

**CITY OF SANTA ROSA
PROFESSIONAL SERVICES AGREEMENT
WITH KITCHELL/CEM, INC.
AGREEMENT NUMBER _____**

This "Agreement" is made as of this ____ day of _____, 2023, by and between the City of Santa Rosa, a municipal corporation ("City"), and Kitchell/CEM, Inc., a California Corporation ("Contractor").

R E C I T A L S

A. City desires to retain construction management and inspection services for the Fire Station 5 Resiliency and Relocation Project.

B. City desires to retain a responsible and qualified firm to conduct the services described above in accordance with the Scope of Services as more particularly set forth in Exhibit A to this Agreement.

C. Contractor represents to City that it is a responsible firm composed of highly trained professionals with the ability and skills necessary to successfully perform the services hereunder under the terms and conditions of this Agreement.

D. The parties have negotiated upon the terms pursuant to which Contractor will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide to City the services described in Exhibit A ("Scope of Services"). Contractor shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto for the purpose of defining the manner and scope of services to be provided by Contractor and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. In the event of any conflict between this Agreement and any terms or conditions of any document prepared or provided by Contractor and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the terms of this Agreement shall control and prevail.

2. COMPENSATION

a. City shall pay Contractor for services rendered pursuant to this Agreement at the rates, times and in the manner set forth in Exhibit B. Contractor shall submit monthly statements to City which shall itemize the services performed as of the date of the statement and set forth a progress report, including work accomplished during the period, percent of each task completed, and planned effort for the next period. Invoices shall identify personnel who have worked on the services provided, the number of hours each worked during the period covered by the invoice, the hourly rate for each person, and the percent of the total project completed, consistent with the rates and amounts shown in Exhibit B.

b. The payments prescribed herein shall constitute all compensation to Contractor for all costs of services, including, but not limited to, direct costs of labor of employees engaged by Contractor, travel expenses, telephone charges, copying and reproduction, computer time, and any and all other costs, expenses and charges of Contractor, its agents and employees. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice.

c. Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all services to be performed hereunder shall in no event exceed the sum of two-million, three-hundred-eighty-five-thousand, two-hundred-one dollars and sixty-four cents (\$2,385,201.64). Contractor acknowledges and agrees that it exceeds the maximum compensation under this Agreement at its own risk. The City's Chief Financial Officer is authorized to pay all proper claims from Charge Numbers 05018 and 05117.

3. DOCUMENTATION; RETENTION OF MATERIALS; ACCESS TO RECORDS

a. Contractor shall maintain adequate documentation to substantiate all charges as required under Section 2 of this Agreement.

b. Contractor shall keep and maintain full and complete documentation and accounting records concerning all extra or special services performed by it that are compensable by other than an hourly or flat rate.

c. Contractor shall maintain the records and any and all other records pertinent to this Agreement for a period of four (4) years after completion of all services hereunder.

d. Contractor agrees to provide City, the State of California, the Federal Emergency Management Agency ("FEMA") Administrator, the Comptroller General of the United States, and any or all of their authorized representatives, access to any books, documents, papers, and records of Contractor which are pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

e. Contractor agrees to permit all or any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

f. Contractor agrees to provide the FEMA Administrator or his authorized representatives access to work sites pertaining to the services being performed under this Agreement.

4. INDEMNITY

a. Contractor shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless City, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, its officers, employees, or agents, in said performance of professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of City.

b. The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 4, nor shall the limits of such insurance limit the liability of Contractor hereunder. This Section 4 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 18(b), below. The provisions of this Section 4 shall survive any expiration or termination of this Agreement.

5. INSURANCE

a. Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Contractor in exchange for City's agreement to make the payments prescribed hereunder. Failure by Contractor to (i) maintain or renew coverage, (ii) provide City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by City as a material breach of this Agreement by Contractor, whereupon City shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under this Agreement. In the event Contractor, with approval of City pursuant to Section 6 below, retains or utilizes any subcontractors in the provision of any services to City under this Agreement, Contractor shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverages set forth in the Insurance Requirements in Attachment One.

b. Contractor agrees that any available insurance proceeds broader than or in excess of the coverages set forth in the Insurance Requirements in Attachment One shall be available to the additional insureds identified therein.

c. Contractor agrees that the insurance coverages and limits provided under this Agreement are the greater of: (i) the coverages and limits specified in Attachment One, or (ii) the broader coverages and maximum limits of coverage of any insurance policy or proceeds available to the name insureds.

6. ASSIGNMENT

Contractor shall not assign any rights or duties under this Agreement to a third party without the express prior written consent of City, in City's sole and absolute discretion. Contractor agrees that the City shall have the right to approve any and all subcontractors to be used by Contractor in the performance of this Agreement before Contractor contracts with or otherwise engages any such subcontractors.

7. NOTICES

Except as otherwise provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

City Representative:

Consultant Representative:

Lisa Welsh Associate Civil Engineer
69 Stony Circle
Santa Rosa, CA 95401
707.543.3909

Michael Mallery
Project Director
2450 Venture Oaks Way, Suite 500
Sacramento, CA 95833
916.648.9700

8. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Contractor, in the performance of Contractor's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors.

d. The provisions of this Section 8 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

9. ADDITIONAL SERVICES

Changes to the Scope of Services shall be by written amendment to this Agreement and shall be paid in accordance with the rates set forth in Exhibit B, or paid as otherwise agreed upon by the parties in writing prior to the provision of any such additional services.

10. SUCCESSORS AND ASSIGNS

City and Contractor each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

11. TERM, SUSPENSION, TERMINATION FOR CONVENIENCE AND CAUSE

a. This Agreement shall become effective on the date that it is made, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

b. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If City gives such notice of suspension, Contractor shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time upon written notice of termination to Contractor. Upon such termination, Contractor shall submit to City an itemized statement of services performed as of the date of termination in accordance with Section 2 of this Agreement. These services may include both completed work and work in progress at the time of termination. City shall pay Contractor for any services for which compensation is owed; provided, however, City shall not in any manner be liable for lost profits that might have been made by Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement. Contractor shall promptly deliver to City all documents related to the performance of this Agreement in its possession or control. All such documents shall be the property of City without additional compensation to Contractor.

d. City shall have the right to terminate this Agreement for cause upon written notice to Contractor following an Event of Default. The following shall be "Events of Default" hereunder and the term "Event of Default" shall mean, whenever it is used herein, any one or more of the following events:

(i) The failure by Contractor to perform any obligation under this Agreement, which by its nature Contractor has no capacity to cure;

(ii) The failure by Contractor to perform any other obligation under this Agreement, if the failure has continued for a period of ten (10) days after the City demands in writing that Contractor cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Contractor may have a longer period as is necessary to cure the failure, but this is conditioned upon Contractor's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure. Contractor shall indemnify and defend the City against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(iii) Any of the following: A general assignment by Contractor for the benefit of Contractor's creditors; any voluntary filing, petition, or application by Contractor under any law relating to

insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise;

(iv) The appointment of a trustee or receiver to take possession of all or substantially all of Contractor's assets; or the attachment, execution or other judicial seizure of all or substantially all of Contractor's assets or of Contractor's interest in this Agreement, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Contractor, or any general partner of Contractor if Contractor is a partnership, or

(a) a petition to have Contractor, or any partner of Contractor if Contractor is a partnership, declared bankrupt, or

(b) a petition for reorganization or arrangement of Contractor under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days.

(v) Any representation or warranty related to this Agreement made by any agent of Contractor is determined to have been false or misleading in any material respect at the time made.

12. REMEDIES UPON DEFAULT

This Section 12 shall apply in the event the amount payable under this Agreement exceeds the simplified acquisition threshold as determined pursuant to section 1908 of title 41 of the United States Code, or \$150,000, whichever amount is greater.

a. Remedies on Event of Default. Upon the occurrence of an Event of Default as defined in Section 11, City shall have the right upon written notice to Contractor, in addition to any other rights or remedies available to City at law or in equity, to:

(i) Terminate this Agreement and all rights of Contractor under this Agreement, (ii) Continue this Agreement without terminating the Agreement, or (iii) Temporarily suspend Contractor's performance hereunder, in whole or in part, and recover from Contractor the aggregate sum of;

(1) any amount necessary to compensate City for all the detriment caused by Contractor's failure to perform its obligations or that, in the ordinary course of things, would be likely to result from its failure; and

(2) all other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California or Federal law.

(b) None of the previous remedial actions, alone or in combination, shall be construed as an election by City to terminate this Agreement unless City has in fact given Contractor written notice that this Agreement is terminated or unless a court of competent jurisdiction decrees termination of this Agreement. If City takes any of the previous remedial actions without terminating this Agreement City may nevertheless at any later time terminate this Agreement by written notice to Contractor.

(c) After the occurrence of an Event of Default, the City, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Event of Default for the account and at the expense of Contractor. However, City must by prior notice first allow Contractor a reasonable opportunity to cure, except in cases of emergency, where City may proceed

without prior notice to Contractor. Contractor shall, upon demand, immediately reimburse City for all costs, including costs of settlements, defense, court costs, and attorneys' fees that City may incur in the course of any cure.

(d) No security or guaranty for the performance of Contractor's obligations that City may now or later hold shall in any way constitute a bar or defense to any action initiated by City for enforcement of any obligation of Contractor or for the recovery of damages caused by an Event of Default.

(e) Except where this is inconsistent with or contrary to any provisions of this Agreement, no right or remedy conferred upon or reserved to City is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute. Except to the extent that City may have otherwise agreed in writing, no waiver by City of any violation or nonperformance by Contractor of any obligations, agreements, or covenants under this Agreement shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by City to exercise a remedy for any violation or nonperformance by Contractor be deemed a waiver by City of the rights or remedies with respect to that violation or nonperformance.

(f) Indemnification. The exercise of City of any one or more of the remedies set forth in this Section 12 shall not affect the rights of City or the obligations of Contractor under the indemnity provisions set forth in Section 4 hereof.

(g) No Remedy Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle City to exercise any remedy reserved to it in this subsection it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

(h) Notice of Default. Contractor agrees that, as soon as is practicable, and in any event within ten (10) days after such event, Contractor will furnish City notice of any event which is an Event of Default under this Agreement, or which with the giving of notice or the passage of time or both could constitute an Event of Default under this Agreement, which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which Contractor proposes to take with respect thereto. Each subcontract shall include the provisions of this subsection (h) to require each subcontractor of Contractor to provide City notice of any Event of Subcontractor Default in the same manner as required hereunder of Contractor for an Event of Default.

13. TIME OF PERFORMANCE

The services described herein shall be provided during the period, or in accordance with the schedule, set forth in Exhibit A. Contractor shall complete all the required services and tasks and complete and tender all deliverables to the reasonable satisfaction of City, not later than June 30, 2025.

14. STANDARD OF PERFORMANCE

Contractor shall perform all services performed under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's profession in

California. All products of whatsoever nature that Contractor delivers to City shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Contractor's profession, and shall be provided in accordance with any schedule of performance. Contractor shall assign only competent personnel to perform services under this Agreement. Contractor shall notify City in writing of any changes in Contractor's staff assigned to perform the services under this Agreement prior to any such performance. In the event that City, at any time, desires the removal of any person assigned by Contractor to perform services under this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

15. CONFLICTS OF INTEREST

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City or that would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of City. Contractor agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City at all times during the performance of this Agreement.

16. CONFLICT OF INTEREST REQUIREMENTS

a. **Generally.** The City's Conflict of Interest Code requires that individuals who qualify as "consultants" under the Political Reform Act, California Government Code sections 87200 *et seq.*, comply with the conflict of interest provisions of the Political Reform Act and the City's Conflict of Interest Code, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests. The term "consultant" generally includes individuals who make governmental decisions or who serve in a staff capacity.

b. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the City's Conflict of Interest Code:

☒ **X** yes ☐ no (check one)

If "yes" is checked by the City, Contractor shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants;" and
- (2) Cause these individuals to file with the City Clerk the assuming office statements of economic interests required by the City's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, Contractor shall cause these individuals to file with the City Clerk annual statements of economic interests, and "leaving office" statements of economic interests, as required by the City's Conflict of Interest Code.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act. The City may withhold all or a portion of any payment due under

this Agreement until all required statements are filed.

17. CONFIDENTIALITY OF CITY INFORMATION

During performance of this Agreement, Contractor may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the City. Contractor agrees to protect all City Information and treat it as strictly confidential, and further agrees that Contractor shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of City. In addition, Contractor shall comply with all City policies governing the use of the City network and technology systems. A violation by Contractor of this Section 17 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

18. CONTRACTOR INFORMATION

a. City shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Contractor pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Contractor shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by City.

b. Contractor shall fully defend, indemnify and hold harmless City, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Contractor pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. City shall make reasonable efforts to notify Contractor not later than ten (10) days after City is served with any such claim, action, lawsuit or other proceeding, provided that City's failure to provide such notice within such time period shall not relieve Contractor of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

c. All proprietary and other information received from Contractor by City, whether received in connection with Contractor's proposal, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to City, City shall give notice to Contractor of any request for the disclosure of such information. Contractor shall then have five (5) days from the date it receives such notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorneys' fees) incurred by City in any legal action to compel the disclosure of such information under the California Public Records Act. Contractor shall have sole responsibility for defense of the actual "trade secret" designation of such information.

d. The parties understand and agree that any failure by Contractor to respond to the notice provided by City and/or to enter into an agreement with City, in accordance with the provisions of

subsection c, above, shall constitute a complete waiver by Contractor of any rights regarding the information designated "trade secret" by Contractor, and such information shall be disclosed by City pursuant to applicable procedures required by the Public Records Act.

18. FEDERAL PROVISIONS

Contractor shall comply with the provisions in Exhibit C to this Agreement. In the event of a conflict between any provision in Exhibit C and any other provision of this Agreement, the more stringent provision shall control and prevail.

19. GENERAL PROVISIONS

a. Entire Agreement. This Agreement contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect.

b. Modification. No modification or change to the terms of this Agreement will be binding on a party unless in writing and signed by an authorized representative of that party.

c. Compliance with Laws. Contractor shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) ("ADA"), and any regulations and guidelines issued pursuant to the ADA; and (ii) Labor Code sections 1720, *et seq.*, which require prevailing wages (in accordance with DIR determinations at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code sections 1720 *et seq.* Contractor shall pay to City when due all business taxes payable by Contractor under the provisions of Chapter 6-04 of the Santa Rosa City Code. City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Contractor.

d. Discrimination Prohibited. With respect to the provision of services under this Agreement, Contractor agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.

e. Governing Law; Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California and Federal law. Venue of any litigation arising out of or connected with this Agreement shall lie in the state trial court in Sonoma County in the State of California or the United States District Court, Northern District of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

f. Waiver of Rights. Neither City acceptance of, or payment for, any service or performed by Contractor, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

g. Incorporation of Attachments and Exhibits. The attachments and exhibits to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

20. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to City that it is (a) a duly organized and validly existing corporation, formed and in good standing under the laws of the State of California, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Contractor hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Contractor in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

21. COUNTERPARTS AND ELECTRONIC SIGNATURES

This Agreement and future documents relating thereto may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one Agreement. Counterparts and/or signatures delivered by facsimile, pdf or City-approved electronic means have the same force and effect as the use of a manual signature. Both City and Consultant wish to permit this Agreement and future documents relating thereto to be electronically signed in accordance with applicable federal and California law. Either Party to this Agreement may revoke its permission to use electronic signatures at any time for future documents by providing notice pursuant to the Agreement. The Parties agree that electronic signatures, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective Agreement. The City reserves the right to reject any signature that cannot be positively verified by the City as an authentic electronic signature.

Executed as of the day and year first above stated.

CONTRACTOR:

CITY OF SANTA ROSA

a Municipal Corporation

Name of Firm: _____

TYPE OF BUSINESS ENTITY (*check one*):

_____ Individual/Sole Proprietor

_____ Partnership

☒ Corporation

_____ Limited Liability Company

_____ Other (please specify: _____)

By: _____

Print Name: Natalie Rogers

Title: Mayor

Signatures of Authorized Persons:

APPROVED AS TO FORM:

By: _____

Office of the City Attorney

Print Name: _____

ATTEST:

Title: _____

By: _____

City Clerk

Print Name: _____

Title: _____

City of Santa Rosa Business Tax Cert. No.

Attachments:

Attachment One - Insurance Requirements

Exhibit A - Scope of Services

Exhibit B - Compensation

Exhibit C – Federal Provisions

ATTACHMENT ONE INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES AGREEMENTS

A. Insurance Policies: Contractor shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Professional liability (E&O)	\$ 1 million per claim \$ 2 million aggregate	Contractor shall provide on a policy form appropriate to profession. If on a claims made basis, Insurance must show coverage date prior to start of work and it must be maintained for three years after completion of work.
4. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to the City in accordance with the policy provisions.

2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the Agreement. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Contractor or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Contractor may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Scope of Services**I. General**

- A. The Santa Rosa Fire Station 5 Resiliency and relocation project ("Project") includes the construction of a new fire station located at 1400 Fountain Grove Parkway, Santa Rosa, CA.

II. Scope of Services**A. General**

1. Coordinate and collaborate with the City, the City's consultants, Design Build Entity, and other project stakeholders as needed in support of the Project.
2. Construction Manager will be the point of contact for the Project.
3. Provide monthly updates to the City Representative through the duration of the Project.
4. Develop and maintain a project schedule with monthly updates in collaboration with the DBE.
5. Attend project meetings, including pre-construction meetings, weekly construction meetings, and specialty meetings as required.
6. Provide meeting agendas and meeting minutes.
7. Organize and maintain project filing and document control in accordance with the City's retention policy.
8. Provide weekly reports of action items and upcoming tasks.
9. Attend and present and provide updates at City staff meetings and public meetings as needed.
10. Support City Project Manager throughout project in tracking and execution of change orders.
11. Review and recommend for approval DBE's monthly application for payments.
12. Provide City with Federal Grant Oversight support services. Represent City in grant requirements management of the CDBG-MIT funding.

B. Design & Construction

1. Provide Project and Construction Management personnel during project design and construction and closeout phases to perform identified services.
2. Review submittals, RFI response, and change orders and provide the City recommendations and a draft response with contract references used and support information for the response.
3. Provide construction cost estimating personnel during project design and construction and closeout phases to perform construction cost estimating services including Independent Cost Estimate (ICE) for change order review process.
4. Coordinate with utility companies as applicable to the project. Coordination with PG&E and AT&T as oversight for the relocation of their facilities and confirmation of resolution of easements and progress of work with the City.
5. Make recommendation to City staff regarding Substantial Completion or Final Completion.
6. All oversight and documentation required per the Mitigation, Monitoring and Reporting Program (MMRP) on the Project website.
7. Coordination and communication of the Public Art process for the Project and coordination with the Public Art chosen with the DBE during construction.
8. Up to (2) constructability reviews. This review is to include (1) accessibility review by a Certified Access Specialist (CAsp).
9. Construction coordination and communication of the Public Art process for the Project and coordination of the Public Art chosen with the Design Builder (tracked and invoiced separately).
10. All submittals, RFI response, and change orders will first be reviewed and response drafted by the Construction Manager to deliver to the City Project Manager with contract references used and support information for the response. All change orders require an Independent Cost Estimate (ICE) from the construction cost estimator.
11. Change Orders will potentially require confirmation from HCD prior to execution, the construction manager will be responsible to bring any concerns that arise efficiently to the City Project Manager.
12. Review and sign design-builder payment requests, certifying that the work requested for payment has been performed.
13. If a claim related to the project is submitted to the City, assist City staff with the claims process (providing documentation relating to the claim, attending meetings to discuss the claim).

C. Communication and Outreach

1. Consultant shall provide coordination with City staff and Contractor, and therefore the Consultant is able to be the primary contact to notify the general public of upcoming road conditions in the work zone area, the safety and mobility impact the Community, traffic revisions, or lane modifications.
2. Consultant shall attend weekly meetings lead by the Design-Build team and incorporate significant issues, milestones, or discussions in their weekly report.
3. Work zone public information and outreach strategies shall be used to communicate with road users, the general public, area residences & businesses, utilities, schools, and appropriate public entities about project information.
4. Work expected by the Consultant during the Project includes monthly updates for the City Newsletter during active construction, a call list creation, public inquiry responses, and general notifications on road changes (e.g., emails, mailing notifications letters, and/or coordinating changeable message signs with Contractor).
5. The CM&I team will work with various City teams outside of the Capital Projects Division (Fire, Traffic, Storm Water, Materials Lab etc.). Those conversations should carbon copy the City Project Manager at all times.

D. Federal Grant Oversight

1. Consultant will represent the City in grant requirements management of the CDBG-MIT funding. Examples of expected oversight from the CM&I consultant include Readily available documentation of the CDBG; Interviews; Certified Payroll reviews and secured storage inspection; Report out to City weekly of the Federal grant required work and summary of effort; Verification of posted documents on site (including maintenance); Review and collection of the Design Builder and subconsultants documentation.

E. Project Closeout

1. Provide all project documents, correspondence, submittals, RFI's, inspection reports. Some documents may be required to be hard copies as specified in the City's retention policy.
2. If a claim related to the project is submitted to the City, assist City staff with the claims process.
3. Coordinate a punch list walk through with stakeholders, compile punch list items, deliver punch list items to design-builder, and oversee the completion of all punch list items.
4. Coordinate with design-builder to collect and turn over close out documents to the City, including but not limited to, manuals, warranties, and inspection cards.

Scope of Services**F. Inspector of Record, Construction Materials & Special Inspections**

1. Provide building code qualified personnel for inspector record services and record keeping during project design and construction and closeout phases to perform identified services.
2. Provide specialty inspection and materials testing personnel during project design and construction phase to perform identified services.
3. Provide certified access specialist personnel for inspection and record keeping during project design and construction and closeout phases.
4. Construction Management weekly project status reports will be submitted to the City by 12:00pm on Monday and inspection reports and weekly statements are to be available upon request. Consultant shall complete the record plans at the completion of the project and provide any documentation for changes to bid set.
5. Inspection shall be daily and track all work on the site required for essential services buildings in California.
6. Track all work on the site required for the applicable essential services buildings.
7. Provide a pre-construction report within 10 days prior to start of construction, including pre-construction photos.
8. Provide daily inspection reports when construction is active, reports shall be hard copy and wet signed and dated by the inspector, scan final copy to create an alternate electronic version.
9. Photos shall be taken daily to document work in progress. Consultant to provide a file sharing system.

G. Other Consultants

1. Provide appropriately CEQA qualified personnel to support mitigation, management and reporting program services during project design and construction phases to perform identified services.
 - a) Biologist.
 - b) SWPPP compliance officer with QSD/QSP certification responsible for permit review (SMARTS), site observation and notification to the City as well as determination of SMARTS close-out date at 70% of Site stabilization.
 - c) Arborist.
 - d) Cultural resource professional/ Archeologist from the Federated Indians of Graton Rancheria's preferred list.
 - e) Professional paleontologist.

H. CASp

1. Provide periodic inspections of during construction related to compliance with the Americans with Disabilities Act.

III. Duration of Services

- A. This Scope of Services and the associated Fee Summary assume a not to exceed time and materials delivery for a duration of time between April 2023 and August 2025 (28 months).

IV. Clarifications and Exceptions**A. Clarifications:**

1. Additional reporting requirements specified by funding sources are not included in the Scope of Services or contract amount.
2. The Fee Proposal assumes that the Fire Station 5 work will start in April 2023 with pre-construction services and the completion of construction phase in December 2024 and Closeout/Occupancy of the project by March 2025. Services that extend beyond March 2025 are not included.

B. The following services are excluded from the Project:

1. Commissioning Agent services.
2. CEQA Consultant services.

City of Santa Rosa

Construction Management Services Terms for Capital Improvement Projects

Consultant shall:

A. General

1. Per California Government Code Section 4525-4529.5, **Construction Manager** (CM) shall be a licensed Architect, registered engineer, or licensed general contractor.
2. The CM is the primary point of contact and is responsible for the contract administration, construction engineering, and engineering integrity of the project. The CM must ensure the contractor complies with the requirements of the contract documents.

B. Project Coordination and Correspondence

1. Coordinate among Contractor, the project team, various utility companies (such as PG&E, AT&T, Comcast, etc.), and other parties as required.
2. Receive all Contractor correspondences. Coordinate with applicable parties as necessary to develop responses. Prepare and transmit responses.
3. Maintain logs of requests for information, submittals, plan clarifications, claims, proposed change orders, final change orders.
4. Provide status updates on significant issues to City.
5. Provide any documentation required by City, State, or Federal requirements for contract administration.
6. Lead preconstruction conference. Prepare agenda and minutes.
7. Lead progress meetings as needed (or regularly scheduled) with Contractor and City staff. Prepare agenda and minutes.
8. Coordinate testing provided by City Materials Engineering with City project team.
9. Contract for and manage non-City supplied material testing services.
10. Coordinate testing and startup including efforts by Contractor, manufacturers, and City staff.

C. Reports

1. Prepare very short (1 page) weekly progress reports including a list of key items of work completed during the week and expected work the following week. Include approximately 2 photos. Submit to the City by Monday 9:00 am the following week. This weekly report may be posted to the City's public website.
2. Prepare and submit a monthly progress report describing key issues, status of schedule, budget, payments, RFI's, submittals, claims, potential change orders, and change orders.

3. Review Inspector's Daily Construction Reports and suggest edits where applicable. Initial (to show you reviewed and approved document) and submit copies to City of previous weeks Daily Reports by Monday 9:00 am the following week.
4. Review / complete Weekly Statement of Working Days and submit to the City for review by Monday morning at 9:00 a.m the following week.
5. Complete all documentation and coordination required for final acceptance and closeout of construction contracts.

E. Submittal Management

1. Receive, stamp, and log submittals, and distribute for review by the design team.
2. Monitor review of submittals to foster timely review and return of submittals to Contractor.
3. Review administrative submittals for conformance with Contract plans and specification requirements and City standards.
4. Transcribe reviewer's comments to duplicate copies for return to Contractor and distribution.
5. Consultant shall ensure that all submittals returned to Contractor include the following language:

"CITY OF SANTA ROSA

___ No exceptions
 ___ Revise and Resubmit
 ___ _____

___ Make Corrections Noted
 ___ Not Reviewed

Submittal was reviewed for general conformance to Contract plans and specifications only. Contractor is responsible for confirming and correlating full compliance with contract plans and specifications. Notations neither relieve contractor from Contract plans and specification compliance nor authorize changes to contract amount. This review does not relieve Contractor from responsibility for any errors, omission or deviations from the contract plans whether or not such errors, omissions or deviations are noted on this drawing.

By _____ Date _____"

G. Change Order and Claims Management

1. Analyze requested change orders for validity, cost, and schedule impacts. Provide information to City Engineer necessary to review the requested change order. The City Engineer shall be responsible for the consideration, negotiation and resolution of all requests for change orders. At the request of the City Engineer, draft and forward proposed change orders to the Engineer using City provided change order format. City staff will formally process, transfer draft change orders to City letterhead, obtain signatures, and distribute accordingly.
2. Analyze claims for validity, cost, and schedule impacts. Provide information to the City Engineer necessary to review and resolve the claim. The City Engineer shall be responsible for the consideration, negotiation and resolution of all claims. If requested by the Engineer, Consultant shall draft responses to claims for review and approval by the City Engineer. City staff will obtain final signatures and distribute responses to claims.

City of Santa Rosa
Construction Inspection Services Terms for
Capital Improvement Projects

Consultant shall:

A. Deliverables / Documentation

1. Prepare pre-construction photo log to identify pre-existing damage to the surface features (and the existing condition of areas that may be damaged by the Contractor) within Project limits. Give a duplicate copy to City. Labeled digital photos on CD are preferred.
2. Complete Daily Construction Reports and submit signed Reports to the Engineer for review by Monday morning at 9:00 a.m. the following week.
3. Take digital construction progress photos, label, and store in a logical manner to be turned over to the Engineer for review by Monday morning at 9:00 a.m. the following week.
4. Complete Weekly Statement of Working Days and submit signed Statements to the Engineer for review by Monday morning at 9:00 a.m. the following week.
5. Document all warnings given to the Contractor regarding safety Hazards.
6. Keep an up to date set of marked up drawings recording as-built conditions, or if required by Contract ensure that the Contractor is doing so.
7. Review Contractor's monthly payment requests, establish payment quantities, review materials on hand, prepare, sign, and date payment recommendations and submit to the Engineer for payment.
8. Create Punch List of outstanding items to be completed when the project is at substantial completion.
9. Make "Record Plan" redline revisions to the original project mylar drawings to show changes that occurred during construction.

B. Responsibility and Duties

1. The construction inspector's responsibilities and duties are consistent with industry standard practice and are described in the Caltrans Construction Manual, and the American Public Works Association publication titled "Management of Public Works Construction Projects."
2. The Construction Inspector is the "eyes and ears" of the Engineer and as such shall ensure compliance with the Contract Documents. The Construction Inspector is not authorized to make changes and shall notify the City Representative if any deviation from the Contract Documents appears to be necessary.
3. Have OSHA - Hazardous Waste Operations and Emergency Response training with a minimum current certification as a 24 Hour Occasional Site Worker.
4. Coordinate the handling and/or disposal of contaminated or hazardous materials with the contractor, specialty contractors, disposal sites, and City staff if contaminated or hazardous materials are encountered during construction. Sign manifests as necessary.

5. Be confined spaced trained and certified if inspection in confined spaces is required. Any confined space entry shall be carried out in accordance with Section 7-1.01L of City's specifications.
6. Witness sewer and water pressure and vacuum testing and document results in Daily Reports. Witness and document television inspection of sewer systems.
7. Review connections of all new service laterals to existing services prior to backfill and note the condition of the exposed portion of the existing service piping.

C. *Water Testing*

1. Perform water sampling for bacteriological clearance per the construction specifications. In the event that a Consultant inspector is unfamiliar with the procedure, the City will conduct the first sampling with Consultant as a training opportunity so the inspector can conduct any future bacteriological sampling that may be required.

D. *Public Relations*

1. Act as the primary contact for the public during construction. Meet with property owners and businesses to keep them informed of anticipated construction activities which may affect them.
2. Address complaints by meeting with members of the public in a timely manner. Follow up with Contractor to resolve any complaints. Maintain a log of complaints which includes the date of the complaint, name of complainant, address, type of complaint, date Contractor notified, and date complaint resolved/action taken.
3. Ensure Contractor provides required public notifications for construction activities.
4. Prepare agendas, coordinate, advertise, and lead any public meetings necessary during construction. Provide follow up contact with individuals. Maintain minutes of any meetings.

Proposal Fee Summary

Description	Start	End	Hours	Amount
Fire Station 5	Apr-23	Jun-25	6,628	\$1,226,400
Pre-Construction	Apr-23	Jul-23	458	\$88,360
Construction - Utility Relocation	Jul-23	Sep-23	600	\$106,200
Construction	Aug-23	Dec-24	4,204	\$777,208
Closeout	Jan-25	Mar-25	728	\$136,568
3-Month Allowance	Apr-25	Jun-25	638	\$118,064
Grand Total	Apr-23	Jun-25	6,628	\$1,226,400

Expenses Summary

Row Labels	QTY	Unit	Cost	Amount
Travel	108.0	5,238.0	\$16.88	\$13,095.00
Lodging	108.0	27.0	\$4,050.00	\$16,200.00
Meals	104.0	27.0	\$1,350.00	\$5,200.00
Grand Total	320.0	5,292.0	\$5,416.88	\$34,495.00

Consultant Allowances

	Start	End	Amount	Amount w/ Markup
Signet	Apr-23	Jun-25	\$160,038	\$160,038
Biologist	Jun-25	Jun-25	\$20,000	\$20,000
Arborist	Jun-25	Jun-25	\$20,000	\$20,000
Cultural Resource - Archeologist	Jun-25	Jun-25	\$30,000	\$30,000
Paleontologist	Jun-25	Jun-25	\$20,000	\$20,000
Durbrow	Apr-23	Jun-25	\$563,155	\$563,155
Grand Total	Apr-23	Jun-25	\$813,193	\$813,193

Total with Labor and Expenses	\$1,260,895.00
Total with Labor, Expenses, and Allowances	\$2,074,088.38
Contingency 15%	\$311,113.26
Total with Labor, Expenses, and Allowances	\$2,385,201.64



Detailed Hours																					
	2023								2024												
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Sr. Project Manager	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Construction Manager	40	40	40	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160
Scheduler	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12
Senior Estimator		30			40		12	12	12	12	12	12	12	12	12	12	12	12	12	12	12
EAS Project Manager	0	100	0	0	100	0	0	0													
Data Analyst				40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Total	92	222	92	252	392	252	264	264	264	264	264	264	264	264	264	264	264	264	264	264	264

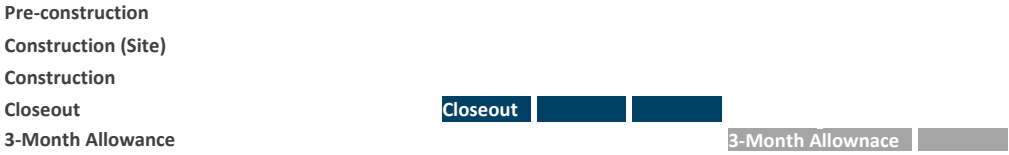
Expenses																					
	2023								2024												
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Travel	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485	\$485
Lodging	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600
Meals	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$0	\$200	\$200
Grand Total	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,085	\$1,285

Consultant Allowances																					
	2023								2024												
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Special Inspections and Testing	\$0	\$0	\$0	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621	\$7,621
Inspector of Record	\$0	\$0	\$0	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817	\$26,817
Biologist																					
Arborist																					
Cultural Resource - Archeologist																					
Paleontologist																					
Subt\total	\$0	\$0	\$0	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438	\$34,438

Total with Labor and Expenses																					
Total with Labor, Expenses, and Allowances																					
Contingency	15%																				



Schedule and Phases



Detailed Hours											
	2025						Total	Rate			Total Amount
	Jan	Feb	Mar	Apr	May	Jun		2023	2024	2025	
Sr. Project Manager	40	40	0	0	0	20	940	\$203	\$207	\$211	\$193,540
Construction Manager	160	160	160	160	160	160	3,960	\$195	\$199	\$203	\$787,560
Scheduler	12	12	0	0	0	12	288	\$165	\$168	\$172	\$48,204
Senior Estimator	12	12	0	0	0	6	280	\$202	\$206	\$210	\$57,376
EAS Project Manager							200	\$185			\$37,000
Data Analyst	40	40	40	40	40	40	960	\$105	\$107	\$109	\$102,720
Total	264	264	200	200	200	238	6,628	\$203	\$207	\$211	\$1,226,400

Expenses											
	2025						Rate	Total Amount			
	Jan	Feb	Mar	Apr	May	Jun					
Travel	\$485	\$485	\$485	\$485	\$485	\$485		\$13,095			
Lodging	\$600	\$600	\$600	\$600	\$600	\$600		\$16,200			
Meals	\$200	\$200	\$200	\$200	\$200	\$200		\$5,200			
Grand Total	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285	\$1,285		\$34,495			

Consultant Allowances											
	2025						Subt\total	Total Amount			
	Jan	Feb	Mar	Apr	May	Jun		2023	2024	2025	
Special Inspections and Testing	\$7,621	\$7,621	\$0	\$0	\$0	\$7,621	\$160,038	1.00	1.00	1.00	\$160,038
Inspector of Record	\$26,817	\$26,817	\$0	\$0	\$0	\$26,817	\$563,155	1.00	1.00	1.00	\$563,155
Biologist						\$20,000	\$20,000			1.00	\$20,000
Arborist						\$20,000	\$20,000			1.00	\$20,000
Cultural Resource - Archeologist						\$30,000	\$30,000			1.00	\$30,000
Paleontologist						\$20,000	\$20,000			1.00	\$20,000
Subt\total	\$34,438	\$34,438	\$0	\$0	\$0	\$124,438	\$813,193	1.00	1.00	1.00	\$813,193

Total with Labor and Expenses	\$1,260,895.00
Total with Labor, Expenses, and Allo	\$2,074,088.38
Contingency	\$311,113.26

Rate Table			
	2023	2024	2025
Executive Director	232	237	241
Project Director	223	227	232
Sr. Project Manager	203	207	211
Construction Manager	195	199	203
Project Manager II	185	189	192
Project Manager	165	168	172
Sr. Project Engineer	130	133	135
Project Engineer	107	109	111
Field Office Manager	90	92	94
Sr. Superintendent	200	204	208
Superintendent	180	184	187
Scheduler	165	168	172
Estimating Manager	211	215	220
Senior Estimator	202	206	210
Estimator	147	150	153
EAS Manager	210	214	218
EAS Project Manager	185	189	192
Architectural Manager	200	204	208
Sr. Architect	180	184	187
Architect	170	173	177
Project Designer	105	107	109
Sr. Mechanical Engineer	170	173	177
Mechanical Engineer	155	158	161
Sr. Electrical Engineer	193	197	201
Electrical Engineer	185	189	192
Civil Engineer	173	176	180
Commissioning Manager	185	189	192
Field Engineer	115	117	120
CAD technician	105	107	109
Structural Engineer	191	195	199
Exec. Director of Business Analytics & Controls	226	231	235
Projects Controls Manager	135	138	140
Business Analyst	125	128	130
Project Controls Analyst	122	124	127
Data Analyst	105	107	109

EXHIBIT C FEDERAL PROVISIONS

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

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

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

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

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

17-DRMIT-17003

NOI Date: 11/02/2020

Approved Date: 4/13/2021

Prep Date: 05/11/2021

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

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

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.

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.

- 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

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

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

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.

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.

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.

- 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

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:

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

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

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

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)

17-DRMIT-17003

NOI Date: 11/02/2020

Approved Date: 4/13/2021

Prep Date: 05/11/2021

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

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 10th calendar day of the second month following execution of this Agreement and must continue through the receipt and approval by the Department of the Project Completion Report, detailed below.
 - 2) Monthly Program Income Report: Program Income, if identified as a funding source for any Approved Project, must be included in the Project budget and must be substantially expended prior to drawing Grant Funds. During the term of this Agreement, if Program Income is generated, the Subrecipient must submit a Monthly Program Income Report certifying the amount of Program Income generated, retained and expended. Program Income remaining at the end of each quarter and at the expiration of this Agreement in excess of \$35,000.00 must be remitted to the Department.
 - 3) Semi-Annual Labor Standards Report: During the term of construction for

each Approved Project, each April 1st and October 1st, 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

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

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

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

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.

- 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.

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 may 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.

- 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

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

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.

- 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 C

FEDERAL PROVISIONS

A. Definitions

1. **Government** means the United States of America and any executive department or agency thereof.
2. **FEMA** means the Federal Emergency Management Agency.
3. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

B. Federal Changes

1. Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Agreement, included but not limited to those requirements of 2 C.F.R. §§ 200.317 through 200.326 and more fully set forth in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which is included herein by this reference. Contractor's failure to so comply shall constitute a material breach of this Agreement.
2. Contractor agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. Compliance with the Contract Work Hours and Safety Standards Act.

Pursuant to section 3701 of title 40 of the United States Code, this Section C shall apply to Contractor in the event the amount payable under this Agreement exceeds \$100,000 and may involve the employment of mechanics or laborers.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory,

to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

D. Clean Air Act and Federal Water Pollution Control Act

This Section D shall apply in the event the amount payable under this Agreement exceeds \$150,000.

Clean Air Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*
2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*

2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. Suspension and Debarment

1. This Agreement is a covered transaction for purposes of title 2 Code of Federal Regulations parts 180 and 3000. As such, Contractor is required to verify that none of Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 "Debarment and Suspension." Contractor agrees that neither Contractor nor any of its third-party subcontractors shall enter into any third-party subcontracts for any of the work under this Agreement with a third-party subcontractor that is debarred, suspended, or otherwise excluded for or ineligible for participation in Federal assistance programs under executive Order 12549.
3. Contractor must comply with title 2 Code of Federal Regulations, part 180, subpart C and title 2 Code of Federal Regulations, part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
4. This certification is a material representation of fact relied upon by City. If it is later determined that Contractor did not comply with title 2 Code of Federal Regulations, part 180, subpart C or title 2 Code of Federal Regulations, part 3000, subpart C, in addition to remedies available to the State of California and the City of Santa Rosa, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

F. Procurement of Recovered Materials

1. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
 - (a) Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - (b) Meeting Agreement performance requirements; or
 - (c) At a reasonable price.

2. Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

G. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by section 1352 of title 31 of the United States Code. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

H. MBE/WBE REQUIREMENTS

1. Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible through the "Good Faith Effort" process in 2 C.F.R. § 200.321. Contractor shall document and report its Good Faith Effort processes. Contractor shall also ensure that all of its subcontractors take the affirmative steps required under 2 C.F.R. § 200.321. Affirmative steps must include:
 - (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (f) Requiring all subcontractors to take the affirmative steps listed in paragraphs (a) through (e) above.

I. MISCELLANEOUS PROVISIONS

1. DHS Seal. Contractor shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.
2. FEMA Assistance. Contractor acknowledges that FEMA financial assistance will be used to fund this Agreement only. Contractor shall comply will all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

3. Federal Government Not Party. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to City, Contractor, or any other party pertaining to any matter resulting from this Agreement.
4. False Claims. Contractor acknowledges that Title 31 United States Code Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement.

J. Equal Employment Opportunity

During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive

Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

K. Prohibition on Contracting for Covered Telecommunications Equipment or Services

1. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
2. Prohibitions.
 - (a) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - (b) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential

component of any system, or as critical technology as part of any system;
or

- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

3. Exceptions.

- (a) This clause does not prohibit contractors from providing—
 - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (b) By necessary implication and regulation, the prohibitions also do not apply to:
 - (i) Covered telecommunications equipment or services that:
 - (I) Are not used as a substantial or essential component of any system;
and
 - (II) Are not used as critical technology of any system.
 - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

4. Reporting requirement.

- (a) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- (b) The Contractor shall report the following information pursuant to paragraph (4)(a) of this clause:
 - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 10 business days of submitting the information in paragraph (4)(b)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall

describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

5. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

L. Domestic Preference for Procurements

1. As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.
2. For purposes of this clause:
 - (a) Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (b) Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.