

EXHIBIT D

CDBG PROGRAM TERMS AND CONDITIONS

1. Effective Date and Commencement of Work

This Agreement is effective upon approval by the Department. This approval date is indicated by the date stamped by the Department in the lower right hand corner of page one of the Agreement, STD 213. The CDBG Recipient agrees that Work shall not commence, nor shall any costs be paid with CDBG funds incurred or obligated by any party prior to the execution of this Agreement by the Department, completion of all required environmental clearances, and compliance with the applicable conditions of this Agreement. Notwithstanding the aforementioned statement, there are two circumstances when costs may be incurred prior to the execution of this Agreement. First, administrative expenses for eligible NEPA compliance work may be incurred prior to the execution of this Agreement. Second, with Grant Management Program Manager or Section Chief approval, other costs may also be incurred prior to the execution of this Agreement. Such costs may consist of procurement of administrative subcontractors, development of program guidelines, 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 project being set up in IDIS, and provided these procurements are conducted in a manner consistent with 2 CFR 200.317 – 200.326, "Procurement Standards". The CDBG Recipient agrees that the Work shall be completed by the expenditure deadline specified in Exhibit A, Section 7, A. This Agreement shall expire on the date set forth in Exhibit A, Section 7, C.

2. Sufficiency of Funds and Termination

- A. This Agreement is valid and enforceable only if sufficient funds are available to the Department by the United States Government for the purposes of the CDBG Program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions or statute enacted by the Congress or State Legislature, promulgated in State or federal regulations or any State or federal statute, as now in effect and as may be amended from time to time which may affect the provisions, terms, or funding of this Agreement in any manner.
- B. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays, which would occur if this Agreement were executed after the determination was made.

If Congress does not appropriate sufficient funds for the program, the Department may amend this Agreement to reflect any reduction in funds, or it may terminate this Agreement by giving 14 days' written notice to the Grantee.

3. Termination for Convenience and Enforcement

- A. Awards may be terminated in whole or in part only if the Department with the consent of the Grantee or Subgrantee in which case the two parties shall agree upon termination conditions, including the effective date and in the case of partial termination, the portion to be terminated.

EXHIBIT D

- B. The Department may terminate this Agreement at any time for cause by giving at least 14 days' written notice to the Grantee. Cause shall consist of violations of any terms and/or special conditions of this Agreement, upon the request of HUD, or withdrawal of the Department's expenditure authority.
- C. Enforcement for noncompliance as set forth in 2 CFR 200.338-200.339, may include the following remedies if a Grantee or Subgrantee materially fails to comply with any term of an award, whether stated in a federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the Department may take one or more of the following actions, as appropriate in the circumstances.
- 1) Temporarily withhold cash payments pending correction of the deficiency by the Grantee or Subgrantee or more severe enforcement action by the awarding agency.
 - 2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.
 - 3) Wholly or partly suspend or terminate the current award for the Grantee's or Subgrantee's program.
 - 4) Withhold further awards for the program.
 - 5) Take other remedies that may be legally available, such as:
 - a) Hearings and appeals. In taking an enforcement action, the awarding agency will provide the Grantee or Subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the Grantee or Subgrantee is entitled under any statute or regulation applicable to the action involved.
 - b) Effects of suspension and termination. Costs of Grantee or Subgrantee resulting from obligations incurred by the Grantee or Subgrantee during a suspension or after termination of an award are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other Grantee or Subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowed if:
 - i. The costs resulting from obligations which were properly incurred by the Grantee or Subgrantee before the effective date of suspension or termination, are not in anticipation of suspension or termination; and, in the case of a termination, are non-cancellable; and,
 - ii. The costs would be allowable if the award was not suspended or expired normally at the end of the funding period in which the termination takes place.

EXHIBIT D

- c) Relationship to debarment and suspension. The enforcement remedies identified in this Section, including suspension and termination, do not preclude a Grantee or Subgrantee from being subject to 2 CFR Part 2424. CDBG funds may not be provided to excluded or disqualified persons pursuant to 24 CFR 570.489(l) and 2 CFR 200.338-200.339.

4. Litigation

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

5. National Objectives

All grant activities performed under this Agreement must be eligible and must meet one of the National Objectives of the HUD regulations as included in the Application authorized under Title I of the Housing and Community Development Act of 1974, Section 104(b)(3), as amended and 24 CFR Part 570.483.

- A. Primarily benefits HUD defined low- or moderate-income person(s) (LMI) or households (LMH). The term low- or moderate-income limits are defined as being no more than 80% of the median area income on a county level, annually determined by HUD, per 24 CFR, Part 570.483(b); and/or,
- B. Elimination of Slums or Blight (on a spot or area basis) is an eligible CDBG National Objective. Slum and Blight's definition is found in 24 CFR, Part 570.483(c). The use of Slums or Blight requires prior Departmental written approval.
- C. Meeting an Urgent Need is an eligible CDBG National Objective under 24 CFR, Part 570.483(d). This National Objective can only be used after formal release of public notice from the Department announcing the disaster event and requesting grantees impacted by the disaster to submit proposals describing how this National Objective is being met by eligible activities under this Agreement.

6. Public Benefit Standards for ED

Per 24 CFR 570.482(f), (g) and 570.483(b)(4), the Grantee is responsible to demonstrate fulfillment of the public benefit standards for all CDBG ED activities under Sections 105(a)(2),(14) and (17) of The Act. The use of public benefit standards is mandatory.

EXHIBIT D

When CDBG funds are provided directly to a for-profit business, or are provided to the Grantee for an ED infrastructure public facility project, public benefit is generally met through the creation or retention of permanent full-time equivalent job positions.

When CDBG funds are provided to a business that provides goods or services within an area that is predominately LMI, public benefit is generally met by documenting that the CDBG assistance does not exceed \$350 per LMI in the identified service area.

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

7. **Waivers**

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

8. **Uniform Administrative Requirements**

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

9. **Non-Performance**

In the event that the National Objective and/or Public Benefit requirements are not met, the Department may, in its sole discretion, impose any or all of the following remedies: disallow all or part of the cost of the activity or action not in compliance; wholly or partly suspend or terminate the award; recapture of part or all of the Program Income; reimbursement of part or all of the grant amount; and/or exclusion of the Grantee from further CDBG funding for a period of time to be determined by the Department.

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

10. **Affirmatively Furthering Fair Housing**

The Grantee will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

EXHIBIT D

11. Equal Opportunity Requirements and Responsibilities

- 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 federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- F. The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that the housing facilities must have one person who is 55 years of age or older living in at least 80% of its occupied units. The act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 or older.
- G. The Age Discrimination Act of 1975: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7.

EXHIBIT D

- H. **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.
- I. **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.
- J. **Executive Order 11063:** This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- K. **Executive Order 11259:** This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- L. **The Equal Employment Opportunity Act:** This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
- M. **The Immigration Reform and Control Act (IRCA) of 1986:** Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (1-9).
- N. **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.

EXHIBIT D

- O. **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.
 - P. **Executive Order 11246**: This executive order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.
12. **The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance (Section 3)**:

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

- A. Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- B. Notifying potential contractors for Section 3 covered projects of the requirements of this Part, and incorporating the Section 3 clause set forth in Section 135.38 in all solicitations and contracts in excess of \$100,000.
- C. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the appendix to this part, as appropriate, to reach the goals set forth in Section 135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in Section 135.30.
- D. Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR Part 135.
- E. Documenting actions taken to comply with the requirements of this part, the results of those actions taken and impediments, if any.

EXHIBIT D

- F. A Grantee which distributes funds for Section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in Section 135.30 regardless of the number of local governments receiving funds from the Section 3 covered assistance which meet the thresholds for applicability set forth at Section 135.30. The State must inform units of local government to whom funds are distributed of the requirements of this part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

13. Environmental Compliance

The Grantee shall have satisfied all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements. CEQA shall be approved by the Grantee. The level of compliance varies by activity. NEPA review must be completed by the Grantee for each activity and approved in writing by Department staff prior to incurring costs on the grant activity(ies).

14. Clean Air and Water Acts

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

15. Relocation, Displacement, and Acquisition

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

16. Compliance with Federal Laws and Regulations

- A. The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines and requirements under 2 CFR Chapter I, Chapter II, Part 200 et al), as applicable, as they relate to the acceptance and use of federal funds under this part.
- B. The Grantee agrees to comply with all federal laws and regulations applicable to the CDBG Program and to the grant activity(ies), and with any other federal provisions as set forth.

EXHIBIT D

17. Federal Labor Standards Provisions

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

The Grantee 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.

18. Prevailing Wages

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Grantee shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [California Labor Code Section 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 Grantee and a licensed building contractor, the Grantee shall serve as the "awarding body" as that term is defined in the LC. Where the Grantee will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

EXHIBIT D

- C. The applicable wage rate determination on construction work will be the more restrictive of the rate prescribed in the State of California Labor Code (LC), Chapter 1, Section 1770-1784 or the Davis-Bacon Wage Determination.

19. **Lead Based Paint Hazards**

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

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

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

21. **Conflict of Interest of Certain Federal Officials**

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

22. **Anti-Job Pirating Certification**

Pursuant to 24 CFR 570.482(h) CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area to another labor market area if the relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs. Job loss of more than 500 employees is always considered significant. Job loss of 25 or fewer positions is never considered significant.

EXHIBIT D

23. Anti-Lobbying Certification

The Grantee shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant activity(ies) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

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

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

24. Rights to Inventions Made Under a Contract or Agreement

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

25. 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.

EXHIBIT D

This clause shall apply to items purchased under this contract 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.

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

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

The Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any 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. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the USFS may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the USFS does not relieve the Contractor of any liability incurred under these specifications or contract.
- C. Protection of Lives and Health: The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his 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 USFS may determine to be reasonably necessary.

27. Bonus or Commission, Prohibition Against Payments of

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

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

EXHIBIT D

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

28. Contractors and Subrecipients

- A. The Grantee shall not enter into any agreement, written or oral, with any contractor or subrecipient without the prior determination that the contractor or subrecipient is eligible to receive CDBG funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.
 - 1) Contractors are defined as program operators or construction contractors who are procured competitively.
 - 2) Subrecipients are defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive CDBG funds from an awarded jurisdiction to undertake eligible activities.
- B. An agreement between the Grantee and any contractor or subrecipient shall require:
 - 1) Compliance with the applicable State and federal requirements described in this Agreement, which pertain to, among other things, labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace; and, Compliance with the applicable provisions relating to Labor Standards/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 grant activity(ies) or any part of it.
 - 3) Maintenance, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.
 - 4) Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 11 of this Agreement.

EXHIBIT D

C. Contractors shall:

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

D. Subrecipients shall:

- 1) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a minimum period of five (5) years after the Department notifies the Grantee that the HUD/HCD contract has been closed.
- 2) Permit the State, federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

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

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

EXHIBIT D

- 6) Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

29. Insurance

The Grantee shall have and maintain in full force and effect during the term of this Agreement such forms of insurance, at such levels as may be determined by the Grantee and the Department to be necessary for specific components of the grant activity(ies) described in Exhibit A.

30. Reporting Requirements

During the term of this Agreement, the Grantee must submit the reports prescribed in the scope of work agreement. The Department reserves the right to request additional detail and support for any report made. Reports must be made according to the dates identified, unless otherwise specified at the discretion of the Department. The Grantee's performance under this Agreement will be based in part on whether it has submitted the reports on a timely basis.

31. Monitoring Requirements

The Department shall perform a program and/or fiscal monitoring of the grant. The Grantee shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. If findings are not adequately resolved in a timely manner, the Department may deduct points from the Grantee's performance score on future applications.

In determining appropriate monitoring for each grant, the Department shall consider prior grant administration, audit findings, as well as factors such as complexity of the project and the amount of funding. The Department shall determine the areas to be monitored, the number of monitoring visits, and their frequency. The monitoring will address program compliance with contract provisions, including to but not limited to National Objective, financial management, the requirements of HCDA, 2 CFR Part 200 et al, as applicable, and all applicable Federal overlay requirements.

32. Inspections of Grant Activity

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

- A. The Grantee shall inspect any grant activity performed by contractors and subrecipients hereunder to ensure that the grant activity(ies) is being and has been performed in accordance with the applicable federal, State and/or local requirements and this Agreement.
- B. The Grantee agrees to require that all grant activity(ies) found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to its contractor or subcontractor, respectively, until it is so corrected.

EXHIBIT D

- C. Access by the Grantee, the Subgrantee, the federal grantor agency, the State, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions pursuant to 24 CFR 85.36(i)(10).

33. Audit/Retention and Inspection of Records

- A. The Grantee must have intact, auditable fiscal and program records at all times. If the Grantee is found to have missing audit reports from the California State Controller's Office (SCO) during the term of this Agreement, the Grantee will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Grantee will be subject to termination of this Agreement and disencumbrance of the funds awarded. The Grantee's audit completion plan is subject to prior review and approval by the Department.
- B. The Grantee agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Grantee agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. The Grantee further agrees to maintain such records for a minimum period of five (5) years after the Department notifies Grantee that the HUD/HCD contract has been closed. The Grantee shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.
- C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Grantee. Expenditures for grant activity(ies) not described in Exhibit A shall be deemed authorized if the performance of such grant activity(ies) is approved in writing by the Department prior to the commencement of such grant activity(ies).
- D. Absent fraud or mistake on the part of the Department, the determination by the Department of the allowability of any expenditure shall be final.
- E. For the purposes of annual audits, Grantee shall comply with 2 CFR Part 200 Subpart F for the State CDBG Program.
- F. Pursuant to 2 CFR Part 200 Subpart F, the Grantee shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. Audit costs for this Agreement are a general administration expense and are subject to the general administration expenditure limits associated with this Agreement. The costs of the CDBG-related portion of the audit may be charged to the program in accordance with Public Law 98-502, 2 CFR Part 200 Subpart F, and Section 7122 of Title 25 CCR.

EXHIBIT D

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

34. Signs

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

35. Citizen Participation

The Grantee is subject to the requirements concerning citizen participation contained in Federal Regulations at 24 CFR, Part 570.486, Local Government Requirements, Part 91.105 and 91.115.

36. Flood Disaster Protection

- A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3(a) of said act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to FDPA, Section 102(d) of said act.
- B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said act.

EXHIBIT D

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

37. Procurement

The Grantee shall comply with the procurement provisions in 2 CFR Part 200.317 – 200.326, Procurement Standards as well as all other Administrative Requirements for Grants and Cooperative Agreements to State, local and federally recognized Indian tribal governments as set forth in 2 CFR 200 et al, as applicable.

38. Program Income

A. General Requirements: Pursuant to the definition of PI found at 24 CFR 570.489(e)(2), repayments of assets generated from use of CDBG funds received by the Grantee from the Department are Program Income ("PI"). These repayments of loans, lease payments, and proceeds of asset sales will be deposited into one of three separate local PI accounts depending on what activity generated the PI.

- 1) The three separate PI accounts are:
 - a) General PI (which, if less than \$35,000 and is received within one fiscal year may be defederalized);
 - b) Housing (1-4 units) Revolving Loan Fund (RLF); and,
 - c) ED RLF.
- 2) Once the Grantee has a Department approved Housing (1-4 units) RLF or ED RLF, any PI received that was generated by the associated RLF activity must be deposited into that RLF.

This means PI received for Housing (1-4 units) activities must be deposited into the Housing RLF, and any ED PI received must be deposited into the ED RLF.

Note: *PI and each RLF must be in separate interest bearing accounts.*

EXHIBIT D

- 3) If the Department has not approved a RLF, the Grantee must deposit all CDBG PI payments into a single interest bearing PI account.
- 4) If repayment comes from a loan or asset that was originally paid with CDBG and non-CDBG funds, the PI accounting and reporting must reflect the correct proportions and amounts, based on the CDBG and non-CDBG funds invested in the asset. Only the CDBG PI portion of the repayment is deposited into the CDBG PI or RLF account.
- 5) In order to spend PI, a Grantee must either have an active contract (a contract where the expenditure deadline has not passed), or a Department approved Program Income Reuse Agreement (Reuse Agreement) dated July 2014 or later.

- B. PI and RLF Monies for Active Grant Contract Activities: All PI on hand must be always be expended on active contract activities prior to requesting contract funds from the Department.

If the Grantee has a Department approved RLF as well as an active contract that includes funding for the same RLF activity, the RLF funds on hand must be expended before requesting contract activity funds reimbursement from the Department.

- C. PI General Administration (PI GA) for Grant Administration Costs (up to allowable limits): A Grantee is allowed to use up to seventeen percent (17%) of all PI received for eligible GA costs. Since all PI must be expended first (before requesting reimbursement from contract funds), GA funds cannot be held and set aside to be used for PI GA costs as they are incurred. All PI must be spent on CDBG eligible costs before the next funds request may be submitted.

Thus, the Grantee must track an accounting of the 17% GA received and all GA expenditures. However, the PI GA allowance only applies to PI received that is not generated by RLF generated by RLF activities. RLF payments are not eligible for PI GA calculations.

PI GA funds cannot be used for planning studies; planning studies can only be funded under awarded grant contracts. See the PI Chapter of the Grant Management Manual (GMM) for further details on eligible PI GA activities under this Agreement.

- D. PI for an Approved RLF Activity: The two eligible RLFs and their corresponding definitions, as permitted by the Reuse Agreement, are:

- 1) Housing RLF - Eligible housing activities under this RLF include:
 - a) Housing Rehabilitation - Single Unit Residence Program for owner and/or tenant occupied properties - Matrix Code 14A.
 - b) Housing Rehabilitation - 2 to 4 Units Program for tenant occupied properties - Matrix Code 14B.

EXHIBIT D

- c) Housing Acquisition - Single Family Program for homebuyer assistance - Matrix Code 13.

2) ED RLF - Eligible ED activities under this RLF include:

- a) Business Assistance Program (direct financial assistance to a for-profit business) - Matrix Code 18A.
- b) Microenterprise Financial Assistance (loans) - Matrix Code 18C.

Written Department approval must be received before incurring any costs associated with any RLF activities. All approved RLF projects must be reported to the Department via the applicable Project Set-Up/Completion Reports.

Any PI that a Grantee expends on RLF activities becomes RLF funds and must be included in the RLF when repayment is received.

E. Grantees Leaving or Entering the State Non-Entitlement Program: Grantees must certify adherence to all State CDBG PI/RLF procedures when leaving or entering the State CDBG Program, including:

1) 24 CFR 570.489(e)(3)(iii) Transfer of PI to Entitlement Program:

A Grantee that either is an entitlement communities or is part of an urban agreement, or a Grantee that becomes an entitlement community or joins an urban agreement, has the following PI and RLF options:

PI not associated with a RLF:

- a) A Grantee must certify they will be reporting the State PI and activity into the Entitlement Programs process, including receipting CDBG proceeds and disbursements into IDIS; or,
- b) Return all State CDBG PI, including the amount of PI on hand at the time the HUD agreement is fully executed and any future PI generated by State CDBG funding to the Department, until all such State CDBG PI has been returned.

PI in an approved RLF:

Entitlement jurisdictions and those who are part of an urban agreement may keep their RLF(s) and monies within an RLF as long as the following is met:

- a) The entitlement/urban agreement jurisdiction has a Reuse Agreement signed by the Department and the City/County Authorized Representative.
- b) The entitlement/urban agreement jurisdiction will operate the RLF in compliance with the Department's RLF rules into the future.

EXHIBIT D

- c) The entitlement/urban agreement jurisdiction will need to report on all expenditures, and accounting of RLF(s) as required by the Department.
- d) The entitlement/urban agreement jurisdiction will have loan servicing and asset management policies and procedures defined and in place, pursuant to the Department's Asset and Real Property Management Chapter in the GMM.

2) 24 CFR 570.489(e)(3)(iv) Transfer of PI of Grantees Losing Entitlement Status:

Entitlement PI and PI generated by State CDBG funds cannot be comingled. Within 90 days of leaving the Entitlement Program to join the State CDBG Program, the authorized representative for any jurisdiction that has lost or has relinquished its entitlement status must submit a letter to the Department certifying that the jurisdiction will either:

- a) Repay or retain PI generated under entitlement grants and continue to comply with the Entitlement Program requirements for PI, including reporting it into IDIS or to the urban county; or,
- b) Retain the PI, identify the total PI and RLF on hand and loan portfolio balances to be transferred to the State CDBG Program and agree that the jurisdiction will comply with all of the State's rules for PI and RLF by executing a Reuse Agreement and obtaining the Department's approval for any RLFs.

39. PI Reuse Agreement

The Grantee must adopt and submit the most current Reuse Agreement provided by the Department. The Reuse Agreement is not in effect until it has been executed by the Department.

40. Obligations of Grantee with Respect to Certain Third Party Relationships

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

41. Energy Policy and Conservation Act

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

EXHIBIT D

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

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