

## APPENDIX N

# 2018 REQUEST FOR WAIVER OF THE 50 PERCENT EXPENDITURE RULE

## BACKGROUND

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As enacted on September 24, 2016, Assembly Bill 723 (AB 723), Section 1, 50833 (f) allows applicants to request a waiver of the 50 % Expenditure Rule (“*Rule*”). The Rule states an applicant shall be ineligible to apply for additional CDBG funds unless the applicant has expended at least 50 percent of funds for which deadline(s) established in the grant agreement(s) executed in 2012 or later. AB 723 allows the director to waive the Rule, thus making an applicant eligible to apply for general CDBG NOFAs.

In compliance with AB723, the Department has implemented a waiver process for applicants who meet one of three criteria: the application is for a “*shovel ready*” project, or the applicant received 2017 CDBG award, or 2016 Special Drought and/or Disaster NOFA awards.

## WAIVER REQUEST REQUIREMENTS

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To request a waiver, the jurisdiction must substantiate compliance with the following three criteria:

1. *Execution of the Request for Waiver Form.* Complete and submit the Request for Waiver form located in the Application Summary Forms, *Request for Waiver* -Tab 12.
2. *Public Participation requirement.* To demonstrate compliance with the public participation requirements, the local jurisdiction must have properly noticed public hearing wherein the jurisdiction was authorized to submit an application that includes requesting a Waiver to the Rule. Specific language is found in [Appendix-C](#)
3. *Authorization by Local Governing Body (“Resolution”).* The Jurisdiction must submit a Resolution, using Sample Resolution, authorizing and acknowledging that the jurisdiction is requesting a waiver and it will comply with the terms of the waiver. For the Resolution language, see [Appendix D](#)

## WAIVER REQUEST FORM

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All applicants not compliant with the Rule and want to apply for a shovel ready project must complete a Request for Waiver form and indicate either of the following criteria:

- A. Received a 2017 CDBG Award; **or**
- B. Received 2016 Special Drought and/or Disaster NOFA award(s); **or**,
- C. Plan to submit an application for a “*shovel ready*” project, as defined below.

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### WHAT IS A SHOVEL READY PROJECT?

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Jurisdictions are eligible to receive a waiver for a “shovel ready project” if the applicant complies with *Readiness Criteria (A)* and *Special Conditions (B)* as defined below:

#### **A. Readiness Criteria**

The following documentation must be submitted as part of the project activity application:

1. **Site Control.** The applicant must have site control of the project property, *i.e.*, an option to purchase, right of way easement, or other legal instrument(s) that convey fee title ownership of the property. If the applicant has an option to purchase, the option agreement must contain a provision, which makes the purchase of the property expressly conditioned upon the applicant’s approval of the environmental condition of the property. The agreement must also allow the applicant to terminate the option agreement and any purchase thereunder in the event the applicant disapproves of the environmental condition of the property.
2. **Funding Commitment.** If additional non-CDBG funding will be used to complete the project, then all funding sources and commitments must be included in the application. Commitment requires a resolution or other instruments that commit funding, (*i.e.*, agency funding commitment letter, first page of an agreement (contract number, amount and conditions clearly stated) lender commitment letters, etc.).
3. **Evidence of Procurement for Architectural and/or Engineering Services.** The applicant should include copies of executed professional services agreement for architectural and/or engineering services, as applicable, along with a resolution approving the terms of all such agreements.
4. **Preliminary Project Plans.** Submit a set of preliminary plans signed and stamped by engineer or architect, as applicable. If available, final plans should be submitted.
5. **Project Budget, Scope of Work, and Schedule.** Must be submitted with the plans, signed and stamped by the engineer or architect, if applicable. If, submitting preliminary plans, then, the tentative budget, scope and schedule must be included. If submitting final plans, then the final budget, scope of work and schedule are required.
6. **List of local permits.** Application must include a list of all required local, state and federal permits required to complete the project. Applicant must indicate the type of permit, permitting agency, anticipated filing date, anticipated date of approval, and cost of permit.

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#### EXAMPLE:

Type of Permit	Issuing Agency	Anticipated Application Date	Anticipated Approval Date	Cost of Permit (if applicable)
Building	ABC City	2 weeks from standard agreement	2 months from submittal	\$5,000
Environmental	XYZ County	within 6 months of execution of the standard agreement		N/A

#### **B. Special Conditions.**

In addition to the above readiness criteria, the jurisdiction must attest to the following as stated in the Request for Waiver form:

1. Within 30 days of the execution date of the Standard Agreement, the grantee must submit an updated project schedule; and
2. Within six (6) months of the execution date of the Standard Agreement, the grantee shall procure project/grant consultants and services, in accordance with CDBG, State and federal procurement standards. The grantee shall submit procurement documentation, the Professional Services Agreement, environmental clearances, and other *general or special conditions* made a part of the Standard Agreement; and
3. Within twelve (12) months of the executed Standard Agreement, the grantee shall submit final plans and copies of permits issued, and the executed construction contract with a contractor procured in accordance with CDBG, state, and federal procurement standards.

#### **AWARD CRITERIA**

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Only jurisdictions that complete the Request for Waiver form and submit it with the required application and project documents, comply with the public participation requirements and meet all application requirements will have their projects reviewed for eligibility and competitively scored by the NOFA Unit.

Only applications that score high enough for award, will be submitted to the Director for final approval.