Assist in development of annual implementation plans and ensure federal compliance for proposed work is addressed and present each annual plan to Core Team for review.
- b) Track, review, and document that FWHP activities are completed as planned.
- c) Review and approve for submission to HCD all invoices submitted by USFS, CAL Fire, CCC and third-party consultants.
- d) Advise and support USFS in its reporting on implementation activities.

**EXHIBIT A**

- e) Serve as local liaison for affected stakeholders, including conducting public meetings to seek input regarding proposed activities and to build consensus for finalized plan.
  - f) Coordinate roles and responsibilities for various FWHP activity partners including USFS, CAL FIRE, CCC, etc.
  - g) Work with USFS, CCC and CAL FIRE to identify and document match funding; and,
  - h) Work with and be assisted by HCD's technical assistance consultant on federal overlay compliance.
  - i) Support USFS, CCC and CAL FIRE during HCD, HUD or other third-party monitoring/audit.
  - j) Review USFS construction and service contract bid documents for CDBG- NDR compliance.
- 3) Grantee shall coordinate and help manage the Biomass Utilization Fund planning, administration and implementation work with HCD, the Core Team and BUF administrator (RCAC). These activities will be completed in two phases:
- a) Phase 1 – Feasibility Study:
    - i. Feedstock assessment report.
    - ii. Economic viability report.
    - iii. Assisting HCD with procurement processes.
    - iv. Review and provide comments on draft and final reports.
  - b) Phase 2 – Economic Development (ED) Tool Kit Development and Implementation of BUF activities:
    - i. Oversee build-out of ED Tool Kit that will contain appropriate roles and responsibilities for state agencies and partners along with sample marketing plan, program guidelines with financing origination policies and procedures, standard application forms and disclosures, along with other documents that facilitate replication of the BUF activity in other areas of the state.
    - ii. Oversee BUF development from start-up application marketing and outreach through project application review and project feasibility process and final approval with build out to full operations. Oversee public facility alternative energy financial assistance program development and implementation.
- 4) With respect to the Phase 1 BUF activities described in Item 3a, above, HCD will conduct a procurement for the feasibility studies. HCD will contract directly with the successful bidder. Approved funding will flow directly from HCD to the consultant.

**EXHIBIT A**

Grantee will assist HCD with the procurement process and perform the following management and coordination activities:

- a) BUF Initial Feasibility Study:
  - i. Assist HCD in the development of a Request for Proposals (RFP) for a feasibility study to evaluate feedstock and business models for wood products or biomass utilization projects.
  - ii. Assist HCD in awarding a contract to develop the feasibility study.
  - iii. Oversee the contractor engaged to develop the feasibility study; and,
  - iv. Inspect and approve all draft and final reports.
  
- 5) With respect to the activities described in Item 3.b), above, HCD will enter into a three-party agreement with RCAC, which is responsible for implementing the BUF pillar activities. Approved funding will flow directly from HCD to RCAC for eligible BUF costs. Grantee will be a party to this agreement. RCAC shall be responsible for performing or contracting for successful administration and implementation of BUF activities.

Grantee will perform the following BUF coordination/management activities:

- a) Tool Kit Development:
  - i. Assist RCAC in Tool Kit development; and
  - ii. Review all RCAC Tool Kit Drafts and final products.
  
- b) BUF Administration and Project Implementation:
  - i. Coordinate economic development and public facility financial assistance program development with RCAC.
  - ii. Assist RCAC with outreach to stakeholders and interested parties.
  - iii. Provide technical review of proposed projects.
  - iv. Assist RCAC and HCD with environmental review processes.
  - v. Review RCAC reimbursement requests prior to HCD payment.
  - vi. Review RCAC BUF documents and processes for federal and state overlay compliance.
  - vii. Work with RCAC to identify and document matching funds; and
  - viii. Support RCAC during HCD, HUD or another third-party monitoring/audit.
  
- 6) With respect to the FWHP and BUF activities described above, Grantee shall perform the following general administration activities, which may/will also be described in the USFS and RCAC three-party agreements:
  - a) Facilitate the reporting and payment processes used by recipients of CDBG-NDR funding.
  - b) Facilitate and coordinate tracking of match funds, beneficiaries and accomplishments for submittal in required monthly and annual reports.

**EXHIBIT A**

- c) Review, approve and coordinate submittal of required reports and payment requests by recipients of CDBG-NDR funding.
  - d) Monitor systems used by implementing agencies to determine their sufficiency to verify eligible use of funding.
  - e) Establish and maintain Grantee's recordkeeping systems to allow monitoring by other agencies and for annual audit purposes.
  - f) Work closely with HCD technical assistance consultant to ensure that contractors, grantees, subgrantees, or subrecipients are in compliance with applicable requirements of federal and state laws, regulations, rules, and guidelines regarding: contracts, grants, or agreements awarded by HCD; appropriate accounting processes and policy review; procurement processes; reporting requirements; timeframes and performance measures; and developing an outreach plan.
  - g) Inspect and monitor grant activities to verify completed tasks and determine compliance with federal and state laws, regulations, rules, and guidelines relative to use of CDBG-NDR grant funds.
  - h) Review all agreements with contractors, grantees, subgrantees, and subrecipients to ensure compliance with applicable federal and state requirements.
  - i) Coordinate and review drafts and final state and federal Environmental Review Record (ERR) documents for FWHP and BUF projects prior to HCD execution and release of HUD funds. The ERR will be completed prior to any project implementation.
  - j) In coordination with HCD or other grantee's contracted Labor Consultant, support monitoring of all contractors and subcontractors for compliance with applicable provisions of federal and state labor laws.
  - k) Review and approve for submission to HCD for final review and approval of all invoices submitted by subgrantees/contractors for reimbursement.
  - l) Forward all invoices, after compliance review, to HCD for approval and processing by HUD.
  - m) Provide monthly and other reports that include:
    - i. Monthly Accomplishment Reports.
    - ii. Annual Grantee Performance Reports.
    - iii. Wage Compliance Reports prepared by Labor Consultant; and,
    - iv. Other reports that provide necessary information to HCD.
- 7) In addition to working with procured consultants associated with the FWHP and BIF development/implementation, Grantee and all procured consultants shall work with and be assisted by HCD staff and HCD's technical assistance consultant as part of implementing FWHP and BUF project activities. Grantee is responsible for and shall ensure the completion of the Work in accordance with the criteria set forth above. HCD reserves the right to review and approve all performed or contracted Work in relation to this Agreement. Any proposed revisions to the Work shall be submitted in writing for review and approved by HCD in their discretion. If approved, Grantee shall sign an amendment to this Agreement.

**EXHIBIT A****6. Budget**

General Administration and Project Management amounts cannot exceed ~~\$1,518,134~~ **\$868,134**.

**NDR General Administration Costs**

<u>General Administration</u>	<del>\$1,129,383</del> <b>\$479,383</b>
<b>Total Costs</b>	<del>\$1,129,383</del> <b>\$479,383</b>

**BUF Planning and Activity Costs**

Planning for BUF Pre-Development and Tool Kit	\$103,100
<u>Commercial Facility and Economic Development</u>	<u>\$107,234</u>
<b>Total Costs</b>	<b>\$210,334</b>

**FWHP Activity Costs**

<u>Public Improvement FWHP</u>	<u>\$178,417</u>
<b>Total Costs</b>	<b>\$178,417</b>

**7. Budget Line Item Adjustments**

Line item adjustments made in accordance with the following:

- A. The Department may approve a request from the Grantee to reallocate funds between the authorized activities and itemized amounts stated in Section 6 of this Exhibit A, except that no additional grant funds moved into General Administration given five percent (5%) cap on administration funding required by HUD and the Stafford Act. Any changes budget line items during the term of this Agreement can be made only with the Department's prior written approval in its sole discretion.

In the event that there are excess funds remaining in the budget after the completion of the approved activities, all such excess funds shall be retained by or returned to HCD, as the case may be, so that HCD may reallocate such funds to other CDBG-NDR project activities if HUD so approves.

- B. If HUD changes an activity matrix code(s) or if there is an error in recording the activity code, the HCD will inform the Grantee in writing and the correction shall not require an amendment to this Agreement.

**EXHIBIT A****8. Limitation on Repayment in Ineligible Costs**

- A. In no event shall the Grantee's monetary liability to HCD arising from or on account of Grantee authorizing, incurring or paying for ineligible costs hereunder exceed the Budget amount set forth in Exhibit A, Section 6 (i.e., \$868,134), as such amount may be adjusted from time to time.

**9. Other Funding Sources**

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

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

The term of this Agreement will begin upon date of execution by HCD and end on the date listed on the first page of this Agreement. With the exception of the Grant Closing Requirements set forth in Exhibit B, Section 6, the grantee shall complete the FWHP, BUF and general administration activities as set forth below.

**Biomass Utilization Fund (BUF):**

- A. **All BUF projects shall be approved by the Core Team for regulatory compliance, construction completed, and projects operational by: ~~06/30/2023~~ **05/31/2024**.**
- B. ~~HUD federal expenditure date requires p~~**Project implementation, activity delivery, and planning funds under this agreement to be expended by: ~~06/30/2023~~ **09/30/2024**.**
- C. ~~HUD federal expenditure date requires g~~**All general administration funds under this agreement to be expended by: ~~07/31/2023~~ **10/31/2024**.**

**Forest and Watershed Health Project (FWHP)**

- A. FWHP projects shall be completed and operational by: **04/30/2022**~~2023~~.
- B. ~~HUD federal expenditure date requires p~~**Project and activity delivery funds under this agreement to be expended by: **08/30/2023**.**
- C. ~~HUD federal expenditure date requires g~~**All general administration funds under this agreement to be expended by: **10/31/2024**.**

Final Funds Request shall be submitted 30 days after the expenditure date listed in above subparagraphs.

This Agreement will expire on: ~~12/31/2023~~ **2024**.

**EXHIBIT A**

Performance measure requirement deadlines during the period of performance are provided in Exhibit B, Section 8. This Section also includes language relating to penalties for non-performance.

**11. State Contract Manager**

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

Contract Manager, CDBG-NDR  
Division of Financial Assistance, Suite 200  
Department of Housing and Community Development  
P.O. Box 952054  
Sacramento, CA 945252-2054

**12. Grantee Contract Manager**

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

Grantee:	State of California, Sierra Nevada Conservancy (SNC)
Contract Administrator:	Mr. Elliott Vander Kolk Policy and Outreach Division 11521 Blocker Drive, Suite 205 Auburn, CA 95603
Phone:	(530) 823-4692
Email:	Elliott.VanderKolk@sierranevada.ca.gov

## EXHIBIT B

### **SET-UP/COMPLETION AND PAYMENT PROVISIONS**

#### **1. Definitions**

- A. "Activity" includes, without limitation, the following HUD eligible activities as per the Act:
  - 1) Business Financial Assistance (Section 105(a)(17))
  - 2) Planning (Section 105(a)(14))
  - 3) Public Improvements/Facilities (Section 105(a)(2))
- B. "General Administration" refers to eligible administrative expenses as provided in Sections 105(a)(13) of The Act [42 USC 5305(a)(12).]
- C. "Funds Disbursement" refers to the forms and processes required to request the drawdown of CDBG-NDR funds (Funds Requests must be a minimum of \$1,000).
- D. "State Program" means the Community and Watershed Resilience Program (CWRP) as outlined in Phase 1 and Phase 2 of the NCRC application submitted by HCD on behalf of the State of California.
- E. "Project" means the HUD approved, CDBG-NDR eligible activity carried out at an approved site with an approved scope of work.
- F. "Project Set-Up" refers to the forms and processes required to reserve funds associated with specific Projects for CDBG-NDR funds in DRGR.
- G. "Project Completion" refers to the form and processes required to report a Project as "complete." The Project Completion Report must be submitted to the Department with, or prior to, the final funds disbursement request. If the Activity is not completed, such that a national objective is not met and a Project Completion Report for the full amount drawn cannot be filed, all CDBG-NDR activity funds for the Project must be repaid to the Department.

Each Project Activity must meet a National Objective, pursuant to 24 CFR 570.483 and CDBG- NDR regulations to be considered eligible.

#### **2. General Conditions Clearance and Set-Up Requirements**

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

- A. The "General Conditions Clearance Checklist" for each funded activity, on a form provided by the Department, and any required supporting documentation.
- B. Any other documents, certifications, or evidence deemed necessary by the Department prior to Project Activity Set Up.

#### **3. Individual Project or Activity Set Up/Completion Requirements**

Grantee shall submit the following documentation to the Department:



## EXHIBIT B

- A. Project Set-Up Report for each individual project activity.
- B. Any other documents, certifications, or evidence deemed necessary by the Department prior to Project Set-Up and Completion.
- C. Project Set-Up Report must contain a DUNS number for each entity involved in implementation of CDBG-NDR activities.

### 4. **Expenditure of Funds**

#### A. General Administration

Costs for general administration may neither be incurred, nor funds expended until execution of this Agreement by the Department, unless the Grantee has received prior written approval from the Department. Department certified that Grantee may incur costs pursuant to October 4, 2016 letter from HCD to Grantee which identifies HUD-approved pre-agreement costs incurred after January 21, 2016, in compliance with FR 5936-N-01 and the e-mail communication from HUD to HCD received by HCD on September 28, 2016.

#### B. Compliance with the Federal Office of Management and Budget (OMB) OMB Uniform

Funds will not be disbursed to any Grantee identified by the State Controller's Office (SCO) as non-compliant with the Federal Single Audit Act, as described in the OMB Circular A-133, (audits of state, local governments and non-profit organizations), OMB 2 CFR 200.501, 505, and 511 and OMB Uniform Guidance, until such compliance is demonstrated to the satisfaction of the Department.

#### C. Grant Administration

The Grantee shall administer this Agreement in accordance with the provisions of Section 7126 of Title 25 of the California Code of Regulations (CCR). Grantee shall also ensure all grant administration costs are eligible per Exhibit A, Section 2 of this Agreement.

### 5. **Method of Payment**

The Grantee shall submit a Financial Report and fill in all information required by Grants Network, the Department's web-based system, also called Grant Management Software (GMS). When submitting a Financial Report in GMS, all required supporting documents for proving eligible costs must also be uploaded for HCD staff review. The GMS will notify HCD Contract Manager, as specified in Exhibit A, Section 11, and that staff will review and process the Financial Report for payment. The Department shall not authorize payments unless it has determined the activity costs have been incurred, the represented work has been satisfactorily performed, reasonable and completed, and the costs are eligible and in compliance with the terms of this Agreement.

## EXHIBIT B

### A. Reimbursement

- 1) Grantee shall work with HCD's technical assistance consultant to set up accounting and recordkeeping systems for themselves and other agencies involved in CDBG-NDR activity implementation to ensure documentation of all eligible costs is on file prior to submitting a funds request.
- 2) All CDBG-NDR Program Income ("PI") on deposit must be expended first, prior to requesting grant funds under this Agreement.
- 3) Payment shall be made as progress payments for work completed. Grantee shall request payment for Work completed on forms provided by the Department and subject to such documentation as the Department may require.
- 4) The Department shall not authorize payments unless it determines that the CDBG-NDR funds were expended in compliance with the terms and provisions of the CDBG-NDR NOFA, Federal Register Notice FR-5936-N-1 and this Agreement.

### B. Advance Payments

HCD will not allow for any advances under this agreement. Funds requests for reimbursement of eligible costs are the sole method of payment.

### C. Timing Final Payment Requests

- 1) Grantee's Final Reimbursement Request: Grantee shall submit a final funds request for reimbursement (no advance allowed) of final costs no later than sixty (60) calendar days after expenditure deadlines of this Agreement, shown in Exhibit A, Section 10.
- 2) Return of Unexpended Funds: All funds received by the Grantee but not expended by the expenditure deadline of this Agreement must be accounted for and returned. Funds shall be returned in accordance with the current State CDBG GAM. All returned funds will be disencumbered.
- 3) All Funds Not Previously Requested: If the final funds disbursement request for activity costs expended during the term of this Agreement has not been received by the Department by expenditure deadline shown in Exhibit A, Section 10, the Department shall disencumber any funds remaining and grant funds will no longer be available for the Grantee. Thus, time is of the essence with respect to the Grantee's submittal of the final payment request.

## 6. Grant Closing Requirements

## EXHIBIT B

- A. Grantee shall work with HCD's technical assistance consultant, at HCD's direction, to ensure all agencies as well as Grantee submits the following no later than 90 days after expiration of this Agreement.
- 1) Final Set-Up and Completion Reports, received and approved by the Department.
  - 2) Closeout Certification Letter.
  - 3) Final Monthly Report (QPER);
  - 4) Final Annual Performance Report (APR);
  - 5) Final Labor Standards Report, if applicable;
  - 6) Evidence, satisfactory to the Department, of compliance with any other Social Conditions or compliance requirements of this Agreement.

### 7. **Grantee Requirement to use Performance Measures and Penalty Language**

Under Federal Register Notice FR-5936-N-01, all agreements that are paid for with CDBG-NDR funding must have performance measure and penalty language. Grantee agrees to include this language in each contract or agreement that is paid for with CDBG-NDR funds. The performance measure language is used to ensure that work under the agreement is done in a timely fashion.

### 8. **Performance Measures and Penalties for Forest and Watershed Health Project (FWHP)**

- A. Per Federal Register Notice FR-5936-N-01, all agreements which are paid for with CDBG-NDR funding must have performance measures and penalties. Grantee is responsible for project management and implementation under the three-party agreements with USFS, CCC and CAL FIRE. If there are circumstances that arise where the performance measures cannot be met, then Grantee must work closely with HCD to ensure the FWHP proceeds to completion prior to expiration of the Agreement. The following performance measures are included in this Agreement and in the three-party agreements between HCD/SNC and USFS/CAL FIRE/CCC:
- 1) No later than six (6) months after execution of this agreement, two three party agreements will be executed, one with USFS and one with CAL FIRE to implement the forest and watershed health activities. SNC will be a party to those agreements.
  - 2) No later than six (6) months after clearance of CEQA and HUD execution of authority to use grant funds on the NEPA environmental review record(s), Grantee will take steps to ensure that USFS and CAL FIRE have procured and entered into agreements with qualified subcontractors to conduct eligible work on the Forest.

## EXHIBIT B

- 3) No later than six (6) months after USFS, CAL FIRE and CCC enter into implementation agreements to perform the forest and watershed health activities, pursuant to the NDR Action Plan and any amendments thereto, work shall begin.
- 4) Per Exhibit A, Section 10, all FWHP work will be completed by ~~June 30, 2023~~.  
**April 30, 2023.**

- B. Penalties: If any FWHP performance measures listed above is not met, as a penalty (within 30 days of being missed), Grantee shall work with USFS, CCC or CAL FIRE as appropriate to submit to the Department a mitigation plan specifying the reason for the delay, the actions to be taken to complete the task that is the subject of the missed deadline, and the date by which the completion of said task will occur. The Department reserves the right to withhold further payments to Grantee until such time as satisfactory progress is made, per subsection C below. HCD reserves all rights and remedies available to it in case of a default by Grantee of its responsibilities and obligations under the terms of this Agreement.
- C. Delays: The Department acknowledges that Grantee's ability to meet the various performance measures deadlines referenced in Section 7A above is in part based on the timely performance by USFS, CCC and CAL FIRE of their respective obligations under the three-party agreements. In the event that USFS, CCC, CAL FIRE or other partner or subrecipient of HCD fails to timely perform their obligations and the direct result of such failure results in the missing of a measure deadline, then the deadline for Grantee to meet such performance measures shall be extended on a day for day basis for a period of time equal to the number of days of delay in performance by USFS, CCC or CAL FIRE. This extension applies solely to delays caused by USFS, CCC or CAL FIRE, as applicable, and shall not apply to any delays on the part of the Grantee, or any delays caused, in whole or in part, by Grantee. Grantee shall use all reasonable efforts to ensure timely completion of obligations under the three-party agreements. Grantee shall notify HCD immediately upon acknowledgement of delays to performance measure deadlines. Grantee shall do everything within its control to ensure delays are minimized.

### 9. Performance Measures and Penalties for Biomass Utilization Fund (BUF)

- A. Per Federal Register Notice FR-5936-N-01, all agreements which are paid for with CDBG- NDR funding must have performance measures and penalties. Grantee is responsible for project management and implementation, so these measures apply to them as well as implementation agencies under three party agreements. If there are circumstances that arise where the performance measures cannot be met, then Grantee must work closely with HCD to ensure the BUF projects proceed to completion prior to expiration of the Agreement. The following performance measures are included in this Agreement for Phase One and Phase two of the BUF activities and will be included in all future three party agreements related to BUF development. Performance measures for Phase One and Phase Two consist of:

## EXHIBIT B

- 1) Phase One: No later than six (6) months after execution of this Agreement, to carry out the implementation of the Biomass Utilization Fund (BUF) activity, pursuant to the NDR Action Plan and any amendments there to, as posted on the NDR website, Grantee shall start assisting HCD in completing a Request for Proposal (RFP) procurement of consultant services to analyze feedstock availability and the economic feasibility of the BUF. These consultants will be hired by HCD using federal and state procurement standards.
- 2) The biomass consultant's final feasibility analysis will be used to determine if one large project should be proposed or if smaller multiple scattered site projects should be developed. This decision will be made no later than 18 months after the HCD BUF feasibility consultant contract is executed.
- 3) Phase Two: Based on results of the feasibility study, the Core Team agreed to move forward with the BUF activity, not as a single campus project, as proposed in the NDRC application, but to administer the activity as economic development Revolving Loan Fund ("RLF") so that small scattered site projects could be developed. No later than six (6) months after completion of initial feedstock and economic development feasibility analysis, Grantee shall assist HCD in conducting a review of different non-profit regional/state wide economic lenders, Community Development Finance Institutions (CDFI), to determine which have the best capacity and ability to implement the BUF RLF and to complete a BUF Tool Kit planning activity ("Tool Kit"). Grantee will also assist in getting Core Team approval of CDFI and assist HCD in entering into a three-party agreement. This process was completed and Rural Community Assistance Corporation services were secured with a three party agreement Based on that RCAC agreement the following performance measures will be enforced:
  - 4) No later than six (6) months after Grantee and HCD enter into a BUF agreement with RCAC, Grantee shall assist RCAC in releasing Request for Qualifications ("RFQ") to develop a list of qualified consultants to conduct NEPA and CEQA reviews of BUF projects.
  - 5) No later than nine (9) months after Grantee and HCD enter into a BUF agreement with RCAC, Grantee shall assist RCAC in releasing Request for Proposals ("RFP") to hire a qualified consultant to conduct NEPA and CEQA reviews of BUF projects.
  - 6) No later than two (2) months after Grantee and HCD enter into a BUF agreement with RCAC, Grantee shall take steps to ensure the RCAC shall develop, with input from SNC and HCD and submit to the Department the BUF RFL program manual ("Manual").
  - 7) No later than one month after completing the Manual, Grantee will take steps to ensure that RCAC begins marketing, accepting and screening BUF project applications from developers.

## EXHIBIT B

- 8) ~~No later than December 31, 2020~~ **2022**, Grantee will take steps to ensure that RCAC shall have one BUF project approved by Core Team for regulatory compliance.
  - 9) No later than ~~March 31, 2022~~ **December 31, 2022**, Grantee will take steps to ensure that RCAC shall have one BUF project that receives full release of NDR funds from HCD and the project can close on all necessary financial assistance to begin development process.
  - 10) No later than ~~June 30, 2022~~ **April 30, 2023**, Grantee will enter into an separate agreement with RCAC to administer the Healthy California Forest program. These program funds shall be used for future investment in biomass or wood processing infrastructure or enterprise to increase forest resilience, primarily in the Sierra Nevada Region of California.
  - 11) No later than ~~July 31, 2023~~ **June 30, 2024**, Grantee will take steps to ensure that RCAC shall have provided Completion Reports for all NDR BUF funded projects with required federal compliance documentation.
  - 12) Per Exhibit A, Section 10, ~~by June 30, 2023~~, BUF projects will be operational and final project funds disbursed by ~~June 30, 2023~~ **May 31, 2024**; ~~the HUD NDR expenditure deadline is September 30, 2025.~~
- B. Penalties: If any BUF performance measure listed above is not met, as a penalty (within 30 days of being missed), Grantee shall work with RCAC to submit to the Department a mitigation plan specifying the reason for the delay, the actions to be taken to complete the task that is the subject of the missed deadline, and the date by which the completion of the said task will occur. The Department reserves the right to withhold further payment to Grantee until such time as a satisfactory mitigation plan is approved. Furthermore, the Department shall reserve all rights and remedies available to it on account of a default by Grantee under the terms of this Agreement.
- C. Delays: The Department acknowledges that Grantee's ability to meet the various performance measures deadlines referenced in Section 8A above is in part based on the timely performance by third party consultants that are tasked with the feasibility planning of the BUF in Phase one as well as by RCAC implementation of the BUF in Phase two. In the event that either feasibility consultant or RCAC fail to conduct timely performance of their obligations under their agreements with HCD and the direct result of such failure results in the missing of a measure date in this Agreement, then the date for Grantee to meet such measure shall be extended on a day for day basis for a period of time equal to the number of days of delay in performance by BUF third party feasibility consultants and/or RCAC. This extension applies solely to delays caused by BUF third-party consultants, as applicable, and shall not apply to any delays on the part of the Grantee, or any delays caused, in whole or in part, by Grantee. Grantee shall use all reasonable efforts to ensure timely completion of obligations under BUF

**EXHIBIT B**

third-party consultants and any three-party agreement with RCAC associated with BUF activities. Grantee shall notify HCD immediately upon acknowledgement of delays to performance measure deadlines. Grantee shall do everything within its control to ensure delays are minimized.

## EXHIBIT D

### CDBG TERMS AND CONDITIONS

#### 1. Effective Date and Commencement of Work

This Agreement is effective upon approval by the Department.

- A. Grantee cannot incur any costs until the execution of this Agreement unless prior written approval has been given by HCD. Written approval for Grantee to incur pre-agreement administrative costs is contained in a letter from HCD to Grantee dated October 4, 2016, pursuant to an e-mail from HUD to HCD dated September 28, 2016, authorizing certain work to be performed after January 21, 2016 in compliance with FR-5936-N-01, cannot incur any costs until the execution of this Agreement, unless prior written approval has been given by HCD.
- B. For certain project activities, HCD must receive the Authority to Use Grant Funds from HUD prior to the commitment and/or commencement of project acquisition or construction work.
- C. Grantee cannot be reimbursed for any project costs until the Department has issued written clearance of all general conditions and any special conditions required.

#### 2. Sufficiency of Funds

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

#### 3. Litigation

- A. If any provision of this Agreement, or 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. Grantee shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement



## EXHIBIT D

and the interests of the Department.

- C. In the event that any legal or administrative claim or action ("Claim") is taken, filed, or asserted by or against any party to this Agreement, or any contractor or subcontractor thereof, or with respect to the NDR project(s), the Department may, in its sole and absolute discretion, and in addition to any other rights or remedies it may have hereunder, elect to either suspend or terminate this Agreement, in whole or in part, or to proceed forward under this Agreement. The Department shall have a period of ninety (90) days from its receipt of notice of a Claim to notify Grantee in writing of its decision to either suspend, terminate, or proceed forward. In the event the Department elects to terminate this Agreement, Grantee shall promptly submit its final Funds Request, together with those of its contractors and subcontractors, to the Department for processing, and upon payment thereof, the parties shall have no further rights or obligations under this Agreement, except for those rights and obligations which are expressly stated as surviving such a termination. Grantee shall ensure that all contracts or agreements with its contractors or subcontractors shall contain a provision similar to this section 3(C).

### 4. National Objectives

All grant project activities performed under this Agreement must be CDBG-NDR eligible, have eligible and reasonable costs, and be documented as meeting one of the National Objectives of the HUD regulations, as included in the NDR Application authorized by HUD. For BUF projects, the eligible activity is Economic Development and the National Objective associated with that eligible activity is benefit to low- and moderate-income persons. Low income benefit for economic development is typically achieved by providing jobs or services from the assisted business to low income persons or service areas. National Objective standards are found under Title I of the Housing and Community Development Act of 1974. For NDR funding, waivers related to National Objective are published over the course of the CDBG-NDR program in Federal Register Notices. For the purposes of the NDR grant, General Administration and Planning Activities are assumed to meet a CDBG National Objective.

- A. Activity primarily benefits HUD defined low- or moderate-income ("LMI") person(s) or household(s)/family. The term low- or moderate-income is defined by HUD as a person whose family / household has an annual income of no more than 80% of the current median area income on a county level. These income limits are annually determined by HUD, per 24 CFR, Part 570.483(b). LMI benefit may also be determined on an area basis (LMA), for project activities that provide a service and have a defined service area. To be LMA, a service area must contain a concentration of LMI families/households. For this NDR award of funds to the Department, HUD has granted a waiver reducing the minimum area benefit percentage from fifty one percent (51%) to thirty eight percent (38%). So if a project provides a service to an area that is documented as 38% or greater LMI, then it will meet this National Objective is met as via LMA status.
- B. Activity eliminates conditions of Slum or Blight (on a spot or area basis) is an eligible CDBG National Objective. Slum and Blight's definition is found in 24 CFR, Part 570.483(c). The use of Slum or Blight is not eligible under CDBG-NDR without prior Departmental written approval.
- C. Meeting an Urgent Need is an eligible CDBG National Objective under 24 CFR, Part 570.483(d). This National Objective was provided a waiver under Federal Register Notice FR-5936-N-01, Section V. A. 1. d. for activities using Urgent Need.

**EXHIBIT D****5. Public Benefit Standards for Certain Economic Development (ED) Activities**

Per 24 CFR 570.482(f), (g) and 570.483(b)(4), the Grantee is responsible for providing fulfillment of HUD required public benefit standards when activities under this Agreement qualify as special ED activities. The NDRC NOFA and Federal Register Notice FR-5936-N-01 waives the public benefit subsidy standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or retain jobs when assisting for profit businesses (including, but not limited to, long-term loans, short-term loans, and grants for infrastructure projects).

Grantee shall ensure public benefit standards are reported and source documentation is maintained on compliance with these standards. An example of public benefit is creation or retention of jobs, so documentation of the jobs resulting from investment of NDR funds would be maintained. In addition, documentation of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs must be on file. HUD is also waiving 570.482(g) and 570.209(c) and (d) to the extent these provisions are related to public benefit.

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

**6. Waivers**

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

**7. Uniform Administrative Requirements**

The Grantee and all other recipients of grant funds shall comply with the policies, guidelines and requirements of OMB Uniform guidance at 2 CFR 200 the Uniform Administrative Requirements, effective July 1, 2015.

**8. Non-Performance**

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

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

**9. Affirmatively Furthering Fair Housing**

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

## EXHIBIT D

U.S.C 3608 (e) (5)).

### 10. Equal Opportunity Requirements and Responsibilities

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

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

#### EXHIBIT D

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 provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.

- I. Americans with Disabilities Act of 1990 (ADA): This act modified and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- J. Executive Order 11063: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- K. Executive Order 11259: This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- L. Equal Employment Opportunity Act: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
- M. Immigration Reform and Control Act (IRCA) of 1986: Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility verification Form (I-9).
- N. Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.
- O. Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002): This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in hiring and promotion of veterans.
- P. Executive Order 11246: This executive order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

#### EXHIBIT D

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

The Grantee will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing 24 CFR, Part 75. The responsibilities of the Grantee are outlined in 24 CFR Part 75.19 as follows:

- A. Implementing procedures designed to notify Section 3 workers 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 75, Subpart C and incorporating the Section 3 clause set forth below in all solicitations and contracts in excess of \$100,000 are required by 24 CFR 75.27.

#### **Section 3 Clause**

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR, Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient

## **EXHIBIT D**

agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

- C. Facilitating the training and employment of Section 3 workers and the award of contracts to Section 3 business concerns by undertaking activities such as described in Section 75.25(b), as appropriate, to reach the goals set forth in Section 75.23 and in Federal Register Vol. 85, No. 189, page 60909, until superseded by HUD in a subsequent publication. As of September 29, 2020, the minimum Section 3 benchmark is twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; and five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.
- D. Documenting actions taken to comply with the foregoing requirements, the results of those actions taken and impediments, if any.

### **12. Environmental Compliance**

The Grantee shall work with HCD, HCD's technical assistance consultant, and any environmental compliance consultant/engineer, should one be procured, to ensure that all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements are met. Grantee shall not assume the role of lead agency for any CEQA review process. Under federal regulations, the Grantee cannot act as Responsible Entity (RE) for NEPA reviews for project activities under this Agreement, as the Department is required to be the RE. The Grantee cannot act as lead agency for CEQA. The Department or other permitting agency shall assume the lead agency role for CEQA. Grantee shall assist the Department in the CEQA/NEPA processes, confirming all environmental clearances have been satisfactory and timely obtained so HCD can obtain Authority to Use Grant funds from HUD staff prior to incurring any project implementation costs.

### **13. Clean Air and Water Acts**

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

**EXHIBIT D****14. Relocation, Displacement, and Acquisition**

The provisions of the Uniform Relocation Act, as amended, 49 CFR, Part 24, and Section 104(d) of the Housing and Community Development Act of 1974 shall be followed where any assistance is carried out by the Grantee and assisted in whole or in part by funds allocated by CDBG. For projects where there will be temporary or permanent displacement, the Grantee must submit signed General Information Notices from each tenant who was residing in the project at the time of Application submittal.

**15. Compliance with State and Federal Laws and Regulations**

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

**16. Federal Labor Standards Provisions**

- A. Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contract over \$2,000.
- B. "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) The act prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The act also provides that the inclusion of kickback amounts in contract prices is prohibited conduct in itself. This act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.
- C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that workers receive "overtime" compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.
- D. Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1, 3 and 5) are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

**17. State Labor Standards Provisions**

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Grantee shall ensure that the requirements of California Labor Code Section 1720-1743, pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations are met.

#### EXHIBIT D

- B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Grantee and a licensed building contractor, the Grantee shall serve as the "awarding body" as that term is defined in the LC. Where the Grantee will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

#### 18. Lead Based Paint Hazards

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

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

Pursuant to 24 CFR 570.489(h), no member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG-NDR activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-NDR-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-NDR-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for one (1) year thereafter. The foregoing requirement shall apply to member of the Grantees governing body and all public officials of the locality in which the program is situated, only if Grantee enters into a contract or subcontract with such locality or localities to fund or perform CDBG-NDR assisted activities. The Grantee 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.

#### 20. Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same. Grantee shall report all perceived, potential, or actual conflicts of interest to HCD for review before entering into any agreements or providing financial assistance.

#### 21. Anti-Job Pirating Certification

Pursuant to 24 CFR 570.482(h) CDBG-NDR funds may not be used to directly assist a business,



### **EXHIBIT D**

including a business expansion, in the relocation of a plant, facility, or operation from one labor market area to another labor market area if the relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs. Job loss of more than 500 employees is always considered significant. Job loss of 25 or fewer positions is never considered significant. A waiver has been granted by HUD for this regulation in the Federal Register Notice FR-5936-N-01, but Grantee must request permission to use the waiver in writing from the Department.

#### **22. Anti-Lobbying Certification**

The Grantee shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant activity(ies) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

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

#### **23. Bonus or Commission, Prohibition Against Payments of**

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

- A. Obtaining the Department's approval of the Application for such assistance; or,
- B. The Department's approval of the Applications for additional assistance; or,
- C. Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of 1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

#### **24. Contractors and Subrecipients**

- A. HCD has certified that state procurement standards meet or exceed federal procurement

#### EXHIBIT D

standards under 2 CFR 200.317. The Grantee shall follow these same standards. In addition, Grantee shall not enter into any agreement, written or oral, with any contractor or subrecipient without the prior determination that the contractor or subrecipient is eligible to receive CDBG-NDR funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

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

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

- 1) Compliance with the applicable State and federal requirements described in this Agreement, which pertain to, among other things, procurement, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace; and, compliance with the applicable provisions relating to labor standards and Section 3 as described in Sections 11, 16 and 17 of this Exhibit. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
- 2) Maintenance of at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the grant activities or any part of it.
- 3) Maintenance, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.
- 4) Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 10 of this Agreement.
- 5) Compliance with the policies, guidelines and requirements of OMB Uniform guidance at 2 CFR 200 the Uniform Administrative Requirements, as well as all state/federal laws, regulations and Department guidelines applicable to the activities set forth in this Agreement.

C. Contractors shall:

- 1) Perform the grant activities in accordance with federal, State and local housing and building codes, as are applicable.
- 2) Provide to assure completion of the project by furnishing the Grantee borrower and construction lenders with Performance and Payment Bonds, or if other security then it must be approved in advance in writing by the Department.

D. Subrecipients shall:

- 1) Retain all books, records, accounts, documentation, and all other materials relevant

#### EXHIBIT D

to this Agreement for a minimum period of five (5) years after the Department notifies the Grantee that the HUD/HCD CDBG-NDR grant agreement has been closed.

- 2) Permit the State, federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.
- E. Contractors and Subrecipients: Drug-Free Workplace Act of 1988
- 1) Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
  - 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) five calendar days, if he or she is convicted of a criminal drug violation in the workplace.
  - 4) Notify the contracting or granting agency within 10 (ten) days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
  - 5) Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
  - 6) Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

#### 25. Insurance

The Grantee shall have and maintain in full force and effect during the term of this Agreement such forms of insurance, at such levels as may be determined by the Grantee and the Department to be necessary for specific components of the grant activity(ies) described in Exhibit A. The foregoing insurance requirement shall not apply to any California State entity or jurisdiction which is self-insured.

#### 26. Reporting and Meeting Requirements

During the term of this Agreement, the Grantee must work with HCD, HCD's technical assistance consultant and other partners in submitting the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. The Grantee's

### EXHIBIT D

performance under this Agreement will be based in part on whether it has submitted reports on a timely basis. Grantee and partners must use HCD technical assistance consultant web based grant management software to track grant outcomes, performance and beneficiaries.

- A. Project Set up/Completion Report: Submit Set-up report for review and approval by Department prior to incurring project activity costs. Submit amended reports as needed.
- B. Monthly Accomplishment Reports: Submit by the 15th of each month a progress report on the previous month. So for December, a monthly report will be submitted by January 15.
- C. Annual Grantee Performance Report (GPR): Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.
- D. Wage Compliance Reports: Semi-annual Wage Compliance Reports are to be submitted by October 7 and April 7 during the entire construction period. The final Wage Compliance Report is to be submitted thirty (30) days after construction is completed.

The Department reserves the right to request any other periodic reports that may be necessary or desirable, in the opinion of the Department, for the implementation of this Agreement or as may be required by HUD and/or any state or federal agency.

## 27. **Monitoring Requirements**

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

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

## 28. **Inspections of Grant Activity**

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

- A. Grantee shall inspect any grant activity performed by contractors and subrecipients

#### **EXHIBIT D**

hereunder to ensure that the grant activities are being and have been performed in accordance with the applicable federal, state and/or local requirements and this Agreement.

- B. Grantee agrees to require that all grant activities found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to its contractor or subcontractor, respectively, until it is so corrected.

#### **29. Access to Records**

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

#### **30. Audit/Retention and Inspection of Records**

- A. Grantee must have intact, auditable fiscal and program records at all times. If the Grantee is found to have missing audit reports from the California State Controller's Office ("SCO") during the term of this Agreement, the Grantee will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Grantee will be subject to termination of this Agreement and disencumbrance of the funds awarded. Grantee's audit completion plan is subject to prior review and approval by the Department.
- B. Grantee agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Grantee agrees to provide the Department or its designee with any relevant information requested 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. Grantee further agrees to maintain such records for a minimum period of five (5) years after the Department notifies Grantee that the HUD/HCD CDBG-NDR grant contract has been closed. Grantee shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.
- C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed. If this determination is made after reimbursement was made to Grantee, then expenditure must be reimbursed to the Department or its designee by the Grantee. Expenditures for grant activity(ies) not described in Exhibit A shall be deemed authorized if the performance of such grant activity(ies) is approved in writing by the Department prior to the commencement of such grant activity(ies).
- D. Absent fraud or mistake on the part of the Department, the determination by the Department of the allowability of any expenditure shall be final.
- E. For the purposes of annual audits under OMB Uniform Guidance, Grantee shall use the Federal Catalog number 14.272 for the Community Development Block Grant National

## EXHIBIT D

### Disaster Resilience (CDBG-NDR) Program.

- F. Pursuant to OMB Uniform Guidance 2 CFR 200, the Grantee shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. Audit costs for this Agreement are a general administration expense and are subject to the general administration expenditure limits associated with this Agreement. The costs of the CDBG-NDR-related portion of the audit may be charged to the program in accordance with Public Law 98-502, Uniform Guidance, and Section 7122 of Title 25 CCR.
- G. Notwithstanding the foregoing, the Department will not reimburse the Grantee for any audit cost incurred after the expenditure deadline of this Agreement, see Exhibit A Section 10.
- 1) The audit shall be performed by a qualified State, department, local or independent auditor. The agreement/contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
  - 2) If there are audit findings, the Grantee must submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends and the Department will notify the Grantee in writing. If the Department is not in agreement, the Grantee will be contacted in writing and informed what corrective actions must be taken. This action may include the repayment of disallowed costs or other remediation.
  - 3) The Department shall not approve reimbursement for any expenditures for the audit, prior to receiving an acceptable audit report.
  - 4) If so directed by the Department upon termination of this Agreement, the Grantee shall cause all records, accounts, documentation and all other materials relevant to the grant activities to be delivered to the Department as depository.

### 31. **Signs**

If the Grantee places signs stating that the activity is funded with private or public dollars and the Department is also providing financing, it shall indicate in a typeface and size commensurate with the Department's funding portion of the project that the Department is a source of financing through the CDBG-NDR Program.

### 32. **Citizen Participation**

The Grantee is subject to the requirements concerning citizen participation contained in Federal Regulations at 24 CFR, Part 570.486, Local Government Requirements, Part 91.105 and 91.115. Grantee must follow a detailed citizen participation plan that satisfies 24 CFR, Part 70.486.

### 33. **Flood Disaster Protection**

- A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3(a) of said act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for

#### EXHIBIT D

participation in the national flood insurance program pursuant to FDPA, Section 102(d) of said act.

- B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said act.
- C. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

#### 34. Procurement

The Grantee shall comply with the procurement provisions, administrative requirements for Grants and Cooperative Agreement to State, Local and Federally Recognized Indian tribal governments and 2 CFR 200318 through 200.326, per the Department's certification of use of these procurement standards.

In accordance with Federal Register Notice FR-5936-N-01, a Data Universal Numbering System ("DUNS") number must be collected and reported in the Disaster Recovery Grants Reporting (DRGR) system. All recipients of NDR funds must have a DUNS number and be documented as not on federal debarred list before executing any NDR agreement.

#### 35. Program Income

Pursuant to Federal Register Notice FR-5936-N-01 Section 3, V. A. 17 - HUD has waived applicable Program Income rules at 42 U.S.C 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) to the extent necessary to provide additional flexibility for the use of CDBG-NDR Program Income. The alternative requirements provide guidance regarding the use of Program Income received before and after grant closeout and address revolving loan funds. Some of the CDBG-NDR program income (CDBG-NDR PI) rules vary slightly from standard CDBG requirements.

For purposes of the NDR project, the Grantee will not be receiving any CDBG-NDR PI generated from projects or activities during the term of this Agreement. Upon the closeout of the entire CDBG- NDR grant, the Grantee must certify Program Income, if any, received from completed project activities. These funds will be promptly returned to the Department. Any CDBG-NDR PI funding generated from project activities under this Agreement after project completion/grant close out, shall be returned to the Department. The Department and its technical assistance contractor will provide guidance as needed to ensure that the expenditure of all program income

## EXHIBIT D

is within the regulations noted above.

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

The Grantee shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Scope of Work with respect to which assistance is being provided under this Agreement to the Grantee. The Grantee shall comply with all lawful requirements of the Department necessary to ensure that the Scope of Work, with respect to which assistance is being provided under this Agreement to the Grantee, is carried out in accordance with the Department's Assurance and Certifications, including those with respect to the assumption of environmental responsibilities of the Department under Section 104(g) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(g)] and Certifications in Exhibit F of this Agreement.

### 37. **Energy Policy and Conservation Act**

This Agreement is subject to mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

### 38. **State Department of General Services Contracting 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 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. Government Code ("GC") § 8546.4(e) provides that State agencies receiving Federal funds shall be primarily responsible for arranging for Federally required financial and compliance audits, and shall immediately notify the Director of Finance, the State Auditor,



## EXHIBIT D

and the State Controller when they are required to obtain Federally required financial and compliance audits.

### 39. **Required Expenditure Dates**

In accordance with P.L. 113-2, all CDBG-NDR funds must be expended within two years of the date HUD obligates funds to the grantee (funds are obligated to a grantee upon HUD's signing of the grantee's CDBG-NDR grant agreement), unless a waiver is requested and granted by HUD. For purposes of this Agreement, on July 18, 2016, HUD granted the Department a waiver of this requirement and establishing a new expenditure date of September 30, 2022. Subsequently, HUD provided a new expenditure deadline of September 30, 2023, **due to initial COVID-19 impacts, and finally, in the Omnibus bill signed March 2022, Congress extended the expenditure deadline to September 30, 2025.** Any funds not expended by the federal expenditure date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose. Grantee cannot request an extension of the federal expenditure date.

### 40. **Grant Reduction**

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

### 41. **Withdrawal of Grant Amounts**

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

### 42. **Financial Controls**

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

### 43. **Administrative and National Policy Requirements**

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

### 44. **Reporting**

HUD requires grantees under the NDRC NOFA to report the sources and uses of all amounts

## EXHIBIT D

expended on NDR activities and projects, including match funds from other sources. Grantee shall also report other information for HUD's annual report to Congress or other purposes as determined by HUD. All recipients of CDBG-NDR funding for project implementation, whether directly or indirectly, shall report amounts shown in project sources and uses forms and all amounts expended on eligible activities under this Agreement. Parties shall provide information as requested by HCD for purposes of reporting to federal, state and local entities including but not limited to CDBG-NDR quarterly report to HUD, and HUD's annual report to Congress or other purposes as determined by HUD and HCD.

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

### 45. Use of Funds

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

### 46. Performance Measures and Related Remedies

Performance Measures and Penalties provisions are set forth in Exhibit B Section 8 and 9.

### 47. Disputes

Except as otherwise provided in this Agreement, any dispute arising under or relating to the performance of this Agreement, which is not disposed of, by mutual agreement of the parties shall be decided by a two-tier process. First, the Grantee will present their dispute documentation to the CDBG-NDR Project Manager for review and resolution. If the dispute cannot be resolved by the Project Manager, then it will be presented to the Deputy Director of HCD's Housing Policy Division. The decision of the Deputy Director shall be final, conclusive and binding.

### 48. Award Date

Given the uniqueness of this NDRC competitive award, HCD is treating the HUD award date as the date of the award for Grantee. As noted in item 39 above, on July 18, 2016, HUD approved HCD's request to extend the federal expenditure deadline to September 30, 2022. **Subsequently,**

## EXHIBIT D

in the Omnibus bill signed March 2022, Congress extended the expenditure deadline to September 30, 2025. It is important to note that only the remaining balance of the grant as of the end of the initial 24-month expenditure period will be extended.

### 49. Suspension or Termination

#### a. Suspension of Work

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

#### b. Termination at Option of Department

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

#### c. Termination for Default

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

#### d. Termination at Option Upon Bankruptcy of Grantee

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

#### e. Effects of Suspension and Termination

Costs incurred by or paid by Grantee relating to obligations incurred by the Grantee during a suspension or after termination of an award are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other Grantee costs during suspension or after termination which are necessary and not

## EXHIBIT D

reasonably avoidable are allowed if:

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

f. Non-Compliance

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

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

g. Cumulative Remedies

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

h. Completion

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

In accordance with federal register notice FR-5936-N-01, a Data Universal Numbering

**EXHIBIT D**

System (DUNS) number must be collected and reported in the Disaster Recovery Grants Reporting (DRGR) system.

**50. Force Majeure**

“Force Majeure” is an unforeseeable event outside of a party’s reasonable control which prevents or delays performance of that party’s obligations under this Agreement. Such event does not include the normal risks a party assume when it enters a contract. A Force Majeure event is a natural disaster such as an earthquake, flood, hurricane, pandemic, an Act of God, act of war, act of public enemies of this state or of the United States, or other similar event.

“Force Majeure” also includes actions or measures taken by any governmental authority, including executive orders, public health orders, or other governmental orders, laws, regulation or other governmental action taken in response to a “Force Majeure” event, such as a quarantine or other restriction, which prevents or delays the performance of a parties’ obligations under this Agreement.

The party asserting “Force Majeure” must give notice to the other party(s) to this Agreement within ten calendar days of the occurrence of the Force Majeure event, notice to be given in accordance with the notice provisions of this Agreement. Such notice must include a description of the Force Majeure event, how the event has prevented or delayed the party’s ability to perform its obligations under this Agreement, a description of the reasonable measures the asserting party proposes to take to resume performance of its obligations under this Agreement, and a date by which the party anticipates it will resume performance of its obligations hereunder.

**51. Federal Register Notice(s)**

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

**52. HCD National Disaster Resilience (NDR) Grant Administration Manual (GAM)**

The Grantee shall utilize the most current version of the CDBG-NDR GAM in implementing CDBG- NDR activities. Grantee will work with HCD’s technical assistance consultant to ensure all activities being undertaken in this agreement are in compliance with CDBG and CDBG-NDR rules and regulations.

**53. Duplication of Benefit**

Duplication of benefits (DOB) requirements in section 312 of the Stafford Act and in the Appropriations Act applies to the use of CDBG-NDR funds. HCD has developed a process for documenting any DOB for project activities. This process is based on HUD Federal Register

**EXHIBIT D**

notice 76 FR 71060 published on November 16, 2011 and other HUD published guidance. Prior to release of any project activity funding, Grantee must follow HCD process for documentation of DOB. The DOB calculations must be completed and approved in writing by HCD as part of clearing general conditions for each project activity under this Agreement upon clearance of general conditions, project funding will be released.

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

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

**55. Policies on Excessive Use of Force**

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

**56. Project Design/Feasibility**

Grantee will demonstrate that the engineering design for each project activity under this Agreement is feasible prior to obligation of funds for construction. This demonstration is satisfied if a registered professional engineer (or other design professional) certifies that the design meets the appropriate code or industry design and construction standards. Grantee will design projects that to the greatest degree possible, use construction methods that are high quality and limit project's environmental impact on the local community.

**57. Use of Web Based Grant Management Software (GMS)**

Grantee staff shall utilize the current web based software for grant payments and reporting. HCD is using eCivis Grants Network GMS for CDBG-NDR grant administration. Grantee shall set up the required account in the eCivis Portal to become an authorized user of Grants Network or GMS. As part of setting up the account, Grantee shall agree to all terms and conditions of the eCivis Grants Network system.

**58. Required Federal Language from 2 CFR Part 200 Appendix II**

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

**59. Procurement of Recovered Materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the

#### **EXHIBIT D**

Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **60. 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.

#### **4261. Ethical Standards/Code of Conduct**

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