

## EXHIBIT A

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

#### **1. Authority & Purpose**

The California Department of Housing and Community Development (hereinafter "Department") is the lead and responsible entity for administering the Community Development Block Grant – Disaster Recovery (hereinafter "CDBG-DR") program funds and the administering the Community Development Block Grant – Mitigation program funds (hereinafter "CDBG-MIT") appropriated under Public Law 115-123 and allocated to the State of California by the Department of Housing and Urban Development (hereinafter "HUD"). CDBG-DR and CDBG-MIT supports the State of California's recovery needs related to the Federal Emergency Management Agency's Major Disaster Declaration DR-4344 in October 2017 and DR-4353 in December 2017. CDBG-DR Infrastructure Program (hereinafter "DR-Infrastructure ") projects are funded to meet the unmet infrastructure needs of eligible California units of local government. CDBG-MIT Resilient Infrastructure Program (hereinafter "MIT-RIP") projects are funded by CDBG-MIT funds to meet the unmet mitigation infrastructure needs of eligible California units of local government.

#### **2. Scope of Agreement**

##### **A. Grant Funds**

Subject to the terms and conditions of this Master Standard Agreement (hereinafter "Agreement"), the Department has allocated and agrees to provide Grant Funds in the maximum amount identified below to City of Clearlake (hereinafter "Subrecipient") for all Subrecipient Work (defined below) and Project Work (defined below) identified in this Agreement (hereinafter "Subrecipient Allocation"). All payments made to the Subrecipient will adhere to the provisions described in Exhibit B, Section 3 (Method of Payment) herein. In no instance shall the Department be liable for any costs in excess of this amount, nor for any unauthorized or ineligible costs or expenses. The Subrecipient DR-Infrastructure Allocation is and shall not exceed \$13,729,484.

This Agreement governs the Subrecipient Allocation and each individual project ("Project") thereafter proposed by the Subrecipient and approved by the Department ("Approved Project"), the budget for each of which is to constitute some portion of the Subrecipient Allocation. The cumulative total amount of all Approved Projects shall not exceed the total amount of the Subrecipient Allocation.

The Department, in conjunction with its internal DR-Infrastructure Review Board and/or internal MIT-RIP Review Board, shall make individual Project application

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approval determinations pursuant to the 2017 DR-Infrastructure and MIT-RIP Policies and Procedures (“DR-Infrastructure and MIT-RIP Policies and Procedures”), HUD guidelines and regulations, subject to the DR-Infrastructure Program requirements to spend 80% of DR-Infrastructure program funds in the HUD Identified Most Impacted and Distressed areas (MID) and 70% of grant-wide funds for Low- to Moderate Income (LMI) benefit. Applications may be approved, conditioned, or denied in the sole discretion of the Department. If the Subrecipient disagrees with the Department’s decision with respect to its application, the Subrecipient may elect to file an appeal of that decision in accordance with the Project selection appeals process detailed in Section 3.1.11 of the DR-Infrastructure and MIT-RIP Policies and Procedures.

The Department, in conjunction with its internal MIT-RIP Review Board, shall make individual Project application approval determinations pursuant to the DR-Infrastructure and MIT-RIP Policies and Procedures, HUD guidelines and regulations, subject to the MIT-RIP requirements to spend 50% of MIT-RIP funds to the benefit of the MID, 50% of MIT-RIP program funds to be spent in the MID, and 50% of grant-wide funds for LMI benefit, or waivers and/or alternative requirements from HUD (along with any required and approved Action Plan Amendments). Applications may be approved, conditioned, or denied in the sole discretion of the Department. If the Subrecipient disagrees with the Department’s decision with respect to its application, the Subrecipient may elect to file an appeal of that decision in accordance with the Project selection appeals process detailed in Section 3.1.11 of the DR-Infrastructure and MIT-RIP Policies and Procedures.

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

By entering into this Agreement and thereby accepting the Subrecipient Allocation of Grant Funds, the Subrecipient agrees to comply with and implement this Agreement in a manner satisfactory to the Department and HUD and consistent with all applicable guidelines and standards that may be required from time to time as a condition of the Department providing the Grant Funds, including but not limited to, all applicable CDBG-DR and/or CDBG-MIT Program administration and compliance requirements set forth by this Agreement, and in accordance with the due diligence documentation previously provided by the Subrecipient and made a part hereof. The Department’s providing of Grant Funds under this Agreement is specifically conditioned on Subrecipient’s compliance with this provision and all other terms and conditions of this Agreement, the Notice to Proceed (defined below), the most recently published version of the DR-Infrastructure and MIT-RIP Policies and Procedures, the Department’s CDBG-DR Action Plan for 2017 disasters and any amendments thereto, the Department’s CDBG-MIT Action Plan for 2017 disasters and any

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amendments thereto, related Federal Register notices, and the requirements of the authorities cited above, as all of the same may be amended from time to time.

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

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

The Subrecipient scope of work (hereinafter "Subrecipient Work") for this Agreement shall consist of the Subrecipient submitting individual Project applications to the Department and managing Approved Projects through the lifecycle of the grant, as outlined in the exhibits of this Agreement and the DR-Infrastructure and MIT-RIP Policies and Procedures. The obligations undertaken by the Subrecipient include, but are not limited to, the obligation to comply with all local, state, and federal laws, regulations, and grant requirements.

- A. Subrecipient shall collect data and submit reports to the Department in accordance with the reporting requirements detailed in section 23 of Exhibit D herein.
- B. Subrecipient shall meet all Project milestones, project-specific special conditions, budgetary and otherwise, and other requirements, as may be set forth in the Notice to Proceed (hereinafter "NTP") of Exhibit F for each Approved Project.
- C. Subrecipient shall comply with all Project closeout procedures, timely and accurately, including responding to the Department's requests for additional information in support of Project closeout in reasonable timeframe.
- D. Subrecipient shall submit requests for reimbursement to the Department no less frequently than quarterly and no more frequently than monthly with end-of-quarter reimbursement requests being due to the Department by the 10<sup>th</sup> calendar day of the month following the end of the preceding quarter. For purposes of this provision, the first full month following the effective date of this Agreement shall constitute the first month of the first quarter.

### 4. **Other Funding Sources**

- A. **Other Funding Sources:** All other sources of funding required to complete the Approved Project must be identified, committed, and documented prior to, and as a condition of, the Department's issuance of the NTP. If at any time, those identified and secured sources change, the Subrecipient must notify the

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

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

- A. This Agreement is effective upon approval by the Department representative's signature on page one of the fully executed Standard Agreement, STD 213 (the "Effective Date").
- B. Subrecipient agrees that no choice-limiting actions toward the implementation of the Submitted Project(s) shall commence, nor shall any costs be paid with CDBG-DR and/or CDBG-MIT funds incurred or obligated by any party, without prior authorization from the Department via a NTP and prior to the execution of this Agreement by the Department. Additionally, for public facility-related activities, proof of the recorded DR-Infrastructure Regulatory Agreement and/or MIT-RIP Regulatory Agreement must be submitted to and accepted by the Department prior to the start of construction on an Approved Project. Details on the Regulatory Agreement will be included in the NTP. Notwithstanding the foregoing, there are two circumstances when costs may be incurred prior to the execution of this Agreement. First, Activity Delivery expenses for environmental compliance work for intended Project Applications may be incurred prior to the execution of this Agreement provided that such expenses are eligible and are supported by documentation satisfactory to the Department. Second, with Program Manager or Section Chief written approval, other costs may also be incurred prior to the execution of this Agreement, such as the cost of procuring consultants and architectural, engineering and other professional services required to prepare plans, drawings, specifications, or work write ups that are incurred not more than 24 months prior to the Approved Project being set up in DRGR, provided these procurements are conducted in a manner consistent with 2 CFR 200.317 – 200.326, "Procurement Standards".

### 6. **Term of Agreement and Performance Milestones**

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

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Department recapturing some or all of the Subrecipient Allocation from Subrecipient.

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

All Grant Funds must be expended by: **August 31, 2025, unless expressly extended by the Department in writing.**

This Agreement will expire on: **February 28, 2026, unless expressly extended by the Department in writing.**

These deadlines apply to both the DR-Infrastructure program and MIT-RIP.

- B. Performance Milestones: Subrecipient shall adhere to the performance milestones below. Time is of the essence with respect to all such milestones.
1. Subrecipient must submit all Project applications to the Department by the deadline identified in the then applicable DR-Infrastructure and MIT-RIP Policies and Procedures.
  2. Subrecipient must complete all design and engineering within two years of the Effective Date of this Agreement.
  3. Subrecipient must initiate construction, reconstruction, acquisition, or rehabilitation on all Approved Projects awarded DR-Infrastructure and/or MIT-RIP funding within three years of execution of this Agreement.
  4. Subrecipient must fully obligate all DR-Infrastructure and/or MIT-RIP Project funds within four years of execution of this Agreement. If Subrecipient fails to fully obligate DR-Infrastructure and/or MIT-RIP Project funds within four years of execution of this Agreement, the Department reserves the right to deobligate, recapture, and/or reallocate the Subrecipient's allocation amount in this Agreement by the amount then unobligated.

Failure to meet performance milestones:

If any performance milestones listed above are not timely met by Subrecipient as required, the Department reserves the right to withhold further payments

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(including, but not limited to, activity delivery fees) on one or more projects to Subrecipient until such time as satisfactory progress is made toward meeting the performance measures. Subrecipient shall diligently work with DR-Infrastructure and/or MIT-RIP staff to submit: (a) a written mitigation plan specifying the reason for the delay; (b) the actions to be taken to complete the task that is the subject of the missed measure deadline; and (c) the date by which the completion of said task will occur.

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

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

Upon review and approval of a Project application, the Department will issue a NTP to obligate activity funds to an Approved Project. The NTP will include the Project description and Project-specific scope of work (hereinafter "Project Work"), time of performance, Project budget, Project-specific special conditions, and Project performance measures, and shall be implemented through this Agreement and subject to the terms and conditions thereof. For each Approved Project, that Project's application, supporting materials and the NTP are thereafter automatically incorporated into this Agreement as its own separate addendum hereto, uniquely identified for ease of monitoring and compliance purposes.

The Department reserves the right to monitor and approve all Subrecipient Work and Project Work in relation to this Agreement and the NTP(s). Any revisions to the Subrecipient Work and/or Project Work which the Department believes are substantial in nature may require a re-review of the affected Approved Project by the DR-Infrastructure Review Board and/or MIT-RIP Review Board and its subsequent approval thereof. Requests for substantial revisions to the Subrecipient Work and/or Project Work must be submitted in writing for review and approval by the Department in its discretion. Any approval shall not be presumed unless such approval is made by the Department in writing.

## 7. Notice to Proceed Revisions

17-DRINFRA-17001  
NOI Date: 11/02/2020  
Approved Date: 4/13/2021  
Prep. Date: 05/11/2021

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- A. Adjustments to the Subrecipient Work and/or Project Work that do not require an increase or reduction of Project scope or a change in the type and/or number of beneficiaries assisted may be completed as a Notice to Proceed revision ("NTP Revision"). NTP Revisions may include, but are not limited to:
1. Adjustments that itemize the Subrecipient Work and/or Project Work, revise milestone deadlines, change the Subrecipient Work and/or Project Work in a manner that does not change the overall budget, National Objective, expenditures in the MID, and type and count of estimated beneficiaries.
  2. Adjustments that increase the estimated number of beneficiaries without increasing or decreasing the scope of work and without changing the overall budget.
- B. NTP Revisions must be approved by the Department in writing prior to implementation by Subrecipient. Approval shall be provided either through Grants Network, or in writing, as determined by the Department. The Department reserves the right to monitor and approve all Subrecipient Work and/or Project Work in relation to this Agreement and the NTP, as modified by any NTP Revisions. NTP Revisions shall be automatically incorporated into this Agreement.

### **8. DR-Infrastructure Program and MIT-RIP Contract Management**

- A. Department Contract Manager: The Department Contract Manager for this Agreement is the DR-Infrastructure Program and/or MIT-RIP Manager or its designee. Written communication regarding this Agreement shall be directed to the Department Contract Manager at the following address:
- CA Department of Housing and Community Development  
Division of Federal Financial Assistance - DR-Infrastructure Program/ MIT-RIP  
Suite 200  
P.O. Box 952054  
Sacramento, CA 94252-2054
- B. Contract Management: Day-to-day administration of this Agreement shall take place via Grants Network, including but not limited to:
1. Financial Reports (Funds Requests)
  2. Activity Reports
  3. Other Reports, as required
  4. Submittal of any and all requested supporting documentation

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5. NTP Issuance and Revisions
  6. Master Standard Agreement Issuance and Amendments
- C. Subrecipient Contract Administrator: The Subrecipient Contract Administrator (must be a Subrecipient employee) is identified in Exhibit G, Profile. Unless otherwise directed by the Department, any notice, report, or other communication required by this Agreement shall be directed via Grants Network or written to the Subrecipient's Contract Administrator at the contact information identified in Exhibit G, Profile.



## EXHIBIT B

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

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

The Department's provision of funding to Subrecipient pursuant to this Agreement is contingent on the availability of CDBG-DR funds and/or CDBG-MIT funds and continued federal and state authorization for CDBG-DR activities and CDBG-MIT activities and is subject to amendment or termination due to lack of funds or authorization. Availability of CDBG-DR funds is subject to the HUD requirement to spend 80% of DR program funds in the MID and 70% of grant-wide DR funds for LMI benefit, unless HUD issues waivers and/or alternative requirements (along with any required and approved Action Plan Amendments). Availability of CDBG-MIT funds is subject to the HUD requirement to spend 50% of MIT-RIP funds to the benefit of the MID, 50% of MIT-RIP program funds to be spent in the MID, and 50% of grant-wide funds for LMI benefit, unless HUD issues waivers and/or alternative requirements (along with any required and approved Action Plan Amendments).

The Department shall be relieved of any obligation for making payments to the Subrecipient if funds allocated to the State of California by HUD cease to be available for any reason or there is any limitation on, or withdrawal of, the Department's authority to administer the CDBG-DR program or any portion thereof.

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

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

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

B. Priority of Use of Funds

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

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### C. Withholding Funds

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

### D. Deobligation of Funds

The Subrecipient agrees that Grant Funds determined by the Department to be surplus upon completion of an Approved Project(s) will be subject to deobligation (i.e., removed from the Subrecipient Allocation amount in this Agreement) and/or reallocation by the Department. Subrecipient also agrees that if funds are not obligated to Approved Projects by milestones outlined in Section 6 of Exhibit A and/or in one or more project specific NTP of Exhibit F, the remaining funds will be subject to deobligation and/or reallocation by the Department.

### E. Indirect Costs

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

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

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

### G. Grant Administration

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

## 3. Method of Payment

Payments will be made directly to Subrecipients as reimbursements based on the

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documented and satisfactory completion of agreed upon milestones detailed in Subrecipient Work and/or Project Work, identified in Exhibit A, and detailed in each Approved Project NTP incorporated in Exhibit F, and confirmation of Subrecipient's compliance with the terms of this Agreement. No advance payments will be allowed to Subrecipients.

Financial Reports shall be submitted by Subrecipient electronically through Grants Network. The Department shall not authorize payments or reimbursements unless it has determined the activities indicated in the Financial Report have been performed in compliance with the terms of this Agreement and any other agreements executed by the parties in connection herewith, as well as all applicable Program requirements. Financial Reports must be for a minimum of \$1,000, except for the final Financial Report, which must be marked "Final". Financial Reports shall be submitted by the Subrecipient to the Department no less frequently than quarterly and no more frequently than monthly.

### A. Reimbursements for Costs Incurred

1. The Subrecipient may use Grant Funds for reimbursement by the Department of Eligible Expenses as defined herein, applied to Projects approved by the Department through the application and NTP processes described in Exhibit A and the DR-Infrastructure and MIT-RIP Policies and Procedures. Eligible Expenses include, but are not limited to, costs associated with Subrecipient program implementation including staff time and environmental reviews for Approved Projects, architectural and engineering design, permitting fees, and Approved Project costs for Eligible Infrastructure Activities as determined by the DR-Infrastructure and MIT-RIP Policies and Procedures.
2. The Department will retain 5% of all DR-Infrastructure or MIT-RIP payments for activity delivery costs. The Department shall release to Subrecipient all amounts retained to date following the Department's acceptance and approval of all required closeout documents identified in Section 6 herein.
3. Approved Project Financial Reports for construction shall be made on the actual expenses of eligible DR-Infrastructure and MIT-RIP activities as determined by the DR-Infrastructure and MIT-RIP Policies and Procedures, respectively.
4. Activity Delivery Financial Reports shall be paid only after such costs are expended for Subrecipient Work and/or Project Work completed, provided the Department determines that the Program Performance Milestones in

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this Agreement and/or Approved Project Performance Milestones in the NTP are on track. Subrecipient may expend up to the indicated Activity Delivery amount as identified in the final, executed NTP, a sample of which is attached as Exhibit F hereto.

5. To receive reimbursement for Approved Project activities, the Subrecipient shall timely submit all required Department forms via Grants Network. Financial Reports must include the level of documentation specified by the Department in the Department's Grant Administration Manual located on the Department's website, in order to be reviewed and processed.

### B. Final Financial Reports

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

## 4. Recapture of Funds

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

- A. The Subrecipient does not comply with the terms of this Agreement or any agreement executed by the Subrecipient and the Department in connection herewith or any Program rules, guidelines, policies, or procedures.
- B. The Subrecipient withdraws voluntarily from the Program prior to completion of the Approved Project(s).
- C. The Subrecipient fails to meet a National Objective for any Approved Project.
- D. The taking of any action, or the failure to take any required action, by Subrecipient which results in HUD requiring the Department to repay, directly or indirectly, all or any portion of any Grant Funds provided to Subrecipient under this Agreement, regardless of when such action or failure to act occurred or when HUD demands repayment from the Department.

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The potential recapture of funds pursuant to this provision is in addition to, and not in lieu of, any other rights and remedies of the Department under this Agreement, and Subrecipient's obligations under this provision shall survive the completion and closeout of the Approved Project(s) and/or the expiration of this Agreement.

### 5. **Project Budget Revisions and Amendments**

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

- A. Project Budget Revisions: Adjustments to the Approved Project budget that do not require an increase or reduction of the total Approved Project budget, a change in National Objective, a change in project service location if the Approved Project service location is in a MID area, a change in Program Priority Level below its current Priority Level, a change in the NTP, or a change in the type and/or count of estimated beneficiaries assisted, may be completed as a Project budget revision. Project budget revisions shall include but not be limited to:
- 1) Adjustments that reallocate funds between budget line items, but that otherwise do not change the total allocation amount, the Project Work, the National Objective, the project service location to a non-MID area, the Program Priority Level and type and count of estimated beneficiaries.
  - 2) Adjustments that increase or decrease the detail included in the submitted budget, including adding and removing budget line items, without increasing or decreasing the Project Work and without changing the total allocation amount.

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

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

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

The Subrecipient must submit the following to the Department within 90 days of the completion of each Approved Project.

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- 1) A Final Activity Report (Project Completion Report) that includes all required reporting data for the Approved Project, including but not limited to, eligible activities, costs, beneficiaries, and National Objective compliance.
- 2) A recorded Notice of Completion.
- 3) Relocation Report: A relocation report is required for those Approved Projects where relocation activities were undertaken pursuant to a Residential Anti-displacement and Relocation Assistance Plan (RARAP) (Section 2.3.21 of the DR-Infrastructure and MIT-RIP Policies and Procedures).
- 4) Final Labor Standards Report as described in Exhibit D(23)(A)(3) herein.
- 5) Evidence, satisfactory to the Department, of Subrecipient's compliance with any other special conditions of this Agreement; and,
- 6) A resolution from the governing body acknowledging the accomplishments of the Approved Project and confirming that the Approved Project is complete and that all Financial Reports have been timely processed and reimbursed.

Upon receipt of the above documentation, the Department will close the NTP and finalize the activity in Disaster Recovery Grant Reporting (DRGR) system for final reporting to HUD.

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

Subrecipient shall retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a minimum period of five (5) years after the Department notifies the Subrecipient that the grant agreement between HUD and the State of California has been closed.

## EXHIBIT D

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

#### **1. Definitions**

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

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

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

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

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

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

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

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

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

Duplication of Benefits (DOB) - Financial assistance received from another source that is provided for the same purpose as the CDBG-DR and/or CDBG-MIT funds, in

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accordance with Federal Register Notices 84 FR 28836 and 84 FR 28848.

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

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

**Grant Funds** – The CDBG-DR and CDBG-MIT funds allocated to the Subrecipient for the implementation of the DR-Infrastructure and MIT-RIP programs and eligible, Approved Projects. Grant Funds include Activity Funds and Activity Delivery Funds.

**Household** - One or more persons occupying a housing unit.

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

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

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

**Infrastructure** – means an infrastructure repair which is an eligible activity according to 42 USC 5305(a)(2), which authorizes the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements.

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

**Master Standard Agreement (“Agreement”)** – The contractual arrangement between the



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Department and the Subrecipient which sets forth the terms and conditions by which CDBG-DR and/or CDBG-MIT funds must be utilized with regards to Approved Projects.

National Environmental Policy Act (NEPA) – The federal law and associated regulations which establishes a broad national framework for protecting the environment. NEPA's basic policy is to assure that all branches of government consider environmental and related social and economic effect prior to undertaking any proposed action. All HUD-assisted projects are required to undergo an environmental review.

Notice to Proceed (NTP) – The NTP is a binding document, approved as to form as a component of the Agreement, that amends the allocation agreement between the Subrecipient and the Department by committing funds to a specific Project. A fully executed NTP is required for each Approved Project, and no work may be commenced, costs or expenses incurred, nor choice-limiting action(s) taken by Subrecipient prior to the execution of the NTP. The NTP includes, among other things, various Project details, including but not limited to the following: a description of the Approved Project and the permitted uses of program funds; the Approved Project budget and sources and uses of funds and financing; the approved schedule of the Project; the deadlines for the commencement and completion of construction or rehabilitation work; Performance milestones; Performance penalties; and any special conditions applicable to the Approved Project.

Project – Per 49 CFR 24.2(a)(22), project means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines. See DR-Infrastructure and MIT-RIP Policies and Procedures Section 1.2.

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

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

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

Urgent Need - The Urgent Need National Objective requires that the project is designed to meet community development needs having a particular urgency. In the absence of substantial evidence to the contrary, a project is considered to address this National Objective if the design of the project is certified to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the Subrecipient is unable to

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finance the activity on its own, and that other sources of funding are not available. A condition is generally considered to be of recent origin if it developed or became critical within 18 months preceding the certification by the Subrecipient.

Urgent Need Mitigation -- UD has created a new National Objective - Urgent Need Mitigation (UNM) for CDBG-MIT programs. This National Objective provides a better fit for CDBG-MIT activities that aim to address risks that do not tie back to the disaster events of the 2017 CDBG-DR funding, or subsequent disasters.

Projects using the UNM national objective must provide documentation that demonstrates a measurable and verifiable impact on reducing risks at the completion of the activity UNM projects must:

- Address the current and future risks as identified in the Mitigation Needs Assessment; and
- Result in a measurable and verifiable reduction in the risk of loss of life and property.

### 2. National Objectives

All DR-Infrastructure Projects approved under this Agreement must be eligible and as a CDBG-DR funded activity must meet a National Objective as required under 24 CFR 570.200(a)(2). Under section 101(c) of the authorizing Act (42 U.S.C. 5301) the CDBG program must ensure that the funded activity meets one of the named national objectives. The two qualifying national objectives are:

- Benefiting low- and moderate-income persons (LMI); and
- Meeting an Urgent Need.

Upon completion of the Approved Project(s) funded under this Agreement and prior to the funding expenditure deadline of this Agreement, the Subrecipient must document that the Approved Project(s) met either the LMI National Objective or the Urgent Need National Objective. The Department shall review the actual National Objective achievements of the Subrecipient.

All MIT-RIP Projects approved under this Agreement must be eligible and as a CDBG-MIT funded activity must meet a National Objective as required under 24 CFR 570.200(a)(2). Under section 101(c) of the authorizing Act (42 U.S.C. 5301) the CDBG program must ensure that the funded activity meets one of the named national objectives. The two qualifying national objectives are:

- Benefiting low- and moderate-income persons (LMI); and
- Meeting an urgent need mitigation.

Upon completion of the Approved Project(s) funded under this Agreement and prior to the funding expenditure deadline of this Agreement, the Subrecipient must document that the Approved Project(s) met either the LMI National Objective or the Urgent Need

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Mitigation National Objective. The Department shall review the actual National Objective achievements of the Subrecipient.

### 3. **Duplication of Benefits**

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

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

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

The Subrecipient agrees to repay to the Department any assistance later received for the same purpose as the CDBG-DR and/or CDBG-MIT funds and that exceeds the total need for the particular recovery purpose. The obligations of Subrecipient to repay the Department for any Duplication of Benefit shall survive the completion of the Approved Project(s) and the expiration or earlier termination of this Agreement.

### 4. **Remedies and Termination for Noncompliance; Appeals**

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

A. Temporarily withhold cash payments pending correction of the deficiency by the

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Subrecipient.

- B. Disallow all or part of the cost of the action not in compliance.
- C. Wholly or partly suspend or terminate the Subrecipient's Allocation of Grant Funds.
- D. Withhold further and/or future awards for CDBG-DR and/or CDBG-MIT funds and/or any other funds administered by the Department.
- E. Request that the Federal Awarding Agency initiate suspension or debarment proceedings.
- F. Take other remedies that may be legally available, such as:
  - 1) In the case of costs incurred without meeting a National Objective, require repayment of all funds reimbursed and/or paid to the Subrecipient, including Activity Delivery Funds, as appropriate.
  - 2) In the case of Duplication of Benefits, require repayment of all CDBG-DR and/or CDBG-MIT funds reimbursed and/or paid to the Subrecipient where other financial assistance was received for the same purpose or in excess of the need.

In taking an action to remedy noncompliance, the Department will provide the Subrecipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Subrecipient is entitled under any statute or regulation applicable to the action involved as per 2 CFR 200.341. Such appeal shall be governed by, and conducted in accordance with, the appeal processes and procedures set forth in section 4 of this Exhibit.

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

Termination for Noncompliance: Grant Funds provided by this Agreement may be terminated in whole or in part as per federal regulation at 2 CFR 200.339 by HUD or by the Department if Subrecipient fails to comply with the terms and conditions of both this

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Agreement and of the federal award. All terminations shall include written notification setting forth the reason(s) for such termination, the effective date, and the portion to be terminated in the case of partial terminations and will follow termination notification requirements identified in 2 CFR 200.340.

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

Appeals Process for Finding of Noncompliance: In taking an action to address noncompliance, the Department will provide the Subrecipient an opportunity for a such hearing, appeal, or other administrative proceeding to which the Subrecipient is entitled under any statute or regulation applicable to the action involved as per 2 CFR 200.341 and/or the Department's Monitoring Plan and associated exhibit/exhibits. Contact the monitoring representative for an updated appeal exhibit version.  
[https://www.hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/cdbg-dr-2017/docs/DR\\_MAC\\_Monitoring\\_Plan\\_Final.pdf](https://www.hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/cdbg-dr-2017/docs/DR_MAC_Monitoring_Plan_Final.pdf)

### 5. **Severability**

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

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### 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 Subrecipient of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions. All waivers by the Department must be in writing in order to be valid.

### 7. Uniform Administrative Requirements

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

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

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

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

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

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

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

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

Such specific conditions, or special conditions, may include but are not limited to, withholding of authority to proceed to the next phase of an otherwise eligible Project, requiring additional detailed financial reports, requiring additional project monitoring, requiring the Subrecipient to obtain technical or management assistance, establishing additional prior approvals, or any other condition the Department deems reasonable and

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necessary to safeguard Federal funds or the Department's interests.

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

### 10. Equal Opportunity Requirements and Responsibilities

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

- A. **Title VI of the Civil Rights Act of 1964:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.
- B. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act):** This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- C. **Restoration Act of 1987:** This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- D. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]:** This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- 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



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- federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- F. **The Age Discrimination Act of 1975:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- G. **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.
- H. **The Americans with Disabilities Act of 1990 (ADA):** This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- I. **Executive Order 11063:** This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- J. **Executive Order 12259:** This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- K. **The Equal Employment Opportunity Act:** This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local

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governments under the Civil Rights Act of 1964.

- L. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.
- M. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- N. **Executive Order 11246:** This executive order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

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

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

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

The Subrecipient and the Subrecipient's Contractors shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulation at 24 CFR, Part 75. The responsibilities outlined in 24 CFR Part 75.19 include:

- 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 Part 75, Subpart C and incorporating the Section 3 clause set forth below in all solicitations and contracts in excess of \$100,000 as required at 24 CFR 75.27.

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### 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 agreements, program regulatory agreements, or contracts.

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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

### 13. **Environmental Compliance**

- A. The Subrecipient shall comply with the California Environmental Quality Act (CEQA) requirements as they apply to this Project(s).
- B. The Subrecipient shall comply with the Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

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- C. The Subrecipient shall comply with the requirements of the Clean Air Act, 42 U.S.C. 1857, et seq., as amended.
- D. The Subrecipient shall comply with Environmental Protection Agency (EPA) regulation pursuant to 40 CFR Part 50, as amended.
- E. The Subrecipient shall comply with HUD regulation pursuant to 24 CFR Part 58
- F. The Subrecipient shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- G. If applicable, the Subrecipient shall comply with the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and Section 401(b) of the Lead-Based Paint Poisoning Prevention Act of 1971. The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be required.
- H. The Subrecipient shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), the Archaeological and Historical Preservation Act of 1974 (Public Law 93-291), and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement. The Subrecipient shall also comply with Executive Order 11593 on the protection and enhancement of the cultural environment. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.
- I. This Agreement does not constitute a commitment of funds or site approval, and the commitment of funds or approval may occur only upon satisfactory

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completion of environmental review and receipt by the Subrecipient of an approval of the request for release of funds and certification from the Department under 24 CFR Part 50, 24 CFR Part 58, and 40 CFR 1500 - 1508. The provision of any funds to the project is conditioned on the Subrecipient's determination to proceed with, modify or cancel the project based on the results of the environmental review. The Subrecipient will not receive an NTP until they have successfully documented compliance with the applicable NEPA requirements, including public noticing and publishing.

### 14. **Procurement**

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

### 15. **Procurement of Recovered Materials**

In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

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

### 16. **Construction Standards**

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

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

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

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

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

### Sustainability Requirements

All rehabilitation, reconstruction, and new construction must be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters. Wherever feasible, the Subrecipient, Subrecipient's and Contractors must follow best practices, such as those provided by the U.S. Department of Energy.

### National Floodplain Elevation Standards

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

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

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

## **17. Federal Labor Standards Provisions**

The Subrecipient and the Developer shall at all times comply, and cause all Project

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contractors to comply, with applicable federal labor standards, including without limitation, the following:

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

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

### 18. State Prevailing Wages

- A. The Subrecipient shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [LC Section 1720-1743] pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations are met.
- B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation, or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "Construction Contract"). Where the Construction Contract will be between the Subrecipient



## EXHIBIT D

and a licensed building contractor, the Subrecipient shall serve as the "awarding body" as that term is defined in the LC. Where the Subrecipient will provide funds to a third party that will enter into the Construction Contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

- C. The applicable wage rate determination on construction work will be the more restrictive of the rate prescribed in LC Section 1770-1784 or the Davis-Bacon Wage Determination.

### 19. Agreements with Contractors

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

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

- B. An agreement between the Subrecipient and any Contractor or other party shall require:
- 1) Compliance with all State and federal requirements described in this Agreement including without limitation those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
  - 2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Project activities.
  - 3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the Approved Project activities.
  - 4) Compliance with the applicable Equal Opportunity Requirements

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described in Exhibit D, Section 10 of this Agreement.

C. Contractors shall:

- 1) Perform the Approved Project activities in accordance with federal, state, and local regulations, as are applicable.
- 2) Provide security to assure completion of the Approved Project(s) by furnishing the borrower and construction lenders with proof of sufficient insurance and performance and payment bonds, or other security approved in advance in writing by the Department, as determined by the particulars of each individual Project will be required.

D. Contractors and Subcontractors: Drug-Free Workplace Act of 1988

- 1) Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- 2) Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- 3) Notify employees that as a condition of employment on a federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- 4) Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- 5) Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- 6) Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

## 20. 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)

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NOI Date: 11/02/2020  
Approved Date: 4/13/2021  
Prep Date: 05/12/2021

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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.

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

- A. **Use of Explosives:** When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives and comply with all insurance requirements set forth in section 29.B.4 below. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

- B. **Danger Signals and Safety Devices:** The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. The Contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public.
- C. **Protection of Lives and Health:** The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Developer may determine to be reasonably necessary.

### 22. **Prohibition Against Payments of Bonus or Commission**

The assistance provided under this Agreement shall not be used in the payment of any

## EXHIBIT D

bonus or commission for the purpose of:

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

### 23. Reporting Requirements

- A. Subrecipient must timely submit the reports prescribed below. The Department reserves the right to request additional detail and support for any report made. Reports must be made according to the dates identified, in the formats provided by the Department, and via the Department's Grants Network unless otherwise specified at the discretion of the Department. The Subrecipient's performance under this Agreement will be assessed based in part on whether it has submitted the reports on a timely basis.
  - 1) Monthly Activity Report: Subrecipient must submit a Monthly Activity Report that addresses the following, at a minimum: (1) a description of the current status of the Subrecipient Work and Project Work, (2) a description of activities to be undertaken in the next reporting period; (3) a description of problems or delays encountered in Subrecipient Work and Project Work and course of action taken to address them; (4) a description of actions taken to achieve Subrecipient Work and Project Work expenditure deadlines; and (5) a summary of Subrecipient Work and Project Work fiscal status, including award amount, funds drawn, and remaining balance. Unless otherwise waived in writing by the Department, Monthly Activity Reports must begin on the 10<sup>th</sup> calendar day of the second month following execution of this Agreement and must continue through the receipt and approval by the Department of the Project Completion Report, detailed below.
  - 2) Monthly Program Income Report: Program Income, if identified as a funding source for any Approved Project, must be included in the Project budget and must be substantially expended prior to drawing Grant Funds. During the term of this Agreement, if Program Income is generated, the Subrecipient must submit a Monthly Program Income Report certifying the amount of Program Income generated, retained and expended. Program Income remaining at the end of each quarter and at the expiration of this Agreement in excess of \$35,000.00 must be remitted to the Department.
  - 3) Semi-Annual Labor Standards Report: During the term of construction for

## EXHIBIT D

each Approved Project, each April 1<sup>st</sup> and October 1<sup>st</sup>, and at the completion of the Project, the Subrecipient must submit the Labor Standards Cover Memo, the HUD Form 4710 and the Davis Bacon Labor Standards Report 5.7 (if applicable). These forms are located on the Department's website and are also available upon request.

- 4) Project Completion Report: At the completion of construction and once an Approved Project is placed in service, the Subrecipient must submit a Project Completion Report that includes that the project is completed and performing as designed.

### 24. Fiscal Controls

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

- A. **Deposit of Funds:** Subrecipient shall maintain separate accounts within established bookkeeping systems for the deposit of CDBG-DR and/or CDBG-MIT funds and Program Income. Deposits in minority banks are encouraged.
- B. **Fiscal Liability:** Subrecipients shall be liable for all amounts which are determined to be due by the Department, including but not limited to, disallowed or ineligible costs which are the result of Subrecipient's or its Contractor's conduct under this Agreement. Subrecipients shall also be liable for the repayment of any and all amounts it has received under this Agreement and which HUD is seeking reimbursement for from the Department. Subrecipient's obligation to repay the foregoing amounts to the Department shall survive indefinitely the expiration or earlier termination of this Agreement. Subrecipient shall be notified in writing and shall be permitted to respond regarding any controversy or proceeding between the Department and HUD arising from this Agreement.
- C. **Fiscal Records:** All financial transactions must be supported by complete and verifiable source documents. Records shall provide a clear audit trail and shall be maintained as specified in Exhibit D, Section 27 of this Agreement.
- D. **Program Income:** Any and all Program Income received during the administration of this Agreement must be receipted and maintained in a separate Program Income account. Program Income funds may not be comingled with CDBG-DR

## EXHIBIT D

and/or CDBG-MIT grant funds in a single account.

### 25. Monitoring Requirements

The Department monitors its Subrecipients based upon an assessment of risk posed by the Subrecipient and according to specific monitoring criteria per 2 CFR 200.331. During the term of this Agreement, the Department shall perform program and/or fiscal monitoring of the Subrecipient and Approved Projects to ensure compliance with federal and state requirements and timely project completion. The Subrecipient shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. In the event Subrecipient disagrees with a finding and/or any accompanying corrective actions or sanction(s) that are associated with such finding, Subrecipient shall follow an appeals process provided by the Department and consistent with Section 4 of Exhibit D of this Agreement..

Subrecipient shall ensure their Contractors and Approved Projects are in compliance with CDBG-DR and/or CDBG-MIT requirements, the DR-Infrastructure and MIT-RIP Policies and Procedures, and the terms and conditions of this Agreement, and in connection therewith, shall perform regular, ongoing monitoring of the Contractors and Approved Project(s) for the term of this Agreement. Subrecipient shall ensure their Contractors resolve any monitoring findings to the Subrecipient's satisfaction by the deadlines set by the Subrecipient. Subrecipient shall report any monitoring findings to the Department, as well as the status of those findings until they are resolved by the Contractors.

### 26. Inspections of Project Activities

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

- A. The Subrecipient shall inspect any Approved Project activity performed by contractors and subcontractors hereunder to ensure that the Approved Project activities are being and have been performed in accordance with the applicable federal, State and/or local requirements and this Agreement.
- B. The Subrecipient shall require that all Approved Project activities found by such inspections that do not conform to the applicable requirements be promptly corrected, and shall withhold payment to its Contractor or subcontractor, respectively, until it is so corrected.
- C. Access by the Subrecipient, the federal grantor agency, the State, the Comptroller General of the United States, or any of their duly authorized

## EXHIBIT D

representatives to any books, documents, papers, and records of the Subrecipient, Contractor, or subcontractor which are directly pertinent to that specific contract for the purpose of monitoring, making audit, examination, excerpts, and transcriptions pursuant to 24 CFR 85.36(i)(10) shall be permitted. Subrecipient shall include in its agreements with Contractors, as applicable, provisions requiring such parties to provide access to its records for the purposes specified above.

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

- A. The Subrecipient must have intact, auditable fiscal and program records at all times. If the Subrecipient is found to have missing audit reports from the California State Controller's Office (SCO) during the term of this Agreement, the Subrecipient will be required to submit a plan to the State for submitting the audit to the SCO. If the deadlines are not met, the Department may initiate remedies for noncompliance in accordance with Section 4 herein. The Subrecipient's audit completion plan is subject to prior review and approval by the Department.
- B. The Subrecipient agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Subrecipient agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq., and other requirements of this Agreement. The Subrecipient further agrees to maintain such records for a minimum period of five (5) years after the Department notifies Subrecipient that the HUD/the Department contract has been closed according to the record retention requirements at 2 CFR 200.333. The Subrecipient shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code section 10115.10.
- C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Subrecipient.
- D. Absent fraud or material error on the part of the Department, the determination by the Department of the allowability or validity of any expenditure shall be final and conclusive.
- E. For the purposes of annual audits, Subrecipient shall comply with 2 CFR Part 200

## EXHIBIT D

Subpart F for the State CDBG Program. Pursuant to 2 CFR Part 200 Subpart F, the Subrecipient shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. The costs of the CDBG-DR and/or CDBG-MIT related portion of the audit may be charged to the program in accordance with Public Law 98502, 2 CFR Part 200 Subpart F, and Title 25 CCR Section 7122.

- 1) The audit shall be performed by a qualified State, department, local or independent auditor. The agreement/contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
  - 2) If there are audit findings, the Subrecipient must submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends, and the Department will notify the Subrecipient in writing. If the Department is not in agreement, the Subrecipient will be contacted in writing and informed what corrective actions must be taken. This action may include the repayment of disallowed costs or other remediation.
  - 3) The Department shall not approve reimbursement for any expenditures for the audit, prior to receiving an acceptable audit report.
  - 4) If so, directed by the Department upon termination of this Agreement, the Subrecipient shall cause all records, accounts, documentation and all other materials relevant to the grant activity(ies) to be delivered to the Department as depository.
- F. Notwithstanding the foregoing, the Department will not reimburse the Subrecipient for any audit cost incurred after the expenditure deadline of this Agreement.

### 28. Signs

If the Subrecipient places signs stating that the Approved Project is funded with private or public dollars and the Department is also providing financing, it shall indicate in a typeface and size commensurate with the Department's funding portion of the Approved Project that the Department is a source of financing through the CDBG-DR Program and/or CDBG-MIT Program.

### 29. Insurance

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



## EXHIBIT D

Agreement for Subrecipient Work and Project Work until the Subrecipient fully complies with all requirements. No payments will be made under the terms of any Approved Project until the Subrecipient confirms to the Department that all Contractors on the specified Approved Project fully comply with all requirements. The Department reserves the right to waive or adjust required insurance coverages from time to time in its sole discretion.

### A. General Provisions Applying to All Policies

- 1) Coverage Term – Subrecipient’s coverage needs to be in force for the complete term of the Agreement. The Contractor’s coverage needs to be in force for the complete affordability period of each Approved Project. The Contractor’s coverage needs to be in force until a certificate of occupancy is issued for each Approved Project, if applicable. No work may be performed by Subrecipient or a Contractor until and unless all insurances required by this Agreement are in full force and effect. If insurance expires during the term of the Agreement, as applicable, a new certificate must be received by the Department at least 30 days prior to the expiration of said insurance. Any new insurance must comply with the original terms of this Agreement.
- 2) Policy Cancellation or Termination & Notice of Non-Renewal – Subrecipient is responsible to notify the Department within 15 business days prior to any actual or proposed cancellation, non-renewal or material change that affects required coverage. No policy may be cancelled upon less than 30 days’ prior written notice from the insurer to the insured and the Department. New certificates of insurance are subject to the approval of the Department and the Subrecipient agrees no Subrecipient Work and Project Work or services will be commenced or performed prior to obtaining such approval. In the event Subrecipient and Contractor fails to keep in effect at all times the specified insurance coverage, the Department may, in addition to any other remedies it may have, terminate this Agreement and/or Approved Project upon the occurrence of such event, subject to the provisions of this Agreement.
- 3) Premiums, Assessments and Deductibles – Subrecipient and Contractors for each Approved Project are responsible for the payment of all premiums, policy assessments, deductibles or self-insured retentions associated with their respective insurance programs.

## EXHIBIT D

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

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### B. Project Insurance Requirements

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

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

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

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

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

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

## EXHIBIT D

- 3) Flood Insurance – Subrecipient shall procure and maintain flood insurance if required under Section 13.E. of this Agreement.
- 4) Additional Coverages – In the event that Subrecipient, Developer, and/or any of its Contractors will be engaging in any Hazardous Activity as part of the Collective Work contemplated by this Agreement, then the party(ies) engaging in any Hazard Activity(ies) shall provide to the Department, prior to commencement of any such activity(ies), such insurance coverages in such forms and in such amounts as the Department may require in its sole discretion. Such coverages are in addition to all other insurance coverages required by this Agreement and shall be imposed on the Developer pursuant to the Development Agreement. For purposes of the provision, the term "Hazardous Activity" includes but is not limited to the following: (a) the removal, storage, and/or transportation of any "hazardous material", as such term is defined under federal, state, or local law, ordinance, regulation, or guideline, (b) the removal, storage, or transportation of lead-based paint or asbestos, (c) blasting, (d) any activity which by its nature is abnormally dangerous, and (d) any "ultrahazardous activity" as defined in California case law. In addition to providing proof of such required coverages, the party(ies) engaging in the Hazardous Activity(ies) shall procure, at its expense prior to the commencement of any work, all required permits, licenses, consents, and approvals that are required for the lawful conduct of such activities, and shall provide adequate written proof thereof to the Department. No Hazardous Activity work may be commenced, or contracted for, prior to the provision of the required insurance coverages and licensure proof to the Department."

### 30. Indemnification

Subrecipient, at its sole cost and expense, shall indemnify, defend, and hold the Department and its employees, representatives, attorneys, agents, and their respective successors, heirs, and assigns harmless from and against any and all claims, demands, actions, costs, losses, damages, and liabilities, whether direct or indirect, and regardless of their nature or source, which in any way relate to or arise from the actions or inactions of Subrecipient and/or its contractors, subcontractors, employees, owners, agents, and representatives in connection with this Agreement and any agreement or instruments executed in connection herewith. The obligations of Subrecipient under this Section 30 shall survive indefinitely the closeout of Approved Projects and the expiration or earlier termination of this Agreement.

### 31. Anti-Lobbying Certification

The Subrecipient shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with the Approved Project(s) and

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shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

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

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

### 32. Conflict of Interest

Pursuant to 24 CFR 570.489(h), no member, officer, or employee of the Subrecipient, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG-DR and/or CDBG-MIT 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, including members and delegates to the Congress of the United States, may obtain a financial interest or benefit from a CDBG-DR and/or CDBG-MIT assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-DR and/or CDBG-MIT assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for 1 year thereafter. The Subrecipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

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

The Subrecipient shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Subrecipient Work and/or Project Work with respect to which assistance

## EXHIBIT D

is being provided under this Agreement to the Subrecipient. The Subrecipient shall comply with all lawful requirements of the Department necessary to ensure that the Subrecipient Work and/or Project Work, with respect to which assistance is being provided under this Agreement to the Subrecipient, is carried out in accordance with the Department's Assurance and Certifications, including those with respect to the assumption of environmental responsibilities of the Department under Section 104(g) of the Housing and Community Development Act of 1974 [42 U.S.C. § 5304(g)].

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

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

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

- A. All contracts, except for State construction projects that are funded in whole or in part by the Federal government, must contain a 30-day cancellation clause and the following provisions:
- 1) It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
  - 2) This contract is valid and enforceable only if sufficient funds are made 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.

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- B. Exemptions from provisions A.1 through A.4 above may be granted by the Department of Finance provided that the director of the State agency can certify in writing that Federal funds are available for the term of the contract.
- C. Gov. Code § 8546.4(e) provides that State agencies receiving Federal funds shall be primarily responsible for arranging for Federally required financial and compliance audits, and shall immediately notify the Director of Finance, the State Auditor, and the State Controller when they are required to obtain Federally required financial and compliance audits.

## EXHIBIT E

### **SPECIAL TERMS AND CONDITIONS**

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

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

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

Subrecipient agrees to provide documents and information to facilitate the Department's Subrecipient due diligence as required in Federal Register Notice 83 FR 58644 Subrecipient further agrees to comply with the requirements, requests, and results of the Department's due diligence and maintain the capacity to carry out disaster recovery activities in a timely manner at all times during the term hereof.

#### **2. Risk Assessment**

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

#### **3. Special Conditions**

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

1. All conditions set forth in an executed Notice to Proceed issued and incorporated into this Agreement as Exhibit F by the Department with respect to Approved Projects.
2. Subrecipient will develop and implement procurement policies and procedures that demonstrate conformity with 2 CFR Part 200.318-327 and applicable Federal Register Notices, in conjunction with technical assistance from the Department. The Subrecipient will submit the procurement policies and procedures to the Department for a review of sufficiency. Procurement policies



## EXHIBIT E

- and procedures must be determined to be sufficient by the Department in advance of the Department's release of a Notice to Proceed.
3. Subrecipient will develop and implement federal environmental review policies and procedures demonstrating conformity to the rules and regulations outlined in 24 CFR Part 58, in conjunction with technical assistance from the Department. The Subrecipient will submit the federal environmental review policies and procedures to the Department for a review of sufficiency. Federal environmental review policies and procedures must be determined to be sufficient by the Department in advance of the Department's release of a Notice to Proceed.
  4. Subrecipient will develop and implement Davis-Bacon and Related Acts (DBRA) (40 U.S.C. 3141-3144) federal labor policies and procedures and to maintain long-term federal labor compliance monitoring policies and procedures, in conjunction with technical assistance from the Department. The Subrecipient will submit the DBRA federal labor compliance monitoring policies and procedures to the Department for a review of sufficiency. DBRA federal labor compliance monitoring policies and procedures must be determined to be sufficient by the Department in advance of the Department's release of a Notice to Proceed.
  5. Subrecipient will develop and implement HUD Section 3 of the Housing and Urban Development Act of 1968 federal labor policies and procedures and maintain long-term federal labor compliance monitoring policies and procedures, in conjunction with technical assistance from the Department. The Subrecipient will submit the Section 3 federal labor compliance monitoring policies and procedures to the Department for a review of sufficiency. Section 3 federal labor compliance monitoring policies and procedures must be determined to be sufficient by the Department in advance of the Department's release of a Notice to Proceed.
  6. Subrecipient will develop and implement Anti-Lobbying (24 CFR Part 87) policies and procedures. The Subrecipient will submit the Anti-Lobbying policies and procedures to the Department for a review of sufficiency. Anti-Lobbying policies and procedures must be determined to be sufficient by the Department in advance of the Department's release of a Notice to Proceed.
  7. Subrecipient will develop and implement non-discrimination policies and procedures adhering to federal and state requirements. The Subrecipient will submit the non-discrimination policies and procedures to the Department for a review of sufficiency. The non-discrimination policies and procedures must be determined to be sufficient by the Department in advance of the Department's release of a Notice to Proceed.
  8. Subrecipient will develop and implement policies and procedure for submitting, reviewing, and tracking staff time consistent with Subrecipient requirements outlined in the MSA between the Subrecipient and the Department. The Subrecipient will submit the timekeeping policies and procedures to the Department for a review of sufficiency. The timekeeping policies and procedures

## EXHIBIT E

- must be determined to be sufficient by the Department in advance of the Department's release of a Notice to Proceed.
9. Subrecipient will develop and implement policies and procedure that demonstrate conformity with financial management requirements outlined in 2 CFR 200.302 and applicable Federal Register Notices, in conjunction with technical assistance from the Department. The Subrecipient will submit the financial management policies and procedures to the Department for a review of sufficiency. The financial management policies and procedures must be determined to be sufficient by the Department in advance of the Department's release of a Notice to Proceed.

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

**Linked Applicant**

aflora@clearlake.ca.us

**First name**

Alan

**Last name**

Flora

**Email**

aflora@clearlake.ca.us

**Title**

City Manager

**Company**

City of Clearlake

**Company Website**

www.clearlake.ca.us

**City**

Clearlake

**State**

California

**Organization Information**

**Jurisdiction Name**

City of Clearlake

**Organization Type**

**Employer Identification Number (EIN)**

94-2707410

**DUNS**

606240273

**Authorized Representative**

**EXHIBIT G**

Alan Flora

**Business/Finance Representative**

**Organization Address**

**Address**

14050 Olympic Drive

**Address 2**

**EXHIBIT G**

**City**

Clearlake

**State**

California

**County**

Lake County

**Congressional District/Region**

3rd

**Zip**

95453

**Phone**

707-994-8201

**Phone Extension**

**Fax**

Authorized Representative (if different from above)

**Name**

**Title**

**Email**

**Phone**

Business/Finance Contact (if required)

**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 17-DRINFRA-17001	PURCHASING AUTHORITY NUMBER (If Applicable)
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1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR NAME

City of Clearlake

2. The term of this Agreement is:

START DATE

Upon HCD Approval

THROUGH END DATE

02/28/2026

3. The maximum amount of this Agreement is:

\$13,729,484.00

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

Exhibits	Title	Pages
Exhibit A	Authority, Purpose and Scope of Work	8
Exhibit B	Budget Detail and Payment Provisions	6
Exhibit C *	State of California General Terms and Conditions	GTC 4/17
+ - Exhibit D	CDBG-DR Terms and Conditions	33
+ - Exhibit E	Special Terms and Conditions	3
+ - Exhibit F	Notice to Proceed	4
+ - Exhibit G	Subrecipient Profile	3

*Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.**These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>**IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.***CONTRACTOR**

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

City of Clearlake

CONTRACTOR BUSINESS ADDRESS

14050 Olympic Drive

CITY

Clearlake

STATE

CA

ZIP

95422

PRINTED NAME OF PERSON SIGNING

Alan Flora

TITLE

City Manager

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

7/7/2021

**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 17-DRINFRA-17001	PURCHASING AUTHORITY NUMBER (If Applicable)
--------------------------------------	---

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS

2020 W. El Camino Ave, Suite 130

CITY

Sacramento

STATE

CA

ZIP

95833

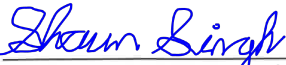
PRINTED NAME OF PERSON SIGNING

Shaun Singh

TITLE

Contract Manager, Business & Contracts Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE



DATE SIGNED

9/1/2021

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

"California Department of General Services Exempt per; SCM Vol. 14.04.A.3 (DGS memo dated 6/12/1981)"