

STANDARD AGREEMENT

STD 213 (Rev. 03/2019)

AGREEMENT NUMBER

16-NDR-12731

PURCHASING AUTHORITY NUMBER (if applicable)

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

CONTRACTING AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME

Rural Community Assistance Corporation, and Sierra Nevada Conservancy

2. The term of this Agreement is:

START DATE

Upon HCD Approval

THROUGH END DATE:

09/30/2022

3. The maximum amount of this Agreement is:

\$20,016,911.00

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

EXHIBITS	TITLE	PAGES
Exhibit A -	Recitals, Authority, Purpose and Scope of Work	19
Exhibit B -	Budget Detail and Payment Provisions	6
Exhibit C* -	State of California General Terms and Conditions	GTC - 04/2017
Exhibit D -	GDBG-NDR Terms and Conditions	25
Exhibit E -	NDRC HUD Notice of Funding Available (NOFA)	58
Exhibit F -	HCD NDRC Application Certifications	10
TOTAL NUMBER OF PAGES ATTACHED		118 pages

Items shown with an asterisk (*) are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

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

CONTRACTOR

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

See Attached

CONTRACTOR BUSINESS ADDRESS

See Attached

CITY

See Attached

STATE

See Attached

ZIP

See Attached

PRINTED NAME OF PERSON SIGNING

See Attached

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

See Attached

DATE SIGNED

See Attached

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS

2020 W. El Camino Ave., Suite 130

CITY

Sacramento

STATE

CA

ZIP

95833

PRINTED NAME OF PERSON SIGNING

Synthia Rhinehart

TITLE

Contracts Manager,
Business & Contract Services Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

California Department of General Services Approval (or exemption, if applicable)

Exempt per: SCM Vol. 1 4.04.A.3 (DGS memo dated 6/12/1981)

CONTRACTOR

Rural Community Assistance Corporation
a California nonprofit Corporation

By: _____

Date: _____

Suzanne Anardé
Chief Executive Officer

Address:

3120 Freeboard Drive, Suite 201
West Sacramento, CA 95691

Sierra Nevada Conservancy
a California State Agency

By: _____

Date: _____

Angela Avery
Executive Officer, Sierra Nevada Conservancy (SNC)

Address:

11521 Blocker Drive, Suite 205
Auburn, CA 95603

STATE OF CALIFORNIA
AGREEMENT SUMMARY
 STD-215 (Rev. 08/2017)

☐ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED

AGREEMENT NUMBER 16-NDR-12731		AMENDMENT NUMBER
1. CONTRACTOR'S NAME Rural Community Assistance Corporation, and Sierra Nevada Conservancy		2. FEDERAL I.D. NUMBER N/A
3. AGENCY TRANSMITTING AGREEMENT Housing and Community Development	4. DIVISION, BUREAU, OR OTHER UNIT Financial Assistance	5. AGENCY BILLING CODE N/A
6a. CONTRACT ANALYST NAME Wendy Barnes	6b. EMAIL wbarnes@hcd.ca.gov	6c. PHONE NUMBER (916) 263-6916

7. HAS YOUR AGENCY CONTRACTED FOR THESE SERVICES BEFORE?

☒ No ☐ YES (If Yes, enter prior contractor name and agreement number)

PRIOR CONTRACTOR NAME
N/A

PRIOR AGREEMENT NUMBER
N/A

8. BRIEF DESCRIPTION OF SERVICES

Administer Biomass Utilization Economic Development Program Participation in green infrastructure program, which includes restoration of forest, meadows, watersheds and rangelands within the Rim Fire burn area, as well as expansion of existing fuel breaks.

9. AGREEMENT OUTLINE (Include reason for Agreement: identify specific problem, administrative requirement, program need or other circumstances making the Agreement necessary; include special or unusual terms and conditions.)

Rural Community Assistance Corporation (RCAC) is being funded as a Community Based Development Organization (CBDO) to conduct economic development activities.

10. PAYMENT TERMS (More than one may apply)

☐ Monthly Flat Rate ☐ Quarterly ☐ One-Time Payment ☒ Progress Payment
☒ Itemized Invoice ☐ Withhold 0% ☐ Advanced Payment Not To Exceed
☐ Reimbursement/Revenue \$ 0.00 or 0%
☐ Other (Explain)

11. PROJECTED EXPENDITURES

FUND TITLE	ITEM	FISCAL YEAR	CHAPTER	STATUTE	PROJECTED EXPENDITURES
Federal Trust Fund	2240 101 0890 Cat.	2019/2020	23	2019	\$ 20,016,911.00
FUND INFORMATION 22402000/46037 = \$20,016,911.00 5432500 - Grants and Subventions - Non-Governmental					AGREEMENT TOTAL \$ 20,016,911.00

OPTIONAL USE

I certify upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure state above.

AMOUNT ENCUMBERED BY THIS DOCUMENT
 \$ 20,016,911.00
 PRIOR AMOUNT ENCUMBERED THIS AGREEMENT
 \$ 0.00
 TOTAL AMOUNT ENCUMBERED TO DATE
 \$ 20,016,911.00

ACCOUNTING OFFICER'S SIGNATURE ACCOUNTING OFFICER'S NAME (Print or Type) DATE SIGNED

12. AGREEMENT

AGREEMENT	TERM FROM	TERM THROUGH	TOTAL COST OF THIS TRANSACTION	BID, SOLE SOURCE, EXEMPT
Original	Upon HCD Approval	09/30/2022	\$ 20,016,911.00	Exempt
Amendment No. 1				
Amendment No. 2				
Amendment No. 3				
TOTAL			\$ 20,016,911.00	

13. BIDDING METHOD USED:

- ☐ Request for Proposal (RFP) (Attach justification if secondary method is used)
☐ Invitation for Bid (IFB) ☒ Exempt from Bidding (Give authority for exempt status)
☒ Other (Explain) SCM 5.80; B 2.b
- ☐ Use of Master Service Agreement
☐ Sole Source Contract (Attach STD. 821)

Note: Proof of advertisement in the State Contracts Register or an approved form STD.821, Contract Advertising Exemption Request, must be attached.

14. SUMMARY OF BIDS (List of bidders, bid amount and small business status) (If an amendment, sole source, or exempt, leave blank.)

15. IF AWARD OF AGREEMENT IS TO OTHER THAN THE LOWER BIDDER, PLEASE EXPLAIN REASON(S). (If an amendment, sole source, or exempt, leave blank.)

16. WHAT IS THE BASIS FOR DETERMINING THAT THE PRICE OR RATE IS REASONABLE?

N/A

17a. JUSTIFICATION FOR CONTRACTING OUT (Check one)

- ☐ Contracting out is based on cost savings per Government Code 19130(a). The State Personnel Board has been so notified.
- ☐ Contracting out is justified based on Government Code 19130(b). When this box is checked, a completed JUSTIFICATION - CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 54760 must be attached to this document.
- ☒ Not Applicable (Interagency / Public Works / Other PCC § 10348)

17b. EMPLOYEE BARGAINING UNIT NOTIFICATION N/A

☐ By checking this box, I hereby certify compliance with Government Code section 19132(b)(1).

AUTHORIZED SIGNATURE
N/A

SIGNER'S NAME (Print or Type)
N/A

DATE SIGNED
N/A

18. FOR AGREEMENTS IN EXCESS OF \$5,000: Has the letting of the agreement been reported to the Department of Fair Employment and Housing? ☐ No ☐ Yes ☒ N/A

19. HAVE CONFLICT OF INTEREST ISSUES BEEN IDENTIFIED AND RESOLVED AS REQUIRED BY THE STATE CONTRACT MANUAL SECTION 7.10? ☐ No ☐ Yes ☒ N/A

20. FOR CONSULTING AGREEMENTS: Did you review any contractor evaluations on file with the DGS Legal Office? ☐ No ☐ Yes ☒ N/A

21. IS A SIGNED COPY OF THE FOLLOWING FILE AT YOUR AGENCY FOR THIS CONTRACTOR?

A. Contractor Certification Clauses

B. STD.204 Vendor Data Record

☐ No ☐ Yes ☒ N/A

☐ No ☒ Yes ☐ N/A

22. REQUIRED RESOLUTIONS ARE ATTACHED

☐ No ☒ Yes ☐ N/A

23. IS THIS A SMALL BUSINESS AND/OR A DISABLED VETERAN BUSINESS CERTIFIED BY DGS?

☐ No ☐ Yes

SB/DVBE Certification Number:
N/A

24. ARE DISABLED VETERANS BUSINESS ENTERPRISE GOALS REQUIRED?

(If an amendment, explain changes, if any)

☐ No (Explain Below) ☐ Yes _____ % of Agreement

N/A

25. IS THIS AGREEMENT (WITH AMENDMENTS) FOR A PERIOD OF TIME LONGER THAN THREE YEARS?

☐ No ☐ Yes (If Yes, provide justification below)

N/A

I certify that all copies of the referenced Agreement will conform to the original Agreement sent to the Department of General Services.

SIGNATURE

NAME/TITLE (Print or Type)

DATE SIGNED

Wendy Barnes / Contracts Analyst

EXHIBIT A

RECITALS, AUTHORITY, PURPOSE AND SCOPE OF WORK

RECITALS

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

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

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

HUD announced the NDRC funding in a NOFA publication, attached in Exhibit E (Funding Opportunity Number: FR-5800-N-29A2, Opportunity Title: National Disaster Resilience Competition).

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

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

EXHIBIT A

1. NDRC Competition Objectives

The Competition sought to meet the following six objectives:

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

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

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

As part of the NDRC application, HCD provided executed partnership letters of intent and agreements, signed by the executive of the Partner entity, demonstrating a commitment to work collaboratively throughout the entirety of the grant application and implementation process and to undertake specified actions. HCD has one formal partnership for the CRC project(s) with the County of Tuolumne. HCD has four (4) separate formal partnership agreements for the FWHP with: 1) SNC; 2) the United States Forest Service ("USFS"); 3) the California Department of Forestry and Fire Protection ("CAL FIRE"); and 4) California Conservation Corps ("CCC"). HCD has one partnership agreement for the BUF project with SNC. HCD has a number of other partnerships with other state agencies, but those agencies will not be a party to the HCD NDR agreements.

EXHIBIT A

Through these less formal partnerships, the Governor's Office of Planning and Research ("OPR") and the California Environmental Protection Agency ("CalEPA") will continue to participate with other partners via the "Core Team". The Core Team is composed of HCD, SNC, USFS, County of Tuolumne, CAL FIRE, and on occasion representatives of OPR, CalEPA, and CCC, and it oversees HCD administration and the Partner's coordination of project development to ensure that the Program becomes operational, scalable, and replicable.

This Agreement must be executed before implementation of CDBG-NDR project activities. Pursuant to FR-5936-N-01, Section V.A.1.g. (v), this Agreement and other associated partnership agreements require parties to comply with CDBG-NDR requirements, including requirements found in the Disaster Relief Appropriations Act, 2013 PL 113-2, Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5302, et seq.), the CDBG program federal regulations at 24 CFR part 570, FR-59-N-01, and any other applicable Federal Register notices, 2 CFR 200 requirements and commitments made in HCD's Phase 1 and Phase 2 NDRC applications.

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

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

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

CDBG-NDR regulations and requirements impose specific funding restrictions (described in Exhibit D), which apply to HCD and also to the Rural Community Assistance Corporation ("RCAC") under this Agreement and their subrecipients, contractors, and BUF borrowers in conjunction with all approved BUF project activities.

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

EXHIBIT A

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

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

A. Community Resilience Center (CRC)

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

B. Biomass Utilization Facility (BUF)

BUF project activities are intended to provide options for clean disposal of unmerchantable biomass removed from the forest, clean power, and wood products facilities for repurposing any merchantable biomass. This will be a two-phase development process, with the first phase including market and feasibility analysis. The second phase includes selecting a program administrator for origination of BUF project funding to build-out and operate feasible BUF projects.

C. Forest & Watershed Health Project (FWHP)

This green infrastructure project activities includes restoration of forest, meadows, watersheds and rangelands within the Rim Fire burn area, as well as expansion of existing fuel breaks and the creation of one new fuel break. Given the uncertain future of drought, climate change and wildfire, FWHP activities are designed to improve forest and watershed health and resilience against further environmental disturbances.

The foregoing Recitals are a part of this Agreement.

EXHIBIT A

1. Authority and Purpose

This Community Based Development Organization ("CBDO") Agreement ("Agreement") provides official notification of the conditional reservation of funding made available by the federal Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013) ("Appropriations Act") and awarded to HCD under the National Disaster Resilience Competition as CDBG National Disaster Resilience grants, Catalog of Federal Domestic Assistance number 14.272 – National Disaster Resilience Competition. This is a three-party Agreement between HCD, RCAC, and SNC.

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

Section 5305 (a)(15) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et. seq.) allows nonprofit corporations to directly undertake certain CDBG activities including community economic development programs, when using funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383, called Community Development Block Grant program funds ("CDBG Funds") (including repayment of any such funds from permanent loans, which are not considered CDBG program income). Non-profits under this eligible activity are referred to as Community Based Development Organizations. HCD has determined that RCAC qualifies as a CBDO. RCAC has agreed to act in this role for the implementation of BUF activities under this Agreement.

For many years, HCD has successfully administered the federal CDBG program for non-entitlement jurisdictions, and has developed boilerplate agreement language that complies with federal and state compliance standards. In addition, HCD used that existing agreement language to develop CDBG-NDR agreements with various entities, county, state, and federal agencies. This CBDO agreement is built upon the success of these past agreements. The language in this Agreement will ensure federal and state regulatory compliance and guide HCD, RCAC, and SNC to the successful completion of BUF project activities.

By executing this Agreement, RCAC is accepting this conditional reservation of CDBG-NDR funds. SNC agrees to work collaboratively with RCAC and both will comply with the terms and conditions of this Agreement, the representations contained in HCD's CDBG-NDR application (the "Application"), the requirements of the authorities cited above, and any other terms and conditions imposed by HUD, HCD, and or the State.

2. Three Party Structure

HCD is a HUD Grantee awarded CDBG-NDR grant funds. Under this Agreement, HCD will provide CDBG-NDR grant funds to RCAC, as a CBDO and Subrecipient, for conducting the work described in the Scope of Work under this Agreement. RCAC shall accept CDBG-NDR funding to originate financing for eligible BUF projects. SNC is the BUF Program Coordinator for these CDBG-NDR funds and will oversee all RCAC work under this Agreement.

To that end, SNC will work directly with RCAC, on behalf of the Department, to implement BUF

EXHIBIT A

authorized project activities in accordance with the NDRC application and HCD Action Plan. SNC will be the day-to-day BUF activity implementation coordinator for the duration of this Agreement. SNC's agreement with HCD, contract number 16-NDR-11311, is incorporated herein by reference.

RCAC, SNC, and HCD will follow all processes and procedures as set forth in this Agreement and the most recent versions of the HUD CDBG-NDR technical assistance and guidance, as may be amended from time to time, to ensure compliance with federal statutes, regulations, and register notices. RCAC and SNC shall also follow all HCD federal and state compliance guidance, as well as policies and procedures for administration and implementation of BUF activities during the term of this Agreement.

3. Eligible Activities and Costs

- A. RCAC shall only use funds under this Agreement for eligible CDBG-NDR BUF activities with eligible costs and that meet a National Objective under existing Section 105(a) of Title I of the Housing and Community Development Act of 1974, as amended by the Appropriations Act and applicable federal register notices. Eligible activities are contained in the NDRC HUD NOFA, HCD funding application, and Action Plan. All NDR-funded activities and costs shall be in compliance with current CDBG-NDR requirements. In addition, activities and costs shall be in compliance with conditions that may be imposed by HUD or HCD from time to time. Eligibility of an activity and associated activity costs are contingent upon the activity meeting a national objective and if, regardless of reason, a national objective is not achieved, then the activity and its associated costs shall be deemed ineligible. The eligible activities under this Agreement are described below in Section 6, Scope of Work.
- B. Eligible costs for eligible planning and project activities, including both activity delivery and direct financial assistance, under this Agreement must comply with the provisions of federal Office of Management and Budget ("OMB") regulations in 2 CFR Part 200, subpart E, as may be amended from time to time. The total amount of funds drawn during the entire Agreement term must be for actual and reasonable costs, according to the United States Office of Management and Budget's Uniform Guidance (issued December 26, 2013). Source documentation for all RCAC time, materials, and third party service costs shall be in NDR administration and project files.

Eligible costs are also defined in HUD CPD Memo 13-07. RCAC will follow cost principles as defined in OMB Uniform Guidance, 2 CFR 200.

4. Meeting CDBG National Objective

Activity delivery costs under this Agreement are assumed to meet a National Objective, once a BUF project is approved for CDBG-NDR funding. For some economic development activities, final documentation of meeting a national objective is completed after project is completed and public benefit jobs are primarily provided to low moderate income county residents. Costs incurred by RCAC, their subcontractors and subrecipients, as part of planning activities delivery/project funding origination will require RCAC/HCD approval of one project prior to HCD reimbursement of said costs. RCAC project approval must document applicable CDBG-NDR project compliance, including but not limited to, applicable public benefit and national objective standards compliance, prior to release of activity delivery funding in Section 7.

EXHIBIT A

County residents must be the primary beneficiaries of CDBG-NDR funded economic development and public facility project activities. BUF projects will be initially screened for national objective benefit to local low-moderate income (LMI) persons. LMI benefit for economic development project activities can be achieved in one of three ways: 1) through job creation or retention activities provided primarily to low moderate income persons (LMJ); or 2) through an economic development service activity that directly benefits an area which is primarily occupied by LMI households (LMA); 3) economic development activities provided to an eligible micro-enterprise business owner whose household is LMI. For the national objective of LMI jobs and service area, the public benefit standards below must also be met. Micro-enterprise activities may not require public benefit standards, if they directly assist a LMI household. Public facility projects shall meet LMA national objective. RCAC may qualify a project under any of the three LMI national objective standards listed above. HCD will provide guidance on documentation requirements for any of the three LMI national objective standards used to qualify a project. HCD may allow for use of one of the other two national objective benefit standards outlined in Exhibit D, Section 4 of this Agreement, but it will require a formal written approval.

5. Public Benefit Standards for Economic Development (ED)

Per 24 CFR 570.482(f) and (g) and 570.483(b)(4), RCAC is responsible for documenting fulfillment of the public benefit standards on each applicable CDBG-NDR Economic Development (ED) project activity. For direct financial assistance to for-profit business activities, under Sections 105(a)(2), (14) and (17) of the Act, public benefit standards must be met. Federal Register Notice FR 5936-N-01 HUD waives the public benefit subsidy requirements for CDBG-NDR projects. Micro-enterprise businesses may also be required to meet public benefit standards if the owner's household is not LMI. HCD will use the public benefit waiver to allow for higher subsidy amounts for CDBG-NDR projects, however, RCAC must provide documentation of "reasonable" public benefit in return for proposed subsidies. Public benefit is met via creation of new or retention of existing permanent full-time equivalent job positions (LMJ), or provision of services to residents of an LMI area (fifty one percent of the households are LMI). The project must document that the public benefit is a direct result of the BUF development and it must be documented in the financial projections of the BUF funding application and funding security documents.

For LMI service area public benefit, the project must be shown to: 1) provide a service that is available to all households in their service area; and 2) have a service area that is primarily made up of LMI households (51% are LMI). The amount of CDBG-NDR assistance is based on the number of LMI households that would be able to benefit from the service.

Additional information on public benefit is included in Exhibit D, Section 5. Economic Development activities under Section 105(a)(17) and (14) must also comply with CDBG's six underwriting standards, pursuant to 24 CFR Part 570.482(e).

6. Scope of Work

- A. RCAC shall perform the funded activities described in the Scope of Work described below ("WORK"). These activities were included in the State of California's NDRC Application to HUD, which is on file with the Department of Housing and Community Development, Division of Financial Assistance, 2020 West El Camino Avenue, Suite 500, Sacramento,

EXHIBIT A

California, 95833, and which is incorporated herein by reference. All NDRC Application activities are formalized in the current NDR Action Plan, as approved by HUD. The current Action Plan or future amended Action Plan, as submitted and approved in writing by HUD, is hereby incorporated as part of the Agreement.

HCD reserves the right to require RCAC to modify any or all parts of the Work in order to comply with CDBG-NDR requirements. HCD reserves the right to review and approve all Work to be performed by RCAC or its contractors and subrecipients under this Agreement. Any proposed revision to the Work by RCAC must be submitted in writing for review and approval by the Department, may require an amendment to this Agreement, and may require an amendment to the Action Plan. Approval of revisions shall not be presumed. Revisions shall be valid upon receipt of HCD written approval.

The Work to be performed by SNC under this Agreement is the same as described in the Scope of Work set forth in Section 5 of Agreement 16-NDR-11311 between HCD and SNC, dated 05/30/2017, as may be subsequently amended. Agreement 16-NDR-11311 and any subsequent amendments are incorporated herein by reference.

- B. For the purposes of performing the work described in the Work and subject to the terms of this Agreement, HCD agrees to reimburse RCAC up to the amounts identified in Section 7 Budget, below for eligible and reasonable costs and expenses. Unless amended in writing, HCD shall not be liable for any costs for WORK in excess of these amounts, nor for any unauthorized or ineligible costs.
- C. The primary goals of funding eligible BUF projects are: 1) to create alternatives to pile burning of wood waste; 2) to create or expand wood waste markets; 3) to provide outlets for forest restoration treatments, such as ecologically based thinning; and 4) to support rural economic resilience through job creation and/or retention in Tuolumne County. RCAC will assist SNC and HCD in implementing the BUF program by using NDR funding to provide subsidized financing to eligible businesses or non-profit organizations that will be either new to the county or expanding. Project financing will be provided as grants and/or loans, based on economic viability of each individual BUF project. All CDBG-NDR funding must be used for assisting BUF projects located in Tuolumne County in accordance with the HUD approved NCRC Application. Projects proposing to use or develop Alternative Energy systems other than use of BUF technology will be reviewed and evaluated but cannot be approved until HCD has formal approval from HUD for funding projects with Alternative Energy systems.

1) BUF Planning and Administration

There are no CDBG-NDR General Administration (GA) activity funds included this Agreement's Budget. RCAC will use SNC to assist with reporting and other general administration tasks. Therefore, the three budgeted activities under this Agreement will be Planning, Activity Delivery and BUF direct financial assistance to eligible projects.

RCAC will administer and manage the CDBG-NDR BUF economic development and public facility financial assistance projects (Projects) in consultation with SNC. For ED implementation, RCAC will use planning funds to create a Program Tool Kit (Tool Kit) which will contain a manual with associated support documents required for BUF

EXHIBIT A

Change provide
to provided

ED Program (ED Program). It will also contain an overview of implementation process with roles and responsibilities of staff and agencies involved in its operation. The Tool Kit will also contain a marketing plan, program guidelines with financing origination policies and procedures, standard application forms and disclosures. The Tool Kit's documents may include financial underwriting tools to document cash flow analysis and federal/state regulatory requirements. The completed Tool Kit will be **provide** to HCD as a final product of the ED planning activity. HCD and SNC will use the Tool Kit to assist in future replication of BUF ED activities throughout the state. The Tool Kit will also include funding criteria for public facilities and for use of Alternative Energy (non-biomass) to make projects eligible under NDR grant. HCD may direct RCAC to use planning funds under this Agreement to conduct other planning activities as needed.

2) BUF Activity Delivery

Activity Delivery (AD) will take place as the same time as planning activities and support the development of the Tool Kit. RCAC AD will include marketing and outreach to potential project developers, screening for NDR eligibility and final financial and eligibility analysis before ED or public facility project funding approval. Activity administration will also include monitoring of project development compliance with CDBG-NDR standards. After project completion, RCAC will be responsible for having projects monitored for compliance with public benefit and national objective standards, per Sections 4 and 5 above until the project's national objective is met.

RCAC may secure third-party service providers to assist with conducting some of the eligible AD and compliance oversight work e.g. environmental review consultants. These third-party consultants must be competitively procured or secured via subrecipient agreements to ensure that all costs are reasonable. RCAC will be reimbursed for eligible third party costs it incurs under these agreements contracts, i.e. environmental reviews or financial underwriting services or federal overlay compliance.

3) BUF Project Funding

RCAC will have the BUF Tool Kit for economic development activity implementation approved by SNC and HCD program staff. RCAC will update the Tool Kit as needed from time to time to meet all state and federal standards. After the economic development, Tool-Kit is completed and program is launched, then RCAC will add a section to the Tool Kit which includes funding and eligibility criteria for public facilities and use of Alternative Energy to make projects eligible under the NDR grant. Any other supporting program documents, disclosures, loan agreements, etc. required for BUF Program administration (ED Public Facility and Alternative Energy) will be developed by RCAC and approved by SNC and HCD staff for CDBG-NDR compliance.

After approval of initial Tool Kit, RCAC will market BUF project funding to eligible applicants. Initially eligible applicants shall be ED projects. Public facility application marketing will take place after required NDR Action Plan Amendment approval by HUD. At that time, BUF project developers may apply for CDBG-NDR implementation funds for ED or Public facility projects. Implementation funding

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proposals for ED and RCAC shall review Public facility projects on a first come first served basis. RCAC shall review ED projects and Public Facility projects on a first come first served basis. Upon completion of project eligibility and financial feasibility, RCAC will provide the Core Team with a project approval document for review and approval. After Core Team approval, RCAC loan committee will review the project for NDR underwriting and eligibility compliance. Loan or Grant conditions, if any, will be included in the project approvals of Core Team and RCAC loan committee. After project **approved**, RCAC will work with recipient to clear HCD General Conditions Checklist items and any funding conditions prior to project release of funding and closing. Upon HCD approval of the completed Checklist, RCAC and recipient will receive a letter from HCD clearing General Conditions and releasing NDR funds for the BUF project activity. After HCD release of project funding and clearing of loan conditions, RCAC will execute project financing documents with project developer and project activity may begin.

BUF project environmental reviews will be prepared by a qualified environmental consultant. RCAC will issue a Request for Qualifications (RFQ) and compile a list of consultants that can be utilized on project environmental reviews. Project environmental reviews can be paid for by the project applicant or by RCAC, after completion of a proper Request for Proposals (RFP) from a qualified list of consultants. HCD will review the project's Environmental Review Record (ERR) and, if approved, sign the ERR as the Responsible Entity (RE). HCD may have to act as "Lead Agency" for CEQA. For NEPA reviews with high levels of review, HCD will need to request Authority to Use Grant Funds (AUGF) from HUD. Project costs or actions which constitute a "choice limiting action" under federal regulations will cause a project to become ineligible for funding. RCAC, SNC and HCD will disclose this information to each BUF applicant and monitor each project's progress to ensure this does not happen.

The parties acknowledge and agree that repayments of all NDR loans originated by RCAC shall lose their identity as federal CDBG funds, per the June 7, 2016 Federal Register Notice waiver Section V.17(2)(b)s. RCAC and SNC will enter a separate agreement and separate Program Manual for administration of any future repayments. These non-federal funds will be maintained by RCAC and operated as separate designated Healthy California Forest Fund Program "Forest Program" from other funds being administered by RCAC. The Forest Program Manual will consist of policies and procedures in conformance with RCAC loan policies as they may be from time to time amended. The State Program shall be used for investments in biomass or wood processing infrastructure or enterprises in forested areas of California, with a priority for the Sierra Nevada Region.

RCAC will comply with CDBG-NDR reporting requirements by:

- 1) preparing monthly NDR grant reports which will be reviewed and approved by SNC prior to submittal to HCD;
- 2) preparing Funds Request forms for all consultants and businesses receiving CDBG-NDR funding;
- 3) preparing HCD Annual Performance Report (APR);
- 4) preparing semi-annual prevailing wage reports for any project that includes construction that must comply with state and federal prevailing wage compliance
- 5) collecting required supporting documentation, which may include payroll and

EXHIBIT A

income information, to demonstrate public benefit and nation objective compliance for each assisted business.

RCAC, with the assistance of third-party consultants as needed, will prepare and submit all reports to the SNC staff for review. Upon SNC review and approval, the report will be submitted to HCD before reporting deadlines provided in Exhibit B, Section 6 of this Agreement. HCD staff will review and approve final versions of reports. If other consultants are involved, RCAC will coordinate and facilitate reporting with SNC and other consultants.

The Parties agree that RCAC will maintain accounting oversight of all CDBG-NDR financial records and audits, as well as any repayments into the State Program. RCAC's fiscal staff will account for all CDBG-NDR expenditures and any match/leverage, or supporting funds used on NDR projects. RCAC shall not commingle CDBG-NDR or repayment funds with funding from any other source in their accounting system.

RCAC shall provide a current funds request form with a monthly billing statement and all source documentation as part of requesting reimbursement of costs for CDBG-NDR eligible activity costs. Costs shall not exceed the limits set forth in Section 7 below. For indirect costs, RCAC must provide HCD with documentation of an approved indirect-cost allocation plan.

4) Program Financial Assistance Activities

Responsibilities for BUF Project Application Process

- i. RCAC will be responsible for creating or modifying financial assistance security documents, including loan agreements or deeds of trust that allow RCAC to enforce CDBG-NDR regulatory requirements on BUF project developers. These documents will require repayment of CDBG-NDR funding if default violations of federal requirements take place. Recapture funds will be returned to HCD for repayment to federal treasury.
- ii. RCAC will be responsible for the marketing of the CDBG-NDR financial assistance program. SNC will assist the marketing efforts by arranging for seminars and marketing meetings within the community. RCAC will coordinate with local economic development agencies in the region.
- iii. RCAC will report monthly to SNC and HCD on the status of projects in the application process.
- iv. RCAC and SNC will work with the BUF project applicants to find other funding to compliment CDBG-NDR gap funding.
- v. Projects will be financially underwritten by RCAC staff with assistance as needed from third party consultants. Projects will also be reviewed for CDBG-NDR federal compliance standards.
- vi. Upon completion of underwriting and CDBG-NDR compliance reviews, RCAC staff will provide a project approval document to Core Team for approval.
- vii. Upon Core Team project approval, RCAC loan committee will meet to review and approve the project per the Tool Kit standards.

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- viii. Once approved by RCAC and Core Team, RCAC staff will formally notify the recipient of NDR BUF funding commitment and provide General Conditions Checklist and loan condition items for them to start completing.
- ix. RCAC will work with borrowers to clear General Conditions Checklist and loan conditions items.
- x. After release of project funding, project applicant will execute financial assistance agreements, RCAC will monitor the project's implementation with SNC and ensure that all CDBG-NDR funds are provided in accordance with NDR requirements.
- xi. HCD will reimburse RCAC for activity delivery services rendered pursuant to this Agreement in accordance with Section 7 below.
- xii. For purposes of CDBG-NDR compliance, including without limitation compliance with applicable CDBG-NDR requirements, after loan closing, RCAC will track all CDBG-assisted businesses and obtain documentation of public benefit and national objective compliance.

Project information, including personal or confidential information will be held in secured files by RCAC for State or HUD monitoring. RCAC or a third party shall be responsible for the pre-screening and monitoring of all new employees hired by such CDBG-assisted businesses during the term of job creation or retention. SNC will assist RCAC and any subcontractor or subrecipient in setting up a referral service and procedures for prescreening and monitoring job creation or retention activities. RCAC may engage the services of a third-party independent contractor or qualified agency to provide prescreening and monitoring services for project public benefit and national objectives.

- xiii. HCD shall require RCAC to retain all application loan packages for a minimum of five-years. The five-year CDBG-NDR file retention period starts upon HUD grant close-out with HCD (see record-keeping requirements below). Original loan security instruments and documents shall be kept until the loan is repaid.

7. Budget

RCAC budget:

Activity	National Objective	Grant Funds
Planning costs for Tool Kit and other Eligible Planning Activities	None	\$1,000,000
Activity Delivery costs for Project Application Processing	Low Mod Benefit	\$2,000,000
Project Implementation Funding	Low Mod Benefit	\$17,016,911
TOTAL		\$20,016,911

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8. SNC Budget

SNC does not have a budget associated with the activities in this Agreement. As outlined in Section 2, SNC and HCD have a separate agreement, 16-NDR-11311, which provides funding to SNC for CDBG-NDR coordination activities they will conduct under this three-party agreement. This separate agreement and any subsequent amendments, incorporated herein by reference, contains a Scope of Work that describes the coordination activities to be conducted by SNC with RCAC and HCD.

9. Budget Line Item Adjustments

If budget amounts listed above need to be amended and funds moved between budget items, then RCAC shall make a formal request in writing and HCD will approve in writing. Any request to add new activities or to delete existing items in RCAC budget, will require a formal amendment of this Agreement. Budget changes due to litigation or substantial programmatic adjustments that have impacts or potential impacts shall be completed as required.

10. Other Funding Sources

RCAC shall ensure that BUF funding is provided as gap funding, which means that multiple funding sources will be included in project developments, e.g. equity from recipient, traditional conventional commercial loans and non-traditional funding. Per the Manual, RCAC will provide all applicants with referrals to non-traditional funding, including funding available from their agency. Other funding used in BUF project development will be reported to HCD. The value of other funding contributions will be reported as match funds for each project activity via the Project Set-Up/Completion Report. The Project Set-Up/Completion Report is the report that conveys the information needed to add project-specific information into the DRGR system. This information may also be entered into HCD's online reporting system. RCAC shall validate eligibility of additional funds with HCD's CDBG-NDR technical assistance provider. The Project Set-up/Completion Report is also used to convey any changes to the project-specific accounts and report the final project-specific information into DRGR.

11. Payment Process

After clearing a project's General Conditions, RCAC shall follow the set-up, completion, and payment process provisions outlined in Exhibit B. Eligible RCAC travel costs may be paid from the CDBG-NDR funds, but only if such costs are eligible and incurred in accordance with current state travel laws, regulations and policies.

12. Administrative Requirements

A. Documentation and Record-Keeping

1) Records to be Maintained

RCAC shall maintain all records required by 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but are not limited to:

EXHIBIT A

- a) Records providing a full description of each activity undertaken;
- b) Records demonstrating that each project activity undertaken meets a national objective of benefit to Low- and Moderate-Income Persons or Households through Job Creation and Retention Activities ("LMJ") or Area Benefit (LMA), per the CDBG-NDR program requirements;
- c) Records required to determine the eligibility of staff administrative services;
- d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG-NDR assistance, if applicable;
- e) Records documenting compliance with the fair housing and equal opportunity components of the CDBG-NDR program, if applicable;
- f) Financial records as required by 24 CFR 570.502(a)(15);
- g) Personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by HCD to ensure proper accounting for all project funds; and,
- h) Other records necessary to document compliance with Subpart K of 24 CFR Part 570, regarding environmental requirements.

B. Closeouts

RCAC's obligations under this Agreement shall not end until all HUD grant closeout requirements set forth in 24 CFR 570.509 are completed.

C. Use and Reversion of Assets

The use and disposition of immovable property, equipment and remaining CDBG-NDR funds under this Agreement shall be in compliance with all CDBG regulations, which include but are not limited to the following:

- 1) RCAC shall transfer to HCD any CDBG-NDR funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination of this agreement.
- 2) Immovable property under RCAC control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives set forth in 24 CFR 570.208 until five (5) years after expiration of this Agreement (or such longer period as HCD deems appropriate). If RCAC fails to use such immovable property in a manner that meets a CDBG National Objective for the prescribed period of time, RCAC shall

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pay to HCD an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. Such payment shall constitute program income to HCD. RCAC may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

- 3) In all cases in which RCAC acquires equipment, in whole or in part, with NDR Funds is sold, the proceeds received shall be placed into the Program for continuation of activities. Equipment not needed by RCAC for activities under this Agreement shall be: (a) transferred to HCD for the CDBG program; or, (b) retained by RCAC after compensating HCD an amount equal to the current fair market or depreciated value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

13. General Conditions

A. Independent Contractor

Nothing contained in this Agreement is intended to create or establish, or shall be construed in any manner as creating or establishing, the relationship of employer/employee, partnership, or joint venture between the Parties. RCAC shall at all times be and remain an independent contractor with respect to all services to be performed under this Agreement. HCD shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance, as RCAC is an independent contractor and is responsible for the same.

B. HCD Recognition

RCAC shall ensure recognition of the role of HCD and HUD in providing services through this Agreement. All activities, facilities and items used pursuant to this Agreement shall be prominently labeled as to funding source. In addition, RCAC will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

C. Amendments

The parties may amend this Agreement at any time, provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each signatory hereto, and approved by HCD. Such amendments shall not invalidate this Agreement, nor relieve or release the parties from its obligations under this Agreement.

HCD may require a written amendment to this Agreement to conform the Agreement to federal, state, and local governmental laws, regulations, executive orders, guidelines, policies and available funding amounts. Failure of RCAC to execute the written amendment required by HCD may constitute, at HCD's sole discretion, a basis for termination of this Agreement for cause.

14. No Assignment

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No party may transfer or assign this Agreement or transfer or assign any of its rights or assign any of its duties hereunder without the express written consent of the other parties. However, if the parties do mutually agree to an assignment, all rights and obligation set forth herein shall inure to the benefit of the parties and to their respective successors and assigns.

15. Severability

The terms and provisions of this Agreement are severable. Unless the primary purpose of this Agreement would be frustrated, the invalidity or unenforceability of any term or condition of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. The parties intend and request that any judicial or administrative authority that may deem any provision invalid, reform the provision, if possible, consistent with the intent and purposes of this Agreement, and if such a provision cannot be reformed, enforce this Agreement as set forth herein in the absence of such provision.

16. Counterparts

This Agreement may be executed in identical, duplicate counterparts with each separate counterpart consisting of a valid and binding conveyance. Each of the undersigned agrees that their respective signature pages and acknowledgments may be removed from their respective counterpart and attached to a single original of this instrument.

17. Entire Agreement

This Agreement constitutes the entire understanding and reflects the entirety of the undertakings between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement.

18. No Authorship Presumptions

Each of the parties has had an opportunity to negotiate the language of this Agreement in consultation with legal counsel prior to its execution. No presumption shall arise or adverse inference be drawn by virtue of authorship. Each party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party who (or whose counsel) drafted that provision. The rule of no authorship presumption set forth in this section is equally applicable to any person that becomes party by reason of assignment and/or assumption of this Agreement and any successor to a signatory party.

19. Applicable Law, Controversies and Venue

Any claim or controversy arising out of this Agreement shall be resolved under Disputes, Section 44 of Exhibit D hereto.

This Agreement shall be governed by and construed in accordance with the laws of California. Exclusive venue and jurisdiction shall be vested in Sacramento County, California.

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20. No Personal Liability of Individual Representatives

No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, trustee, officer, agent or employee of any corporate party in his individual capacity, and neither the officers of any party nor any official executing this Agreement shall be personally liable with respect to this Agreement or be subject to any personal liability or accountability under this Agreement by reason of the execution and delivery of this Agreement.

21. Delay or Omission

No delay or omission in the exercise or enforcement of any right or remedy accruing to a party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

22. Prohibited Activity

RCAC is prohibited from using, and shall be responsible for its contractors and sub-contractors being prohibited from using, the funds provided herein or personnel employed in the administration of the program for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government. RCAC will comply with the provision of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

23. Safety

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RCAC shall exercise, and shall ensure that its contractors and subcontractors and subrecipients exercise, precaution at all times for the protection of persons and property and shall be solely responsible for all damages to persons or property, either on or off the worksite, which occur as a result of third party performance of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by 29 CFR 1926, shall be observed and RCAC shall take or cause to be taken such additional safety and health measures as RCAC may determine to be reasonably necessary.

24. Fund Use

RCAC agrees not to use proceeds from this Agreement to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the California Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the California Legislature or any local governing authority.

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RCAC, SNC, and all of RCAC's contractors and sub-contractors shall certify that they have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and 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 or a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. RCAC and each of its contractors and subcontractors shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

25. Subcontractors and Subrecipients

RCAC may, with prior written permission from HCD, enter into subcontracts and subrecipient agreements with third parties for the performance of any part of RCAC's duties and obligations hereunder. Subrecipients must be eligible non-profits per federal regulations and do not require federal procurement process. Subcontractors are third party consultants that must be procured per federal standards in 2 CFR 200. In no event, shall the existence of a subrecipient or consultant agreement release or reduce the liability of RCAC to HCD for any breach in the performance of or any subcontractor's duties.

26. Copyright

No materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, shall be available to RCAC for copyright purposes. Any such material produced as a result of this Agreement that might be subject to copyright is the property of and all rights shall belong to HCD.

All records, reports, documents, or other material or data, including electronic data, related to this Agreement and/or obtained or prepared by RCAC and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance of the services contracted for herein shall become the property of HCD, shall, upon request, be returned by RCAC to HCD at termination or expiration of this Agreement. Cost incurred by RCAC to compile and transfer information for return to HCD shall be billed on a time and materials basis, subject to the maximum amount of this Agreement. Software and other materials owned by RCAC prior to the date of this Agreement and not related to this Agreement shall be and remain the property of RCAC.

HCD will provide specific project information to RCAC necessary to complete the services described herein. All records, reports, documents and other material delivered or transmitted to RCAC by HCD shall remain the property of HCD and shall be returned by RCAC to HCD, upon request, at termination, expiration or suspension of this Agreement.

27. Public Communication

HCD, RCAC, and SNC shall coordinate all public communications regarding the BUF activities funded under this Agreement.

28. No Third Party Beneficiaries

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Nothing herein is intended and nothing herein may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a party to this Agreement. Notwithstanding the foregoing, this provision shall not limit any obligation which either Party has to HUD in connection with the use of CDBG funds, including without limitation the obligations to provide access to records and cooperate with audits as provided in this Agreement.

29. Term of Agreement, Period of Performance and Deadlines, Date of Completion

The term of this Agreement will begin upon date of execution by HCD and end on September 30, 2022. With the exception of the Grant Closing Requirements set forth in Exhibit B, Section 7, RCAC shall complete the project activities within the timeframe set forth below.

Biomass Utilization Facility (BUF):

- A. All project implementation funds under this Agreement shall be expended by: **06/30/2022**
- B. All activity delivery funds under this Agreement shall be expended by: **07/31/2022**

This Agreement will expire on: **09/30/2022**

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

30. State Grant Manager

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

Grant Manager, CDBG-NDR
Division of Financial Assistance, Suite 400
Department of Housing and Community Development
P.O. Box 952054
Sacramento, California 94252-2054

31. RCAC Program Administrator

RCAC Program Administrator (must be an RCAC employee) for this Agreement is listed below. Unless otherwise informed, any notice, report or other communication required to be given to RCAC by this Agreement shall be in writing and sent by first class mail to the following address:

CBDO:	Rural Community Assistance Corporation
Program Administrator:	David Ebenezer, CFO 3120 Freeboard Drive Suite 201 West Sacramento CA 95691

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Phone:	916-447-2854 ext. 1058
Email:	Debenezer@rcac.org

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32. SNC Program Coordinator

The SNC BUF Coordinator (must be an SNC employee) for this Agreement is listed below. Unless otherwise informed, any notice, report or other communication required to be given to SNC by this Agreement shall be in writing and sent by first class mail to the following address:

Partner:	State of California, Sierra Nevada Conservancy (SNC)
Program Coordinator:	Mr. Elliott Vander Kolk Biomass Utilization Facility Coordinator Sierra Nevada Conservancy 11521 Blocker Drive, Suite 205 Auburn, CA 95603
Phone:	(530) 823-4692
Email:	Elliott.Vanderkolk@sierranevada.ca.gov

EXHIBIT B

SET-UP/COMPLETION AND PAYMENT PROVISIONS

1. Definitions

- A. "Activity" includes, without limitation, the following HUD eligible activities as per the Act:
- 1) Community Based Development Organization (CBDO) (Section 105(a)(15)).
The CBDO will conduct eligible economic development activities.
- B. "General Administration" refers to eligible administrative expenses as provided in Sections 105(a)(13) of the Act (42 USC 5305(a)(12)).
- C. "Funds Disbursement" refers to the forms and processes required to request the drawdown of CDBG-NDR funds. A HCD current funds request form must be used. The minimum amount of a funds requested is \$1,000, except final funds request for balance of grant funds).
- D. "Source Documents" refers to necessary support documents that must be provided with the funds request that will substantiate the costs. Source documents are required for all costs, both RCAC and their contractors and subrecipients.
- E. "State Program" means the Community and Watershed Resilience Program ("CWRP") as outlined in Phase 1 and Phase 2 of the Application submitted by HCD on behalf of the State of California.
- F. "Project" means the HUD approved, CDBG-NDR eligible economic development activity, further described in the Section 6 Scope of Work, in Exhibit A.
- G. "Project Set-Up" refers to the forms and processes required to reserve funds associated with specific Projects for CDBG-NDR funds in DRGR.
- H. "Project Completion" refers to the form and processes required to report a Project as "complete." RCAC must submit a Project Completion Report to the Department with, or prior to, the final disbursement request. For any activity that is not finished or completed, or does not meet a National Objective, or for which a Project Completion Report representing the full amount of funds drawn cannot be submitted in DRGR, all CDBG NDR activity funds for the Project must be repaid to the Department.

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

2. General Conditions Clearance and Set-Up Requirements

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

- A. The "General Conditions Clearance Checklist" for each funded activity, on a form provided by the Department, and all required supporting documentation.

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- B. Any other documents, certifications, or evidence deemed necessary by the Department prior to Project Activity Set-Up.

3. Individual Project or Activity Set-Up/Completion Requirements

RCAC shall submit the following documentation to the Department:

- A. A Project Set-Up Report for each individual project that receives CDBG-NDR funds.
- B. All other documents, certifications, or evidence deemed necessary by the Department as part of clearing general conditions for the project, i.e., prior to Project Set-Up and Completion Report.
- C. Project Set-Up Report must contain a DUNS number for each entity involved in implementation of CDBG-NDR program or project activities with proof of not being on federal debarment list.

4. Expenditure of Funds

- A. Compliance with the Federal Office of Management and Budget (OMB) OMB Uniform Requirements, 2 CFR 200 Audit Requirements

Funds will not be disbursed to any recipient under this Agreement that is required to submit annual audits, and which is identified by the California State Controller's Office ("SCO") or other oversight agency as non-compliant with the Federal Single Audit Act, as described in OMB 2 CFR 200. 501, 505, and 511 and OMB Uniform Guidance, until such compliance is demonstrated to the satisfaction of the Department.

- B. Grant Administration

RCAC shall administer this Agreement in accordance with the provisions of Section 7097 through and including Section 7126 of Title 25 of the CCR. RCAC shall also ensure that all grant administration costs are eligible per Exhibit A, Section 3 of this Agreement.

5. Method of Payment

RCAC shall use the current HCD grant management software system or other HCD submittal process. Funds requests and supporting documentation will be submitted electronically for reimbursement. Funds requests can be submitted monthly or quarterly but should be submitted consistently whenever possible. Close coordination on processing of funds requests for large amounts of money is encouraged. RCAC shall cooperate in the use of any such software for Funds Request or report submittal.

All funds requests will first be submitted to SNC, via the grant management software or other HCD process for review and approval. SNC shall then forward all approved funds requests to the HCD Contract Manager specified in Exhibit A, Section 30, or to any other address of which RCAC has been notified in writing. Neither SNC nor the Department shall authorize payments

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unless it has determined the activity costs have been incurred, the represented Work has been performed and completed, and the costs are eligible and in compliance with the terms of this Agreement.

A. Reimbursements

- 1) RCAC shall work with HCD's technical assistance consultant and SNC to set up accounting and recordkeeping systems for themselves and other agencies involved in CDBG-NDR activity implementation to ensure documentation of all eligible costs is on file prior to submitting a Funds Request.
- 2) RCAC costs shall be reimbursed based on eligible time, materials, travel and indirect cost rate. RCAC's subrecipient costs will also be reimbursed on time, materials, travel and indirect cost rate. RCAC's procured contractors may be reimbursed based on time, materials, etc., or on a task schedule basis. Costs must be associated with the Work described in Exhibit A, Section 6. RCAC shall request reimbursements for themselves and their contractors and subrecipients. Supporting documentation of all costs associated with completed Work shall be provided, as the Department may require.
- 3) The Department shall not authorize payments unless it determines that the CDBG-NDR funds were expended by RCAC in compliance with the terms and provisions of this Agreement, the HUD NDRC NOFA, and all applicable Federal Register Notices and CDBG-NDR regulations cited in this Agreement.

B. Timing Final Payment Requests

- 1) RCAC's Final Reimbursement Request: RCAC shall submit a final funds request for reimbursement (no advances allowed) of final costs no later than thirty (30) calendar days after the deadlines A and B of Exhibit A, Section 29.
- 2) Return of Unexpended Funds: All funds received by RCAC but not expended by the expenditure deadline of this Agreement must be accounted for and returned. Funds shall be returned in accordance with the current HCD policies and procedures. All returned funds received after the expenditure deadline will be disencumbered.
- 3) All Funds Not Previously Requested: If the final payment request for activity costs incurred during the term of this Agreement has not been received by the Department by the deadline in Exhibit A, Section 29, the Department shall disencumber any funds remaining and grant funds will no longer be available for payments to RCAC. Thus, time is of the essence with respect to RCAC's submittal of the final payment request.
- 4) Unexpended BUF Project Funds: If a project is completed and does not spend all the approved CDBG-NDR funding, then the balance of the project funds must be returned to HCD. HCD will return those funds to the federal treasury. Those funds will not be considered financial assistance repayments from the borrower.

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- 5) Non-completed or Non-compliant BUF Projects: If for any reason a project is not completed or if it does not meet CDBG-NDR eligibility standards, per federal regulations, then RCAC will work with the borrower to return any balance of project assistance provided and RCAC will repay all CDBG-NDR funding disbursed for the project. RCAC shall return all CDBG-NDR funds from an incomplete project to HCD. HCD shall then return the project funds to the federal treasury.

6. Agreement Reporting Requirements

- A. RCAC shall work with HCD staff and SNC to ensure the following reports are submitted within 15 days of end of report period, as shown below.
- 1) Monthly Report, End of Report Period is last day of the month;
 - 2) Annual Performance Report (APR), End of Report Period is June 30;
 - 3) Semi-Annual Labor Report, End of Report Period is September 30 and March 31;
 - 4) Provide copy of Annual Single Audit document;

RCAC will use current HCD reporting forms for reports listed above.

7. Agreement Close Out Requirements

Change to A.

- B.** RCAC shall work with HCD's technical assistance consultant, at HCD's direction, to ensure that RCAC submits the following close out documents prior expiration of this Agreement.
- 1) Final Set-Up / Completion Reports, received and approved by the Department;
 - 2) Closeout Certification Letter;
 - 3) Final Monthly Report;
 - 4) Final Annual Performance Report (APR);
 - 5) Final Labor Standard Reports; and,
 - 6) Evidence, satisfactory to the Department, of RCAC compliance with any other Special Conditions or compliance requirements of this Agreement.

8. Performance Measures and Penalties for Biomass Utilization Facility (BUF)

- A. Per Federal Register Notice FR-5936-N-01, all agreements that are paid for with NDR funding must have performance measures and penalties. See Exhibit D, Section 24 for

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the requirement that performance milestones and penalty language to be used by RCAC in every NDR contract and subrecipient agreement in which NDR funds are used.

In regards to this Agreement, if circumstances arise in which the performance measures below cannot be met, then RCAC must work closely with HCD and SNC to ensure the BUF WORK proceeds to completion prior to expiration of the Agreement. If RCAC becomes aware of any potential barriers to meeting any milestone, then RCAC will promptly notify HCD and SNC to mitigate or eliminate the barriers and/or to request an extension of time prior to the performance measure deadline. The following performance measures are included in this Agreement:

- 1) No later than three (3) months after execution of this Agreement, RCAC shall release a Request for Qualifications (RFQ) to develop a list of qualified consultants that will assist with project environmental review work.
- 2) No later than two (2) months after execution of this Agreement, RCAC shall develop, with input from SNC and HCD, and submit to the Department the Biomass Utilization Facility Program Manual.
- 3) No later than one (1) month after completing the BUF Program Manual, RCAC shall begin marketing, accepting, and screening financial assistance applications from potential BUF developer(s).
- 4) No later than December 31, 2020, RCAC shall have at least one BUF project approved by CDBG-NDR for funding and implementation.
- 5) No later than June 30, 2021, RCAC shall have one BUF project with General Conditions Clearance and loan conditions completed and be prepared close on the NDR financial assistance.
- 6) No later than June 30, 2021, RCAC shall enter into an agreement with SNC to administer the Healthy California Forest program. These program funds shall be used for investments in biomass or wood processing infrastructure or enterprises to increase forest resilience, primarily in the Sierra Nevada Region of California.
- 7) No later than July 31, 2022, RCAC shall have provided Completion Reports for all CDBG-NDR funded projects, which documents each BUF project's eligible activity, costs and national objective.
- 8) Per Exhibit A, Section 29, all proposed CDBG-NDR work on BUF projects must be completed by June 30, 2022, including meeting public benefit and national objective standards, unless a project-specific waiver has been granted by HCD to extend the completion deadline.

B. Penalties

If any BUF performance measures listed above are not met, a penalty will be imposed within 30 calendar days of missed performance measure. At such time, RCAC shall diligently work with SNC to submit to HCD: (a) a written mitigation plan specifying the reason for the delay; (b) the actions to be taken to complete the task that is the subject of the missed measure deadline; and, (c) the date by which the completion of said task will occur.

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The Department reserves the right to withhold further payments to RCAC until such time as satisfactory progress is made toward meeting the performance measures. HCD reserves all rights and remedies available to it in case of a default by RCAC of its responsibilities and obligations under the terms of this Agreement.

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CDBG-NDR TERMS AND CONDITIONS

1. Effective Date and Commencement of Work

This Agreement is effective upon approval by the Department.

- A. RCAC cannot incur any costs until the execution of this Agreement, unless prior written approval has been given by HCD.
- B. For certain project activities requiring environmental review and clearance, HCD must receive the Authority to Use Grant Funds from HUD prior to the commitment and/or commencement of project work.
- C. RCAC cannot be reimbursed for any project costs until the Department has issued written clearance of all general conditions and any special conditions required, per the General Conditions Checklist referenced throughout in this Agreement.

2. Sufficiency of Funds

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

3. Litigation

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. RCAC 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. RCAC acknowledges and agrees that in the event a court of competent jurisdiction grants any kind of temporary or permanent

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injunctive relief as a form of Legal Action against RCAC, then RCAC must immediately comply with the terms of the court's order and provide the Department with any notices, demands, claims, or orders it receives regarding the subject matter of this Agreement immediately upon receipt. RCAC shall ensure that all agreements with BUF funding recipients, with RCAC contractors or subcontractors shall contain a termination and suspension provision similar to this section 3.C.

- C. In the event litigation or legal or administrative action or claim of any kind or nature ("Legal Action"), is threatened, asserted, or instituted against the NDRC project, the Department, HUD, any of the NDRC Partners, and/or any contractors or subcontractors thereof, then the Department, in addition to any other rights or remedies it may have hereunder, shall be entitled to take the following actions in its sole discretion and upon written notice to RCAC:
- i) terminate this Agreement, in whole or in part, in which case RCAC shall promptly submit a Funds Request covering eligible costs of services and projects provided to the date of termination or partial termination to SNC for review and approval and payment by the Department in accordance with the terms hereof, and/or
 - ii) suspend performance under this Agreement, in whole or in part, for such time as the Department determines is required as a result of the existence of the Legal Action; and/or
 - iii) Continue performance under the Agreement while the parties thereto determine any necessary modifications to this Agreement as a result of the Legal Action.

The Department shall have a period of ninety (90) days from its receipt of notice of a Legal Action to notify RCAC in writing of its decision to either suspend or terminate. In the event of a termination of the Agreement in full, then upon payment to RCAC of its final Funds Request, the parties shall have no further rights or obligations under the Agreement except for those specifically stated as surviving termination of the Agreement. In the event of a partial termination or suspension of work, the parties shall in good faith negotiate, as applicable, any necessary revisions to the Scope of Work, milestones and deadlines, and an equitable adjustment to the Agreement amount reflecting the revisions to the WORK. Any agreed-upon revisions and adjustment shall be documented in an amendment to this Agreement to be signed by all parties.

Notwithstanding the foregoing, as SNC's obligations to the Department in regard to the subject matter of this Agreement are contained in a separate agreement with the Department, SNC shall continue to perform its obligations to the Department pursuant to the terms of such separate agreement.

RCAC acknowledges the existence of existing litigation filed against the NDR partners and the project in the matter of Earth Island Institute, et al., v. HUD, HCD, et al. case ("Earth Island"). The plaintiffs in Earth Island are challenging among other things, the validity of the HUD NDR award to the Department and various environmental studies and reports pursuant to which portions of the NDR work are being performed. RCAC acknowledges that this litigation could potentially affect the ongoing viability of the NDR work and the subject matter of this Agreement, and an adverse ruling potentially could

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result in the inability of RCAC to perform the WORK and achieve a required national objective. In the event RCAC is prevented from achieving a required National Objective as a direct result of the Earth Island litigation and as a result, HUD requires repayment of NDR funds relating thereto, the Department shall be solely responsible for making such repayment.

4. National Objectives

All grant program activities performed under this Agreement must be CDBG-NDR eligible, have eligible costs and be documented as meeting one of the National Objectives of the HUD regulations as included in this Agreement. Program activities and related costs not documented as meeting a national objective, regardless of reason, shall not be eligible. National Objective standards are found under Title I of the Housing and Community Development Act of 1974, Section 104(b)(3), as amended and 24 CFR Part 570.483. Waivers of National Objective Standards are published over the course of the CDBG-NDR Program. For the purposes of the NDR grant, General Administration and Planning Activities are assumed to meet a CDBG National Objective. The three National Objectives are:

- A. Activity primarily benefits HUD defined low- or moderate-income ("LMI") person (family) or household. The term low- or moderate-income is defined as a family or household having an annual income of no more than 80% of the median area income on a county level, which is annually determined by HUD, per 24 CFR, Part 570.483(b); unless a formal waiver is provided in a CDBG-NDR federal register notice. All activities under this Agreement shall primarily meet this national objective unless HCD written approval allowing use of another national objective.
- B. Activity eliminates conditions of Slum or Blight (on a spot or area basis) is an eligible CDBG National Objective. Slum and Blight's definition is found in 24 CFR, Part 570.483(c). The use of Slum or Blight is not eligible under this Agreement without prior Departmental written approval.
- C. Meeting an Urgent Need is an eligible CDBG National Objective under 24 CFR, Part 570.483(d). This National Objective was provided a waiver under Federal Register Notice FR-5936-N-01, Section V. A. 1. d. for activities using Urgent Need. The use of Urgent Need is not eligible under this Agreement without prior Departmental written approval.

5. Public Benefit Standards for Special Economic Development (ED) Activities

Pursuant to 24 CFR 570.482(f), (g) and 570.483(b)(4), RCAC is responsible for providing fulfillment of HUD required public benefit standards when activities under this Agreement qualify as special ED activities. The NDRC NOFA and Federal Register Notice FR-5936-N-01 waives the public benefit subsidy standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or retain jobs when assisting for profit businesses (including, but not limited to, long-term loans, short-term loans, and grants). However, recipients of CDBG-NDR funding shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program;

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the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. HUD is also waiving 570.482(g) and 570.209(c) and (d) to the extent these provisions are related to public benefit. Special ED activities must also comply with CDBG's six (6) underwriting standards, per 24 CFR Part 570.482(e).

6. **Waivers**

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

7. **Uniform Administrative Requirements**

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

8. **Non-Performance**

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

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

9. **Affirmatively Furthering Fair Housing**

Per Federal Register Notice FR-5936-N-01, Section 3: V.C.1.b., all activities under this Agreement and under any and all associated agreements, shall be carried out in a manner that affirmatively furthers fair housing, as required by section 808 (e) (5) of the Fair Housing Act, as amended (42 U.S.C. 3608 (e) (5)).

10. **Equal Opportunity Requirements and Responsibilities**

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

- A. **Title VI of the Civil Rights Act of 1964:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.
- B. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act):** This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin.

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This law also requires actions which affirmatively promote fair housing. RCAC will meet all civil rights related requirements pursuant to 24 CFR 570.503(b)(5).

- C. Restoration Act of 1987: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- D. Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- E. The Fair Housing Amendment Act of 1988: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- F. The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that the housing facilities must have one person who is 55 years of age or older living in at least 80% of its occupied units. The act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 or older.
- G. The Age Discrimination Act of 1975: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7.
- H. Section 504 of the Rehabilitation Act of 1973: It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.
- I. 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

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disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

- J. Executive Order 11063: This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- K. Executive Order 11259: This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- L. Equal Employment Opportunity Act: This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
- M. Immigration Reform and Control Act (IRCA) of 1986: Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (1-9).
- N. Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.
- O. Vietnam Era Veterans Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002): This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- P. Executive Order 11246: This executive order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

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

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

- A. Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- B. Notifying potential contractors for Section 3 covered projects of the requirements of this Part, and incorporating the Section 3 clause set forth in Section 135.38 in all solicitations and contracts.
- C. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the appendix to this part, as appropriate, to reach the goals set forth in Section 135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in Section 135.30.
- D. Assisting and actively cooperating with HUD/HCD in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR Part 135.
- E. Documenting actions taken to comply with the requirements of this part, the results of those actions taken and impediments, if any.
- F. If RCAC distributes funds for Section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in Section 135.30 regardless of the number of local governments receiving funds from the Section 3 covered assistance which meet the thresholds for applicability set forth at Section 135.30. The State must inform units of local government to whom funds are distributed of the requirements of this part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

12. Environmental Compliance

RCAC shall assist HCD, HCD's technical assistance consultant, and any environmental compliance consultant/engineer, should one be procured, so that all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements are met. Under federal regulations, RCAC cannot act as lead agency for NEPA, as the Department is required to be lead agency for the CDBG-NDR funds. RCAC shall not assume the role of lead agency for any CEQA review process. The Department or one of its designees shall assume the lead agency role for CEQA. RCAC will assist the Department in the

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CEQA/NEPA processes as needed and obtaining Authority to Use Grant funds from HUD staff prior to incurring any project implementation costs.

13. Clean Air and Water Acts

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

14. Relocation, Displacement, and Acquisition

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

15. Compliance with State and Federal Laws and Regulations

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

16. Federal Labor Standards Provisions

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

- A. Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- B. "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) The act prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The act also provides that the inclusion of kickback amounts in contract prices is prohibited conduct in itself. This act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.
- C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires

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that workers receive "overtime" compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

- D. Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1, 3 and 5) are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

17. State Labor Standards Provisions

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, RCAC shall ensure that the requirements of Section 1720-1743 of the California Labor Code ("LC"), 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 RCAC and a licensed building contractor, RCAC shall serve as the "awarding body" as that term is defined in the LC. Where RCAC will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

18. Lead Based Paint Hazards

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

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

Pursuant to 24 CFR 570.489(h), no member, officer, or employee of RCAC, or its designees or agents and if applicable, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG-NDR activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside

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information with regard to such activities, may obtain a financial interest or benefit from a CDBG-NDR-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-NDR-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for one (1) year thereafter. The RCAC shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

20. Conflict of Interest of Certain Federal Officials

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

21. Anti-Job Pirating Certification

Pursuant to 24 CFR 570.482(h) CDBG-NDR funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area to another labor market area if the relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs. Job loss of more than 500 employees is always considered significant. Job loss of 25 or fewer positions is never considered significant. A waiver has been granted by HUD for this regulation in the Federal Register Notice FR-5936-N-01, but RCAC must receive Department written permission to use.

22. Anti-Lobbying Certification

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

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

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23. Bonus or Commission, Prohibition Against Payments of

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

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

24. Contractors and Subrecipients

- A. HCD is requiring RCAC to follow procurement standards under 2 CFR 200.318-326. RCAC shall follow these standards. HCD is also requiring RCAC to include performance measure and penalties, similar to those in this Agreement, Exhibit B, Section 8, in all contractor and subrecipient agreements which they are a party to. In addition, RCAC shall not enter into any agreement, written or oral, with any contractor or subrecipient without the prior determination that the contractor or subrecipient is eligible to receive CDBG-NDR funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.
 - 1) Contractors are defined as consultants (for-profit or non-profit) or construction contractors who are procured competitively.
 - 2) Subrecipients are defined as public agencies or public/private non-profit agencies or organizations and certain (limited) private for-profit entities who receive CDBG-NDR funds from an awarded jurisdiction to undertake eligible activities.
- B. An agreement between RCAC and any contractor or subrecipient shall require:
 - 1) Compliance with the applicable State and federal requirements described in this Agreement, which pertain to, among other things, procurement, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace; and, compliance with the applicable provisions relating to labor standards and Section 3 as described in Sections 11 and 16 of this Exhibit. Appendix II of 2 CFR Part 200 sets forth mandatory provisions for incorporation into non-Federal entity contracts involving federal funds awards. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
 - 2) Maintenance of at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the grant activities or any part of it.

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- 3) Maintenance, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.
- 4) Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 10 of this Agreement.
- 5) Compliance with the policies, guidelines and requirements of OMB Uniform guidance at 2 CFR 200 the Uniform Administrative Requirements, as well as all state/federal laws, regulations and Department guidelines applicable to the activities set forth in this Agreement.

C. Contractors shall:

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

D. Subrecipients shall:

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

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

Contractors and subrecipients shall comply with all of the following:

- 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.

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

25. Insurance

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

26. Reporting Requirements

During the term of this Agreement, RCAC must work with HCD, HCD's technical assistance consultants and other partners in submitting the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. Report forms are provided in the most current CDBG-NDR GMM Appendixes. Grant closeout reports are listed in Exhibit B, Section 6. The RCAC's performance under this Agreement will be based in part on whether it has submitted reports on a timely basis. RCAC and partners must use HCD technical assistance consultant web based grant management software to track grant outcomes, performance and beneficiaries.

- A. Project Set-Up / Completion Report: Submit Set-up report for review and approval by Department prior to incurring project costs. Submit amended reports as needed.
- B. Monthly Project Update Report: RCAC and other partners associated with CDBG-NDR project activity implementation must participate regular meetings and provide status updates on each activity. RCAC shall provide written reports on the Monthly Project

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Update Report form which is reviewed by SNC first before being provided to HCD. Report information is used to update BUF project status in DRGR reporting system.

- C. Annual Performance Report (APR): Submit APR by July 31, starting from the contract effective date to subsequent June 30.
- D. Annual Single Audit Report: Submit Annual Audit within six (6) months of end of fiscal year end.
- E. Labor Standards Wage Compliance Report: Submit Semi-annual Wage Compliance Reports by October 7 and April 7 during the entire project construction period. Submit final Wage Compliance Report thirty (30) days after construction is completed.

The Department reserves the right to request any other periodic reports or documents that may be necessary or desirable, in the opinion of the Department, for the implementation of this Agreement.

27. Monitoring Requirements

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

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

28. Inspections of Grant Activity

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

- A. RCAC shall inspect any grant activity performed by contractors and subrecipients hereunder to ensure past and current grant activities meet the applicable federal, state

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and/or local requirements per this Agreement.

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

29. Access to Records

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

30. Audit/Retention and Inspection of Records

- A. RCAC must have intact, auditable fiscal and program records at all times. If the RCAC is found to have missing audit reports from the California State Controller's Office ("SCO") during the term of this Agreement, RCAC will be required to submit a plan to the Department with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, RCAC will be subject to termination of this Agreement and disencumbrance of the funds awarded. RCAC's audit completion plan is subject to prior review and approval by the Department.
- B. RCAC agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. RCAC agrees to provide the Department or its designee with any relevant information requested. RCAC 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 24 CFR 570 et seq. RCAC further agrees to maintain such records for a minimum period of five (5) years after the Department notifies RCAC that the HUD HCD CDBG-NDR grant contract has been closed. RCAC shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.
- C. An expenditure that is not authorized under this Agreement or that cannot be adequately documented shall be disallowed. If this determination is made after reimbursement was made to RCAC, then expenditure must be reimbursed to the Department or its designee by RCAC, within 30 days of demand by the Department. Expenditures for grant activity(ies) not described in Exhibit A shall be deemed authorized if the performance of such grant activity(ies) is approved in writing by the Department prior to the commencement of such grant activity(ies).
- D. Absent fraud or mistake on the part of the Department, the determination by the Department of the allowability of any expenditure shall be final.
- E. For the purposes of annual audits under OMB Uniform Guidance, RCAC shall use the

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Federal Catalog number 14.272 for the CDBG-NDR Program.

- F. Pursuant to OMB Uniform Guidance 2 CFR 200, RCAC shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. Audit costs for this Agreement are a general administration expense and are subject to the general administration expenditure limits associated with this Agreement. The costs of the CDBG-NDR-related portion of the audit may be charged to the program in accordance with Public Law 98-502, Uniform Guidance, and Section 7122 of Title 25 CCR.
- G. Notwithstanding the requirement of A-F above, the foregoing, the Department will not reimburse RCAC for any audit cost incurred after the expenditure deadline of this Agreement.
- 1) The audit shall be performed by a qualified State, department, local or independent auditor. The agreement/contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
 - 2) If there are audit findings, RCAC 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 RCAC in writing. If the Department is not in agreement, RCAC 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, RCAC shall cause all records, accounts, documentation and all other materials relevant to the grant activities to be delivered to the Department as depository.

31. Signs

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

32. Citizen Participation

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

33. Flood Disaster Protection

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- A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3(a) of said act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to FDPA, Section 102(d) of said act.
- B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said act.
- C. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

34. Procurement

RCAC shall comply with the procurement provisions, administrative requirements for grants and cooperative agreements to state, local and federally recognized Indian tribal governments and 2 CFR 200.318 through 200.326, per the Department's certification of these procurement standards.

In accordance with federal register notice FR-5936-N-01, a Data Universal Numbering System (DUNS) number must be collected and reported in the Disaster Recovery Grants Reporting (DRGR) system.

35. Program Income

The Parties acknowledge and agree that repayments from all NDR loans originated by RCAC shall lose their identity as federal CDBG funds, per the June 7, 2016 Federal Register Notice waiver Section V.17(2)(b)s. As such, repayments received will be used in accordance with Exhibit A, Section 3, Healthy California Forest Fund Program.

36. Obligations of RCAC with Respect to Certain Third Party Relationships

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

37. Energy Policy and Conservation Act

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

38. State 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. Government Code ("GC") § Section 8546.4(e) provides that State agencies receiving

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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.

39. **Required Expenditure Dates**

In accordance with P.L. 113-2, all CDBG-NDR funds must be expended within two years of the date HUD obligates funds to HCD (funds are obligated to a HCD upon HUD's signing of HCD's CDBG-NDR grant agreement), unless a waiver is requested and granted by HUD. For purposes of this Agreement, on July 18, 2016, HUD granted the Department a waiver of this requirement and establishing a new expenditure date of September 30, 2022. Any funds not expended by September 30, 2022 will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose. RCAC cannot request an extension of the federal expenditure date.

40. **Grant Reduction**

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

41. **Withdrawal of Grant Amounts**

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

42. **Financial Controls**

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

43. **Administrative and National Policy Requirements**

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

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44. Reporting

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

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

45. Use of Funds

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

46. Performance Measures and Related Remedies

Performance Measures and Penalties provisions are set forth in Exhibit B Section 8. In addition, RCAC shall incorporate sufficient Performance Measures and Penalties in all their contractor and subrecipient agreements to ensure compliance with this federal regulation.

47. Disputes

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

48. Award Date

Given the uniqueness of the NDRC competitive award, HCD is treating the HUD award date as the date of the award for Partners included in the application. Since RCAC was not in the original NDRC funding application, then this provision does not apply to RCAC, so the date of execution is the date of signing of this Agreement by all parties.

As noted in item 1 above, on July 18, 2016, HUD approved HCD's request to extend the expenditure deadline to September 30, 2022. It is important to note that only the remaining balance of the grant as of the end of the initial 24-month expenditure period will be extended.

49. Suspension or Termination

A. Suspension of Work

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

B. Termination at Option of Department

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

C. Termination for Default

The Director, Acting Director, or their designee may, upon three (3) day written notice to RCAC, and without any prejudice to its other remedies, terminate this Agreement in whole or in part for cause. Cause shall consist of violations of any terms and/or special conditions of this Agreement and for the HUD agreement, upon the request of HUD, or the withdrawal of, or any limitation on the Department's expenditure authority. Upon receipt of any notice terminating this Agreement in whole or in part, RCAC shall (1) immediately discontinue all services affected (unless the notice directs otherwise); and (2) deliver to the Department's Contract Manager all data, reports, summaries, and such other information and materials as may have been accumulated by RCAC in performing under this Agreement, whether completed or in progress. At the sole discretion of the Department, the Department shall offer RCAC an opportunity to cure any breach(es) prior to terminating for a breach. If after notice of termination for failure to fulfill contract

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obligations, it is determined that RCAC had not so failed, the termination shall be deemed to have been effected for the convenience of the Department.

D. Termination at Option Upon Bankruptcy of RCAC

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

E. Termination or Suspension in Cases of Litigation

The Department shall have the right to either termination of this Agreement or suspend performance hereunder pursuant to this Exhibit, Section 3 above.

F. Effects of Suspension and Termination

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

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

G. Non-Compliance

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

- 1) Temporarily withhold cash payments pending correction of the deficiency by the RCAC.

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- 2) Disallow (that is, deny use of funds for) all or part of the cost of the activity or action not in compliance.
- 3) Wholly or partly suspend or terminate the current award for RCAC's program.
- 4) Exercise any other remedies or any other rights that may be legally available to the Department, including termination of this Agreement.

H. Cumulative Remedies

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

I. Completion

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

50. Federal Register Notice(s)

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

51. HCD Disaster Recovery (DR) Grant Administration Manual (GAM)

RCAC will utilize the most current version of the CDBG-NDR Manual in implementing CDBG-NDR activities. RCAC will work with HCD technical assistance consultant consulting to ensure all activities are in compliance with CDBG and CDBG-NDR rules and regulations.

52. Duplication of Benefit

Duplication of benefits (DOB) requirements in section 312 of the Stafford Act and in the

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Appropriations Act applies to the use of CDBG-NDR funds. HCD has developed a process for documenting any DOB for project activities. This process is based on HUD Federal Register Notice 76 FR 71060 published on November 16, 2011 and other HUD published guidance. Prior to release of any project activity funding, RCAC must follow HCD process for documentation of DOB. The DOB calculations must be completed and approved in writing by HCD as part of clearing general conditions for each project activity under this Agreement upon clearance of general conditions, project funding will be released.

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

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

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

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

55. **Project Design/Feasibility**

RCAC will demonstrate that the engineering design and financial feasibility for each project activity under this Agreement is feasible prior to obligation of funds for construction or project development. This demonstration is satisfied if a registered professional engineer (or other design professional) certifies that the design meets the appropriate code or industry design and construction standards and cost estimates document all financing is in place for project completion. RCAC will ensure project designs, to the greatest degree possible, use construction methods that are high quality, green construction, energy and water efficient, healthy indoor environments, resilient and mitigating the impact of future disasters.

56. **Use of Web Based Grant Management Software**

RCAC staff shall utilize the most current web based software that HCD provides for CDBG-NDR grant administration. The HCD technical assistance consultant shall develop such software and shall provide training and technical assistance to RCAC's staff on accessing and using the software. The software license from the consultant is extended to HCD's employees as **Authorized Users** and is extended to RCAC's staff as **Non-HCD Authorized Users**. RCAC, as Non-HCD Authorized User, acknowledges that its and its employee use of the CDBG-NDR software created for this Agreement by the technical assistance consultant is expressly subject to the terms and conditions of the software license granted to HCD in Section 1 of Exhibit F to that certain agreement between HCD and the consultant (the "License"), which License RCAC has reviewed and agrees to be fully bound by. These indemnity, defense and hold harmless obligation of RCAC shall indefinitely survive the completion or earlier termination of this Agreement.

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57. Required Federal Language from 2 CFR Part 200 Appendix II

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

58. Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act (42 USC 6901, et seq.), as amended by the Resource Conservation and Recovery Act (42 USC 6962, et seq.). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

59. Rights to Inventions Made Under a Contract or Agreement

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

60. Ethical Standards/Code of Conduct

RCAC must develop and maintain written standards of conduct as required by 2 CFR 200.318 and ensure all of its principals, employees and contractors/subrecipients conduct themselves in accordance herewith.

EXHIBIT E
NDRC HUD NOTICE OF FUNDING AVAILABILITY (NOFA)



U.S. Department of Housing and Urban Development

Community Planning and Development

National Resilient Disaster Recovery Phase TWO

FR-5800-N-29A2

Application Due Date: 10/27/2015

U.S. Department of Housing and Urban Development

Program Office: Community Planning and Development
Funding Opportunity Title: National Resilient Disaster Recovery Phase TWO
Announcement Type: Initial
Funding Opportunity Number: FR-5800-N-29A2
Primary CFDA Number: 14.272
Due Date for Applications: 10/27/2015

Today's Notice of Funding Availability (NOFA) publication provides information and instructions for the CDBG-NDR Phase 2 competition and marks the beginning of Phase 2. The requirements for applicants eligible to apply under Phase 2 are contained in Section III A. Eligible Applicants of this NOFA and in HUD's FY2014 NOFAs for Discretionary Programs General Section expressly incorporated. HUD will award CDBG-NDR funds at the end of Phase 2. All awarded funds shall assist eligible CDBG-NDR activities.

Through today's publication, HUD is making available approximately \$999,108,000 in assistance.

Additional Overview Information:

On February 19, 2014, HUD published a General Section to the Department's fiscal year 2014 NOFAs for Discretionary Programs. The General Section contains requirements for applicants to HUD's competitive grant programs. However, many of these requirements are duplicative of regulations governing the Community Development Block Grant program, which apply to the use of CDBG-NDR grants unless modified by a waiver or alternative requirement. For ease of administration, HUD has expressly incorporated only those portions of the General Section relevant to the competitive award of funds. Applicants must meet all of the applicable requirements of the General Section in addition to the requirements of this NOFA to be considered and to receive funding. HUD hereby incorporates and makes applicable only those requirements of the General Section and the Technical Correction to the General Section expressly listed and made applicable in paragraph 2 below.

The full title of the General Section is General Section for Fiscal Year 2014 Discretionary Programs. It can be found on Grants.gov and on HUD's Funds Available webpage at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail. The Technical Correction to HUD's Notice General Section to the Department's Fiscal Year 2014 NOFAs for Discretionary Programs is available at <http://portal.hud.gov/hudportal/documents/huddoc?id=2014-gensec-tc.pdf>.

1. Applicable Requirements of the General Section (as modified by the Technical Correction to the General Section).

Only the following requirements of the General Section (as modified by the Technical Correction) apply, as may be modified or supplemented by this NOFA. Other requirements of the General Section are superseded by the requirements applicable to the use of Community Development Block Grant funds as modified by waivers and alternative requirements applicable to Public Law 113-2.

III. Eligibility Information (specified subsections only).

A. Registration in SAM prior to application submission.

C. Other Requirements and Procedures Applicable to All Programs (specified subsections only).

1. Statutory and Regulatory Requirements.

2. OMB Approval Number(s):

2506-00203

I. Funding Opportunity Description.

A. Program Description and Requirements.

A. Community Development Block Grant – Disaster Recovery – Summary: This NOFA will award supplemental disaster recovery CDBG funds competitively for resilient recovery activities. The Disaster Relief Appropriations Act, 2013 (PL 113-2) included funds for disaster recovery from major disasters declared under the Stafford Act (42 U.S.C. 4121 et seq.) in 2011, 2012, and 2013. HUD has not previously allocated such funds competitively, instead employing Federal agency data available for all eligible jurisdictions to allocate funds applying formula methods. At this time, HUD has allocated approximately \$14 billion, by formula and to Rebuild by Design projects, and has determined that the data available for the earliest disasters, in particular, does not credibly represent additional current unmet needs (beyond those for which HUD has already allocated funding by formula) to support such a formula allocation method for the remaining funding. No other reasonably current data sources common to all possible eligible jurisdictions exist. Because the law directs that CDBG-DR assistance must flow to the most impacted and distressed areas with unmet recovery and revitalization needs related to the effects of a covered major disaster, HUD decided that a competition framework would work best to elicit the data needed to inform allocation choices and ensure that the unmet disaster recovery and revitalization needs of communities around the country are appropriately considered.

HUD has six goals for this competition. First, to fairly allocate remaining PL 113-2 CDBG disaster recovery funds. Second, to create multiple examples of local disaster recovery planning that applies science-based and forward-looking risk analysis to address recovery, resilience, and revitalization needs. Third, to leave a legacy of institutionalizing in as many states and local jurisdictions as possible the implementation of thoughtful, innovative, and resilient approaches to addressing future risks. Fourth, to provide resources to help communities plan and implement disaster recovery that makes them more resilient to future threats or hazards, including extreme weather events and climate change, while also improving quality of life for existing residents and making communities more resilient to economic stresses or other shocks. Fifth, to fully inform and engage community stakeholders about the current and projected impacts of climate change and to develop pathways to resilience based on sound science. Sixth, to leverage investments from the philanthropic community to help communities define problems, set policy goals, explore options, and craft solutions to inform their own local and regional resilient recovery strategies. As with all CDBG assistance, the priority is on serving low- and moderate-income people.

This CDBG-NDR competition bears some similarities to other federal programs that address disaster recovery and threat and hazard mitigation. This similarity (and the distinctions noted below) is deliberate.

The similarity allows states and local governments to invest CDBG-NDR funds to support or fill gaps to address unmet needs inaccessible or unaffordable to other federal programs, and for which insurance and state, local, and other resources are unavailable. In addition, any similarity in program structure will enable lessons learned from this competition to potentially be transferable to other federal programs. The distinctions, on the other hand, spring from the CDBG nature of the funding source, as directed in the Congressional appropriation. Among major disaster recovery programs, CDBG is notable in its statutory focus on determining and meeting the unmet needs of vulnerable lower-income people and communities and targeting the most impacted and distressed areas. CDBG is also singular in its ability to consider a wide range of local community development objectives related to recovery and economic revitalization, including integrally related resilience objectives. HUD intends that the most successful proposals in this competition will take advantage of these CDBG similarities and distinctions to envision and implement recovery projects that serve multiple purposes and position recovering communities for a prosperous and more resilient future. To ensure programs harmonize and do not duplicate benefits, HUD is requiring all

The NOFA provides an overview of the competition process, including a brief time-line of when HUD intends to make awards. This is followed by a summary of the competition details, and then by the rating and ranking factors for Phases 1 and 2. Appendices provide additional details and instructions for applicants, as follows:

- Appendix A – Program and Post-Award Requirements (requirement)
- Appendix B – List of Qualified Counties (informational)
- Appendix C – Phase 1 and Phase 2 Partner Letter (sample)
- Appendix D – Phase 2 Partner Agreement Terms (requirement)
- Appendix E – Phase 2 Instructions for Requesting Waivers (requirement)
- Appendix F – Phase 1 and Phase 2 Certifications (requirement)
- Appendix G – Phase 1 and Phase 2 Most Impacted and Distressed and Unmet Recovery Needs Criteria and Instructions (requirement)
- Appendix H – Phase 2 Benefit-Cost Analysis Guidance for Covered Projects (guidance)
- Appendix I – Phase 1 and Phase 2 Consultation Summary (requirement)
- Appendix J – Phase 1 and Phase 2 Crosswalk Checklist (Table of Contents) (required submission)

Two-Phase Competition

Too often when designing a project to meet one exigent disaster recovery need, such as a damaged or destroyed sewer system, a community fails to consider other important needs the project could meet, or purposes it could serve. This is in part due to the rushed nature of disaster response and recovery, but also because too few community planning models exist to properly frame all the issues a project can and needs to solve. While your application must demonstrate a logical link to addressing Unmet Recovery Needs from the past disaster (also known as the “tie-back to the Qualified Disaster”), this NOFA instructs an Applicant to consider the full range of its community development objectives, and to design CDBG-DR projects to function well through reasonably foreseeable future conditions, including those related to climate change. Grantees are encouraged not to rebuild to meet past needs or threats, but to design recovery projects to create a more vital, resilient community for the present and future, taking into consideration changing threats and hazards, including those due to climate change. Moreover, particular emphasis should be given to the current and anticipated needs of vulnerable populations. The goal is to have projects that allow a community to withstand and recover more quickly from all future extreme events, shocks, or stresses.

Designing projects without putting substantial thought and effort into framing the complete range of unmet needs may lead to ineffective or wasteful use of scarce resources. Designing recovery solutions to be resilient only for threats and hazards related to the past disaster can leave a community vulnerable to negative effects from future extreme events related to other threats or hazards. When all risks are identified among other vulnerabilities during the project framing and design, project implementation can enhance protection and save lives, maximize the utility of scarce resources, and revitalize the community long after the recovery projects themselves are complete.

HUD used Applicant responses to the Phase 1 factors (including a long-term commitment under Factor 5) to select evidence-driven proposals best positioned to result in effective, innovative and compliant resilient recovery projects. At the end of Phase 2, HUD will select projects that best achieve the goals of the competition. Note that in rating Phase 2 submissions, HUD will provide more points to applications from communities that commit to or demonstrate taking actions to improve long-term community resilience. In addition, HUD only invited an applicant to Phase 2 if it has at least committed to taking a permanent resilience-enhancing action.

Human understanding of complex problems often benefits from iterative thinking, in which a basic initial understanding grows as additional viewpoints or aspects are considered. Few problems confront us with more complexity than the effects of past, present, and future disasters on the interdependent physical, social, and economic aspects of human settlements and their greater surrounding environments, especially

phase), the highest scoring applicants from the first phase are invited to fully articulate a resilience-enhancing disaster recovery or revitalization project or program that addresses as many of the Phase 1 identified risks, vulnerabilities, and community development opportunities as feasible and compete for implementation funding. The best projects will demonstrate how the proposal or project will help the community recover from the effects of the covered disaster, advance community development objectives such as economic revitalization AND improve the community's ability to absorb or rapidly recover from the effects of a future extreme event, stress, threat, hazard, or other shocks. The proposed Phase 2 project may be a pilot for the overall Phase 1 solution, may be limited to the CDBG-NDR-eligible portion of a Phase 1 concept that would benefit a larger geography than the most impacted and distressed target area, or a stand-alone portion of a project idea envisaged in Phase 1 that may take years or decades to completely realize. In any case, the Phase 2 project must not be contingent on actions outside the scope of the project to provide a defined level of protection against the threat(s) and hazard(s) identified, meet a CDBG-NDR national objective, or comply with requirements of this NOFA, including Appendix A. The applicant will be asked to explain how the Phase 2 proposal arises logically from the Phase 1 framing.

In Phase 2, each applicant will complete a benefit-cost analysis (BCA) for any Covered Project(s). Although the required completion of a BCA is new to CDBG-DR, Rebuild by Design competitors completed BCAs and the analysis process helped improve the final proposals. FEMA and DOT also employ BCAs in reviewing applications for major projects, and cost efficiency analysis is employed in reviews of environmental impact and consideration of alternatives. This CDBG-NDR BCA will provide a sense of the cost efficiency of the proposal, but the BCA score will not be used alone to determine soundness of approach. HUD recognizes that the benefits and costs may be difficult or impossible to comprehensively quantify, but, regardless of a proposed project's scale, HUD will not fund any Phase 2 activities for which the benefits to the applicant's community and to the United States as a whole are not demonstrated by the evidence submitted to justify the costs. Appendix H provides guidance on completing an acceptable BCA. Note that quantifying or otherwise accounting for social and ecological benefits and costs is a critical component, as is consideration of all related resources, including leverage, and the benefits and costs of long-term commitments under Factor 5.

Some of the resources provided to CDBG grantees to support completion of the environmental reviews required under 24 CFR part 58 may also be useful sources of information for a benefit-cost analysis. Consideration of these resources at an early stage may help speed the required environmental reviews. Applicants are strongly encouraged to integrate general and project planning with the environmental review process, and should coordinate these reviews under the Unified Federal Review (UFR) process, where possible and as appropriate. The applicant can use public outreach meetings not only to seek Phase 1 planning input and Phase 2 project comments or to meet the consultation requirement of this NOFA, but also to inform the public about environmental effects of different design approaches or of a proposed project and its alternatives. Examples of required outreach include scoping for the National Environmental Policy Act (NEPA), notices and evaluation in compliance with Executive Orders 11988 and 11990 (the 8-step decision process for floodplain management and wetlands protection), and consultation for section 106 of the National Historic Preservation Act. The applicant should have an engagement plan that includes strategies to ensure that vulnerable and under served populations are involved in the planning and decision-making processes. This informs decision-makers of the widest possible range of needs and options. Meaningful engagement and participation ensures the highest probability of success for all stakeholders.

In both phases, HUD is requiring thoughtful, evidence-based practice, incorporating consideration of the latest findings regarding the range of possible effects of climate change and other risks on the target geography during the useful life of any proposed project. Many of the communities eligible to apply have already been subject to repetitive or increasingly severe disaster events and their community and regional plans, built environment, building codes, and design/construction practices may not yet have adjusted to enhance community resilience to expected threat(s) and hazard(s) based on the best available data and science. Planning for an investment in a structure or improvement intended to endure and remain in service

Phase 1 Applicants that are not invited to continue to Phase 2, but have met all thresholds, submitted a complete application, and demonstrated unmet disaster recovery needs in Phase 1 by scoring at least 15 of the Phase 1 Need Factor points and at least 65 of the overall Phase 1 points, will be invited by HUD to submit an Action Plan for Disaster Recovery (see Authority section below for discussion of the Action Plan requirement) in accordance with an allocation Notice published in the Federal Register after the invitation. This Action Plan may include CDBG-DR activities totaling up to \$2.5 million (for applicants that are not current CDBG-DR grantees under P.L. 113-2) or \$500,000 (for applicants that are current grantees under P.L. 113-2) or the total amount of demonstrated unmet needs, whichever is less, and may include reimbursement for planning and general administration costs associated with completion of the Phase 1 application (unless these were indicated as leverage in the application), subject to applicable limitations in Appendix A. HUD will award up to \$30 million to such Applicants. Any reserve pool funds not awarded at this stage will be allocated in a similar manner following Phase 2 to any applicants meeting the same criteria based on Phase 2 submission information and point minimums.

After HUD provides comments on the initial Phase 1 submissions, each continuing applicant will have approximately 120 days in Phase 2 to develop a final submission. HUD will consider Soundness of Approach, Needs, Capacity, Leverage, and Long-term Commitment at this phase. Note that leverage in this phase may include traditional financial and in-kind contributions, but must also include the applicant undertaking supporting actions locally (e.g., building code updates, executive orders, zoning revisions, comprehensive and mitigation plan linkages, inter-agency partnerships, financing mechanisms, or completing and adopting a forward-looking community-wide resilience assessment and plan) that will better position the Applicant to be more resilient to future threat(s) and hazard(s).

Following submission of the Phase 2 applications, HUD and federal agency partners will review, rate, and rank the applications in accordance with the published criteria. HUD will then determine and announce Phase 2 awards. HUD will consider for funding any complete Phase 2 application that meets all thresholds and receives at least 75 percent of the total points available in Phase 2.

The applicable post-award requirements are included in Appendix A to this NOFA. These post-award grant management requirements are, insofar as feasible, identical to those imposed under the Notices published for grants made under the formula P.L. 113-2 allocations.

B. Authority.

The funding authority for CDBG-NDR grants under this NOFA is provided by the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, signed into law January 29, 2013) (Appropriations Act) which made available \$16 billion in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. All capitalized terms in this NOFA are defined in the Definitions section or later in the document.

On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG-DR grants under the Appropriations Act to \$15.18 billion. To date, a total of approximately \$14.1 billion has been allocated -- \$13 billion in response to Hurricane Sandy, and Tropical Storms Irene and Lee, \$514 million in response to disasters occurring in 2011 or 2012, and \$654 million in response to other 2013 disasters. The Appropriations Act requires funds to be awarded directly to a State or unit of general local government (hereinafter, local government), and the term "grantee" (as defined below) refers to any jurisdiction receiving a direct award from HUD.

To comply with statutory direction that CDBG-NDR funds be used for disaster-related expenses in the most impacted and distressed areas related to the Qualified Disaster, HUD is requiring that applicants address unmet needs in counties identified by HUD as "most impacted and distressed," as identified

In the abbreviation, “NDR” refers to “national disaster resilience”.

3. CDBG funds. CDBG funds is a defined term at 24 CFR 570.3, and includes any CDBG-DR funds and CDBG-NDR funds. The terms CDBG-DR funds and CDBG-NDR funds are terms referring grant funds made available by CDBG-DR or CDBG-NDR awards, respectively.

4. Covered Project. A major infrastructure project having an estimated total cost of \$50 million or more (including at least \$10 million of CDBG-DR or CDBG-NDR funds), or benefiting multiple counties. Additionally, two or more related infrastructure projects that have a combined total cost of \$50 million or more (including at least \$10 million total of CDBG-DR, or CDBG-NDR funds) must be designated as major infrastructure projects.

5. Grantee. An Applicant that receives a CDBG National Disaster Resilience award directly from HUD to carry out an activity to address an Unmet Recovery Need. The term Grantee does not include subrecipients. An Applicant becomes a Grantee after the grant agreement is signed by HUD. The Grantee is the sole entity that will have access to HUD’s Line of Credit Control System (LOCCS) through the Disaster Recovery Grant Reporting (DRGR) system to draw down CDBG-NDR funding. Under P.L. 113-2, although Partners may assist in carrying out CDBG-NDR projects, the Grantee remains legally and financially accountable for the use of all funds and may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight, policy development, and financial management (Also see Appendix A).

6. Livability Principles. Livability principles jointly adopted by HUD, EPA and DOT to support federal neighborhood and community development initiatives. The Livability Principles are as follows: provide more transportation choices; promote equitable, affordable housing; enhance economic competitiveness; support existing communities; coordinate and leverage federal policies and investment; and value communities and neighborhoods. For further information, see <http://sustainablecommunities.gov/>.

7. Most Impacted and Distressed. This term is defined in Appendix G. The term will not be capitalized throughout this NOFA. This term is sometimes shortened to “MID.”

8. Partner. Partner means a State, unit of local government, a nonprofit entity, a private developer, a financial institution, or other entity chosen by the Applicant to assist the Applicant in applying for funding or in carrying out a funding award or project under this NOFA, and which submits a letter of intent to assist in that capacity, and which may be referenced by the Applicant for purposes of demonstrating additional capacity for planning, design, financing, or implementation in applying for funding under this NOFA. See section on submission requirements to demonstrate commitment of Partner.

9. President’s Climate Action Plan. In June 2013, the Administration released the President’s Climate Action Plan, a series of executive actions to (1) Cut Carbon Pollution in America, (2) Prepare the United States for the Impacts of Climate Change, and (3) Lead International Efforts to Combat Global Climate Change and Prepare for its Impacts. For full text of the plan and further detail, see <http://www.whitehouse.gov/climate-change>.

10. Resilience Guidelines of Sandy Task Force The two overarching infrastructure-related goals of the Hurricane Sandy Rebuilding Task Force were to ensure all Federal actions, policies, and resources work together to foster a quick and effective recovery from Hurricane Sandy and to encourage investment in systems and assets that ensures the region is better prepared to both withstand and recover from future disasters. The Task Force created Infrastructure Resilience Guidelines to lead to decisions that better protect communities and ensure wise investment of scarce public resources. The seven guidelines are: (1) Comprehensive Analysis; (2) Transparent and Inclusive Decision Process; (3) Regional Resilience; (4) Long-Term Efficacy and Fiscal Sustainability; (5) Environmentally Sustainable and Innovative Solutions; (6) Targeted Financial Incentives; and (7) Adherence to Resilience Performance Standards. <http://portal.hud.gov/hudportal/documents/huddoc?id=hsrebuildingstrategy.pdf>.

HUD is making available through this NOFA **\$998,108,000** for National Resilient Disaster Recovery Phase TWO. Page 15 of 58

Additional funds may become available for award under this NOFA as a result of HUD's efforts to recapture unused funds, use carryover funds, or because of the availability of additional appropriated funds. Use of these funds will be subject to statutory constraints. All awards are subject to the applicable funding restrictions described in the General Section and to those contained in this NOFA.

B. Number of Awards.

HUD expects to make approximately 40 awards from the funds available under this NOFA.

C. Maximum Award Information.

Estimated Total Funding: \$998,108,000

Minimum Award Amount: \$1,000,000

Maximum Award Amount: \$500,000,000

D. Period of Performance.

Grantees must proceed in a timely manner, as indicated by the time-frames established in the NOFA.

HUD anticipates announcing awards under this NOFA 6-7 months after the initiation of Phase 2 or 2-3 months after Phase 2 applications are due.

Estimated Project Start Date:

Estimated Project End Date:

Other

Additional Information on Project Periods

Estimated project period end date is 2 years after awarded, unless waived.

E. Type of Funding Instrument.

Funding Instrument Type: Grant

F. Supplementation.

Not applicable.

III. Eligibility Information.

A. Eligible Applicants.

Eligible applicants under this NOFA include:

Others (see text field entitled "Additional Information on Eligibility" for clarification)

Additional Information on Eligibility:

Eligible applicants under Phase 2 are:

State, district and territory-level

1. Alaska
2. California
3. Colorado
4. Connecticut

Recovery Need threshold criteria). See the Appendix B spreadsheet for the lists of eligible counties with disaster declarations between January 2011-December 2013 and those previously designated “most impacted counties” based on HUD’s definition. HUD does not award grants to individuals nor will HUD evaluate an application from an ineligible applicant.

In accordance with 2 CFR 25.200, all applicants must have an active Data Universal Numbering System (DUNS) number (<http://www.dnb.com/get-a-duns-number.html>;) and have an active registration in the System for Award Management (SAM) (www.sam.gov) *before submitting an application*. Getting your DUNS number and SAM registration can take up to four weeks; therefore, you should start this process or check your status early.

HUD does not award grants to individuals nor will HUD evaluate an application from an ineligible applicant. Additionally, if for-profit firms are eligible they are not allowed to earn a fee (i.e., make a profit from the project).

In accordance with 2 CFR 25.200, all applicants must have an active Data Universal Numbering System (DUNS) number (www.dnb.com) and have an active registration in the System for Award Management (SAM) (www.sam.gov) *before submitting an application*. Getting your DUNS number and SAM registration can take up to four weeks; therefore, you should start this process or check your status early.

B. Cost Sharing or Matching.

Federal sources are generally not allowed to be used as cost share or match unless otherwise permitted by a program’s authorizing statute.

This Program does not require an applicant to leverage resources through cost sharing or matching.

Not applicable.

C. Other.

1. Citizen participation waiver and alternative requirement. To permit a more streamlined process, and ensure disaster recovery grants are awarded in timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 91.105(b) and (c), and 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. (Note that the citizen participation process is distinct from the consultation requirements of this

(2) Any activity that does not meet a national objective under the requirements of Appendix A is not eligible unless a waiver is obtained from HUD. Note that such waivers are exceedingly rare, but applicants may see Appendix E for more detail.

(3) Any activity for which Unmet Recovery Need or tie-back to a Qualified Disaster is not established is ineligible. This may not be waived.

(4) You may not use CDBG-NDR grant funds to pay for any activities carried out on or before the date of the letter announcing the award of the grant except that you may use grant funds, should you receive an award, to reimburse CDBG-NDR eligible costs of grant application preparation, including planning and citizen outreach activities. Note that general administration costs may not exceed more than 5 percent of any grant. This is not waivable. For detailed guidance on what costs are included in general administration, see Notice CPD 2013-07, available from www.hud.gov.

(5) Any activity that is not in compliance with applicable fair housing and civil rights laws and regulations.

(6) Projects dependent on a contingent action to be effective or feasible, and projects which are not feasible and/or effective at significantly reducing the risk against the threat(s) and hazard(s) for which the project was designed. Note that you must describe the feasibility and effectiveness of your project in your response to Phase 2 Factor 3. A feasible project will demonstrate (either in the application materials or prior to HUD obligation of funds if HUD selects only a portion of your proposal for funding or for substantial amendments post award) conformance with accepted design practices, established codes, standards, modeling techniques, or best practices. (Note that CDBG-NDR grantees are responsible for complying with national objective requirements and make a certification acknowledging that responsibility and covering the entire grant. An infeasible and ineffective project design will not provide the benefit proposed in your application to meet a CDBG-NDR national objective and justify project costs.)

(7) Projects for temporary measures (e.g. sandbags, bladders, geotubes, newly established emergency operation centers). Equipment is generally ineligible for CDBG-NDR assistance unless necessary in the provision of an eligible public service or special economic development activity.

(8) Response activities, equipment, and training (e.g., electronic evacuation road signs, interoperable communications equipment).

(9) Projects sited within a Special Flood Hazard Area where the jurisdiction is not participating in the National Flood Insurance Program.

3. Threshold Requirements.

To be rated and ranked, all Applicants and applications must meet all threshold requirements of this NOFA. Applicants must demonstrate compliance with the threshold requirements through the information provided in their application, unless instructed otherwise in this NOFA. The threshold requirements of this NOFA include the incorporated requirements of Section III.C.2 of the General Section (see section on Additional Overview Information for a list of incorporated General Section requirements) and threshold requirements specific to the CDBG-NDR program described in this NOFA. If an application does not meet all threshold requirements, HUD will not consider the application as eligible for funding and will not rate and rank it. HUD will screen for technical (not substantive) deficiencies and administer a cure period as described in Section V.C.2., of the General Section. Applicants must review and follow documentation requirements provided in this Thresholds Requirements section and the instructions on application organization, content and submission provided in section V.B. of this NOFA. Required forms, certifications and assurances must be included in the application and will be available on at <http://www.grants.gov>. In addition to the thresholds incorporated from the General Section, the following are also competition thresholds:

- a. Eligible Applicant. You must be an Eligible Applicant and identify which Applicant you are on

Appendix H for each Covered Project in your Phase 2 application. HUD will not fund any Phase 2 activities for which the benefits to the applicant's community and to the United States as a whole are not demonstrated by the evidence submitted to justify the costs.

j. CDBG-NDR Applicant Certifications. You must include in your application attachments CDBG-NDR Applicant Certifications. See Appendix F for the certifications for states and local government applicants and the specific electronic submission requirements in Section IV of this NOFA.

4. Number of Applications and Projects.

- 1) An Applicant may participate in a maximum of one application under this NOFA. A Partner may participate in more than one application, provided each application demonstrates capacity.
- 2) There is no limit to the number of proposed activities, partners, or projects per application, so long as all proposed activities meet all thresholds and CDBG-NDR program requirements.
- 3) If HUD receives electronically multiple versions of an application, HUD will rate and rank the last version of the application received by Grants.gov that meets the timely receipt requirements. All other applications (i.e., prior versions) will not be considered eligible. If applicants find after submitting an application that they want to amend or adjust their application and it is prior to the deadline date, applicants should be aware that they must resubmit the entire application, including all fax transmissions previously sent, to ensure that HUD gets a complete application.

5. Relation to prior CDBG-DR Grants and activities. Note that a CDBG-NDR Applicant may propose additional funding for an existing CDBG-DR activity, provided the Applicant can meet CDBG-NDR threshold and program requirements. The CDBG-NDR award will be made under a separate grant agreement from any prior CDBG-DR award from the same appropriation.

6. Program Requirements. Appendix A contains CDBG-NDR program requirements, administrative and national policy requirements, and other program priorities that applicants should consider as they develop their applications. Applicants MUST review this complete NOFA including Appendix A and ensure they comply with the requirements, as relevant.

IV. Application and Submission Information

A. Obtaining an Application Package.

An electronic copy of the Application Package and Application Instructions for this NOFA can be downloaded from Grants.gov at <http://www.grants.gov/applicants/apply-for-grants.html>.

An applicant demonstrating good cause may request a waiver from the requirement for electronic submission. If you receive a waiver, your paper application must be received by HUD before the deadline of this NOFA. To request a waiver and receive a paper copy of the application materials, you should contact:

Stan Gimont
 Director, Office of Block Grant Assistance
 US Department of Housing & Urban Development
 451 7th Street, SW
 Washington, DC 20410
 Email: ResilientRecovery@hud.gov

Refer to Section IV. of the General Section for additional guidance. Applicants requesting a waiver should submit their waiver requests via e-mail to ResilientRecovery@hud.gov. The subject line should contain the name of the applicant and 'Request for Waiver to Electronic Application for CDBG-NDR'.

after the first, if the application includes multiple, separate areas.

Each CDBG-NDR application for Phase 2 must contain no more than 75 pages, with five additional pages allowed for each project after the first, if the application includes multiple projects. Any pages beyond these limits will not be reviewed. HUD will not consider the information on any excess pages, which may result in a lower score or failure of a threshold.

c. Exceptions to page limits.

The documents listed below constitute the only exceptions and are not counted in the page limit listed above. Extraneous information not related to the content of these attachments will be counted toward the page limit.

1. Additional pages submitted at the request of HUD in response to a technical deficiency.
2. Crosswalk Checklist
3. Evidence of Partnership
4. Leverage documentation
5. Consultation Summary. See Appendix I for instructions.
6. Waiver requests. Waiver requests associated with an application must be submitted with an application. If HUD, during review of an application or during the post-review negotiation process determines that the Applicant would require an additional waiver for the proposed project, HUD may contact the Applicant any time prior to award announcement to explain the issue and request that the Applicant submit a waiver request for consideration.
7. Benefit-cost Analysis. You will submit a Benefit-Cost Analysis (BCA) for each Covered Project in your Phase 2 application in accordance with the instructions in Appendix H. There is no page limit to the BCA, however, material in the BCA will not be directly considered as part of the award of points for a rating factor.
8. Maps, drawings, renderings, and other graphical representations of the project or MID-URN target area and related geography submitted uploaded to www.grants.gov (total application must not exceed 200 MB in size), or by providing a password-protected link in your Exhibit A Executive Summary to a cloud storage service such as Dropbox, Google Docs or Drive, Microsoft OneDrive, Box, or Bitcasa. Files must be in a PDF or JPEG format. Include relevant copyright or ownership information within the body of each file. All submitted files must be referenced in your narratives by filename. HUD will not open or review unreferenced files. Such graphical representations will not count against the page limits provided they include no narrative text or data tables. Labels, legends, data sources, and copyright information are acceptable and expected.
 1. You may email the password for any cloud storage link to ResilientFuture@hud.gov. Include Applicant's name in the Subject line of the email. Include Applicant's name, a contact person's name and telephone number, and a list of the relevant filenames in the body of the email.
9. Application Certifications and Standard forms (see Appendix F for the certifications). Standard forms are available within the application package for this NOFA that may be downloaded at www.grants.gov. Applicants affix a signature to the certifications by checking the "I AGREE" box in Item No. 21 of the SF424. To complete the certification process, both the "I AGREE" box in Item No. 21 of the SF424 must be checked AND the certifications found in Appendix F must be attached to your application as Attachment C.
10. Blank/extra pages generated as part of standard forms.
11. Tabs/title pages that are blank or display a title/header/ "n/a" indication.
12. Sources and Uses statement included as part of the Budget submission in Phase 2.
13. Summary of citizen comments by topic with a list of commenters by name and organization (if any) and Applicant responses. This may be submitted as part of Attachment D Consultation Summary.
14. Data linked from or submitted separate and apart from the narrative in Exhibit B demonstrating the Unmet Recovery Need and most impacted and distressed threshold requirements. Data must be

Table of Contents. Complete the Crosswalk Checklist, indicating by Exhibit or Attachment Title and page number where required and optional responses are located in your application.

Phase 2 (In any of the Phase 2 exhibits, you may reference and summarize, and need not repeat in its entirety, material from your Phase 1 submission that is responsive to the Phase 2 Factor. Within any Exhibit, you must address the required elements, and you may do this by providing a cross reference to another Exhibit rather than repeating information.

(a) Exhibit A - Executive Summary. Please summarize your application briefly and specifically (suggested 3 pages maximum)

(b) Exhibit B - Threshold Requirements. Provide a narrative response to the threshold requirements.

(c) Exhibit C - Capacity. Provide a narrative response to the Capacity Factor. Remember to provide the required organization chart and to include information about each Partner. Attach the documents required in Appendices D and E.

(d) Exhibit D - Need. Review and provide a narrative response to the Need Factor.

(e) Exhibit E - Soundness of Approach. Review and provide a narrative response to the Soundness of Approach Factor.

(f) Exhibit F - Leverage. Provide a narrative response to the Leverage Factor. Remember to attach all supporting documentation.

(g) Exhibit G - Long-Term Commitment. Provide a narrative response to the Long-Term Commitment Factor. Applicants must include a baseline and goal outcome measure (including expected duration of the outcome being measured), and effective date for each commitment.

(3) Attachments. The attachments required in your applications, unless otherwise noted, do not count against page limits and are as follows:

(a) Attachment A - Partner documentation. Documents required under Appendices C and D for each Partner, if applicable.

(b) Attachment B - Leverage documentation. Provide supporting documentation for the leverage factor, including letters of commitment, as described in the Leverage Factor.

(c) Attachment C – CDBG-NDR Application Certifications. Applicants need only to include the Certifications, as presented in Appendix F, as Attachment C to their application and check the “I AGREE” box in Item No. 21 of their SF424 within grants.gov. The grants.gov electronic submission system will automatically populate the identified Authorized Organization Representative (AOR) name within the signature section.

(d) Attachment D – Consultation Summary. Complete the Consultation Summary described in Appendix I and submit it with your Phase 1 application. If you are invited to Phase 2, provide a separate updated Consultation Summary with your application. The Consultation Summary should also include a summary by topic of all comments received on the Application or amended submission and a list of commenters by name or organization.

(e) Attachment E – Maps and Drawings (optional). Maps, drawings, renderings, and other graphical representations of the project or MID-URN target area and overall project geography submitted uploaded to grants.gov (total application must not exceed 200 MB in size), or by providing a password-protected link in your Executive Summary to a cloud storage service such as Dropbox, Google Docs or Drive, Microsoft OneDrive, Box, or Bitcasa. Files must be in a PDF or JPEG format. Include relevant copyright or ownership information within the body of each file. All submitted files must be referenced in your narratives by filename. HUD will not open or review unreferenced files. Such graphical representations will not count against the page limits provided they include no narrative text or data tables. Labels, legends, data sources, and copyright information are acceptable and expected. You must email the password for any cloud storage link to ResilientFuture@hud.gov . Include

Applicant’s name in the Subject line of the email. Include Applicant’s name, a contact person’s name and telephone number, a list of the relevant filenames, and the password in the body of the email.

access the toll-free number or experience problems using that number you may use **215-825-8798** (this is not a toll-free number). If you or any other parties submitting documents for this application do not use the form HUD-96011 that came with your application as the fax cover page, the documents cannot be matched to the application. Consequently, these documents will not be considered when the application is evaluated. Additionally, if your fax machine creates a cover page, you must turn this feature off.

Amending a Validated Application: If you resubmit an application that was previously validated by Grants.gov, all documents faxed in support of the application must be faxed again using the form HUD-96011. You must fax the materials after the resubmitted application has been validated by Grants.gov. All faxed materials must be received by the applicable deadline.

Applications must be received no later than the deadline. Please refer to the General Section for more information about timely receipt of applications.

D. Intergovernmental Review.

This program is subject to Executive Order 12372, Intergovernmental Review of Federal Programs. Executive Order 12372 allows each state to designate an entity to perform a state review function. To determine if your state has designated a State Point of Contact (SPOC), please go to http://www.whitehouse.gov/omb/grants_spoc/. States not listed on the website have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your state has a SPOC, you should contact the SPOC to see if that person/office is interested in reviewing your application before you submit it to HUD.

E. Funding Restrictions.

Statutory Time Limits.

1. **Required Obligation Date.** Funds appropriated for the CDBG-NDR program must be obligated by HUD on or before September 30, 2017. Any funds that are not obligated by that date will be recaptured by the Treasury, and thereafter will not be available for obligation for any purpose.
2. **Required Expenditure Date.** In accordance with P.L. 113-2, all CDBG-NDR funds must be expended within two years of the date HUD obligates funds to the grantee, unless a waiver is requested and granted prior (see Appendix E for more details). Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.
3. **Grant Size.** The maximum grant award possible following Phase 2 is \$500,000,000. The minimum award after Phase 2 is \$1,000,000. You must identify scaling and scoping options for your Phase 2 proposal as described in the Soundness of Approach Factor. Also see Appendix H for details in completing a BCA for each Covered Project or phase thereof in your application. HUD will consider Applicant submission of Unmet Recovery Need in allocating a reserve pool of up to \$30 million under a separate formula allocation Notice.
4. **Budget Deductions.** HUD may delete any unallowable items from your proposal and may reduce your grant amount accordingly. HUD will not fund any portion of an application that: (a) is not eligible for funding under specific HUD program statutory or regulatory requirements, as waived; (b) does not meet the requirements of this notice; or (c) is duplicative of other funded programs, cost, benefits, or activities. Only the eligible portions of an application (excluding duplicative portions) may be funded. Allowable costs for CDBG-NDR funds under this appropriation include only those necessary expenses to meet the unmet recovery needs of the most impacted and distressed target area identified in the application.
5. **Grant Reduction or Recapture.** If you are selected for funding, and if you then or subsequently propose to make a substantial amendment to your project, compared to what was presented in this application, HUD reserves the right to amend the award and reduce the amount or recapture the grant.
6. **Withdrawal of Grant Amounts.** If a grantee does not proceed within a reasonable timeframe, HUD

Applicants that Received a CDBG-DR Allocation in Response to Hurricane Sandy that wish to be considered for funding under the general pool of funding only:

1) Infrastructure Projects: HUD strongly encourages applicants that are subject to the November 18, 2014, Federal Register Notice to follow, to the extent applicable, the requirements for “infrastructure projects” and “related infrastructure projects” (defined in paragraph VI.2.b.) in paragraphs VI.2.c., through VI.2.f. (78 FR 69107). These applicants are also encouraged to follow the requirements for “covered projects” (defined in paragraph VI.2.g.) in paragraphs VI.2.g.(2)–(5) (78 FR 69107, 69108). Grantees are advised that paragraphs VI.2.g.(1) is inapplicable and is superseded by the project description requirements.

2) Covered Projects and Consultation with the Regional Coordination Working Group: In addition, although HUD review and HUD rating and ranking process described in this NOFA will supersede the HUD review of covered projects in paragraph VI.2.h., HUD encourages these applicants to submit activities that meet the definition of “covered project” to the Regional Coordination Working Group for

consultation prior to applying for funding under the National Resilient Disaster Recovery Competition.

The goal of this coordination effort is to promote a regional and cross-jurisdictional approach to resilience in which neighboring communities and states come together to: identify inter-dependencies among and across geography and infrastructure systems; compound individual investments towards shared goals; foster leadership; build capacity; and share information and best practices on infrastructure resilience.

3) Procedures: Submissions documenting voluntary compliance may be submitted as an attachment to an application and will not be counted toward page limits in the application. Submissions to the Regional Coordination Working Group for consultation should be sent to HUD to forward to the Regional Coordination Working Group.

Applicants that wish to be considered for funding under the set aside of \$181 million for areas most impacted and distressed by Hurricane Sandy in New York State, New York City, and New Jersey. For applicants that wish to be considered for the Hurricane Sandy Recovery Set Aside (this may be in addition to the funding available to all applicants under this NOFA), submission to the Sandy Regional Coordination Working Group is mandatory. Accordingly, the actions described in paragraph I.A.(1) above are strongly encouraged, but the actions in paragraphs I.A.(2) and (3) above are mandatory for these grantees.

Applicants that Received a CDBG-DR Allocation in Response to 2013 Disasters. HUD strongly encourages applicants that are subject to the June 3, 2014, Notice to follow the requirements for “infrastructure projects” and “related infrastructure projects” (defined in paragraph V.3.b.) in paragraphs V.3.c. through V.3.f. (79 FR 31967, 31968). These applicants are also encouraged to follow the requirements for “covered projects” (defined in paragraph V.3.g.) in paragraphs V.3.g.(2)–(5) (79 FR 31968). Grantees are advised that paragraphs V.3.g.(1) and V.3.g.(5) are inapplicable and are superseded by the project description requirements and HUD rating and ranking process described in this NOFA.

Submissions documenting voluntary compliance may be submitted as an attachment to an application and will not be counted toward page limits in the application.

Reminders. In the process of preparing your submission, HUD also reminds you of the following, which may affect your approach to program design and the quality and compliance of your planning process and proposed project or program:

Affirmatively furthering fair housing. All activities under this NOFA shall be carried out in a manner that affirmatively furthers fair housing, as required by section 808(e)(5) of the Fair Housing Act, as amended (42 U.S.C. 3608(e)(5)). Each Applicant will make the required certification for CDBG-NDR activities,

HUD encourages innovative proposals; however, all projects must consist of technologies that can be demonstrated to be effective.

In Phase 2, your Sources and Uses response must identify all project costs. CDBG-NDR funds may not be used for operations and maintenance of the project. Additionally you must identify the source(s) and plan for operations and maintenance in your Leverage factor response and in your BCA, if applicable.

HUD expects well-designed projects to identify and, at a minimum, meet design or resilience standards as follows:

Safe Room. Any Safe Room construction, reconstruction, or rehabilitation is at least consistent with the requirements of FEMA P-320 or FEMA P-361.

Wind Retrofit. Wind retrofit construction, reconstruction, or rehabilitation activities funded under CDBG-DR are required to be implemented in conformance with FEMA-804.

Flood-related Activities. HUD recommends flood projects be designed and constructed in conformance with the design criteria of ASCE/SEI 24-05 as a minimum standard, if applicable.

Levees, Floodwalls and other flood control structures. HUD expects the Applicant or one of its Partners to take responsibility for operating and maintaining any levee, floodwall, or other flood control structure. One function of such a structure must be for the purpose of providing flood protection for existing structures at risk of flooding, although the CDBG-NDR project incorporating such a structure must also meet an Unmet Recovery Need and may include co-benefits that meet other community development objectives, but must not be created to reduce flooding to currently undeveloped land. A levee system proposed under this NOFA must be technically sound (i.e. levee is tied off to high ground, is geo-technically stable, etc.), well maintained, and provides reliable flood protection. Any levee proposed under this NOFA must meet FEMA accreditation standards on completion and the Sources and Uses statement must identify and the Leverage response commit to providing a source of funding for operations and maintenance of the levee in perpetuity. If HUD provides funding for such structure under this NOFA, HUD will impose special Grant Terms and Conditions governing the use of the funds, as further described in Appendix A. These terms will require the Grantee to provide HUD with certain information to be shared with Congress, other federal agencies, and affected parties, in part for the purpose of insuring that no additional federal resources are used for operations and maintenance of the structure in future. The terms also will require grantees to provide certain notices annually to property owners in the affected areas.

Section 3 of the Housing and Urban Development Act (Section 3). Applicants must certify that they will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and HUD's implementing regulations at 24 CFR part 135. These authorities require recipients to ensure, to the greatest extent feasible, that training, employment, and contracting opportunities will be directed to Section 3 residents and Section 3 business concerns. Additional information on these requirements can be found at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opportunity/section3/section3.

V. Application Review Information

A. Review Criteria.

A.1. Rating Factors.

Phase 1	Points	Minimum
Factor 1 - Capacity	25	12
Subfactor: General Management	5	
Subfactor: Technical Capacity	7	
Subfactor: Community Engagement	7	

Benefits - Cost Analysis		Benefits reasonably demonstrated to justify Costs
Total - Both Phases	200	125

Phase 1 Factor 1: Capacity

Maximum Points: 25

a. General management capacity. (5 Points) You will be rated on the degree to which you demonstrate clear capacity, or a plan to get capacity, in managing federal funds, project management roughly on the scale of your idea or proposal, and leadership capacity to coordinate among proposed partners.

1. Have you decided on a specific government agency to implement the proposed activities? What is its role and management capacity?
2. Describe how the agency has (or plans to obtain) the relevant project management, quality assurance, financial and procurement, and internal control capacity to quickly launch and implement a major project.
3. Describe the agency's experience working with and coordinating partners (including contractors, funders, subrecipients, community stakeholders, and other government agencies) in previous projects similar in scope of scale to the proposed activities. If you do not have such experience, how will you get it?
4. Who wrote this application, state/community staff or a professional technical or grant writer in a consulting or contract capacity? If a professional writer was the drafter, describe how the Applicant staff and decision makers were actively engaged in the writing process and how they will maintain Applicant systems understanding and analytic capacity over time.

b. Cross-disciplinary technical capacity (7 Points). For this sub-factor, you will be rated on the degree to which you and any Partners possess sufficient cross-disciplinary capacity to fully design and implement a major project(s).

1. Describe the capacity of each of your partners. Specifically identify areas of expertise for yourself and each Partner.
2. How will you work across disciplines in achieving project goals? What experience does your team have in multi-disciplinary work?
3. What experience do you and your partners have with area-wide or comprehensive planning? With implementing large, complex programs or projects?
4. Describe how you and your Partners have the data analysis, public works, affordable housing, environmental quality, community engagement, design and engineering, affordable housing, economic revitalization, and other relevant capacity to quickly launch and implement a major project? Alternately, how will you get the capacity?
5. Specifically, do you or your Partner(s) have the capacity to identify and assess science-based information on existing and future risks from climate change? What is your capacity to assess and address possible future conditions and risks and possible benefits and outcomes, including resilience, of project(s) or program(s) over their lifetimes?
6. Do you or any Partner(s) have experience working with civil rights and fair housing issues including, for example, working with data to analyze racial or economic disparities?
7. How will you determine and ensure excellent design quality that enhances long-term resilience? Is the Applicant's capacity to design or plan dependent on Partner capacity? If yes, describe the dependency.
8. What is your plan to regain capacity if a Partner drops out?
9. How do you determine whether a project is cost reasonable? Briefly describe your or your

regional or statewide resilience needs that can be addressed with leveraged funding sources, and to specifically address present and future recovery, revitalization, and resilience needs resulting from current and projected effects of climate change in the geography considered.

First, provide a narrative summary with a cross-reference to your response to the Unmet Recovery Need and Most Impacted and Distressed threshold requirement. In your summary, describe your unmet needs and the characteristics and location of your geographic most impacted and distressed target area(s). HUD is only requiring you to submit one qualified most impacted and distressed target area to meet the threshold to participate in this competition. However, because the only allowable CDBG-NDR costs are necessary expenses tied back to the Unmet Recovery Needs of most impacted and distressed areas related to a Qualified Disaster, you may describe and justify additional most impacted and distressed target areas in your threshold submission and provide a summary for all areas in response to this Factor.

In addition, you must use a comprehensive risk approach to analyzing need that will inform the development of your proposed project or program. Your narrative must describe the science-based risk approach you will employ to select your project, or if proposing a recovery program, the approach you will employ to select projects and activities within your proposed program. At a minimum, your approach must include consideration of historical impacts and forward looking analysis of risks, including climate change and other risks that may affect the resilience of the community such as development patterns. This consideration should be based on a broad range of information and best available data, including forward-looking analyses of risks the affected project from climate change and other hazards, such as the Northeast, Midwest, Great Plains and Southwest United States Regional Climate Trends and Scenarios from the U.S. National Climate Assessment, the Sea Level Rise Tool for Sandy Recovery, or comparable peer-reviewed information. In addition, your approach should consider, to the extent feasible and appropriate, public health and safety impacts; direct and indirect economic impacts; social impacts; environmental impacts; cascading impacts and inter-dependencies within and across communities. You should employ an approach that, wherever possible, includes both quantitative and qualitative measures and recognizes the inherent uncertainty in predictive analysis.

In addition to the above, if you plan to approach responses to the factors from a geographic perspective larger than the minimum required geography (as HUD strongly encourages you to), you must provide a summary of the characteristics and location of that larger area(s) as well (5 points for Unmet Needs and 5 points for Impacted and Distressed).

Next, for Phase I, consider and respond to the following questions, at a minimum as they relate to the Unmet Recovery Need tied back to the most impacted and distressed areas from the Qualified Disaster (15 points).

HUD expects you to comprehensively consider post-disaster threats, hazards, and vulnerabilities. What threat(s), hazard(s), or vulnerability(ies) are you are focusing on? How did you identify it/them? Who and what are/have been/will be affected by events related to them and what are the future risks from the threat(s), hazard(s), or vulnerability(ies)?

What data and other information did you use to identify the risk(s) or vulnerability(ies) and over what timeframe? The law directs HUD to use the best available data. Why is the information you considered the best data in your geographic area?

As reported in the May 2014 National Climate Assessment, effects of climate change are already being felt and will continue to be felt in the future. These effects must be taken into account using a risk management approach, accounting for relevant uncertainties. Given the history of your region, climate change projections, demographic and development trends, and other factors as appropriate, what risks is your community facing? How serious and likely are the risks? What are your "known unknowns"? To what extent are public and private buildings, improvements, and residences in your community un-insured or under-insured for the risk(s) you have identified? If your community has been subject to

risks and vulnerabilities? Describe.

Have you considered and discussed with stakeholders the indirect risks and vulnerabilities in the environment of your most impacted and distressed target area and (optionally) region or state, with particular attention to potential sources of contamination, such as wastewater treatment facilities or brownfields?

How have the results of the collaboration with stakeholders, project partners, and/or citizens shaped your proposal? Provide a summary of the consultation process and complete and submit the Consultation Summary form in Appendix I.

b. Idea(s) or Concept(s). (15 Points)

- Do you have an idea(s) or concept(s) that will address identified unmet needs and the risks and opportunity(ies) of your vulnerability(ies) in a way that will make you more resilient? What is/are your general idea(s)? Build something? Relocate something? Finance something? Are you open to alternatives, or are you already committed to a particular approach? What actions have you already taken to make your state/community more resilient? Do you want to augment or replace existing actions? How will you ensure your idea will be feasible and effective at supporting recovery and resilience? Does your idea provide long-term or permanent resilience?
- How are you considering potential co-benefits of implementing your idea (e.g. environmental and human health, workforce and business development)? Are there other community development objectives that can be met through your resilience project(s)? How does your idea represent integrated thinking across disciplines such as those listed in Phase 2 of the Capacity Factor?
- How has or will your proposal involve and address residents and small businesses that are least resilient or most vulnerable to future threat(s) and hazard(s), including future effects that may be caused by climate change?
- How will your idea affect adjacent areas (positively or negatively)? Describe both potential positive and negative effects.
- What are the local and regional interdependencies among sectors (e.g., housing, transportation, energy, environmental)? If you don't know, how have you or will you collaborate with your neighbors to learn about and consider these issues?
- Can you resolve your vulnerability(ies) and meet unmet recovery needs inside your jurisdiction, or will you need to work with other UGLGs or state(s) or regional organizations? If you need others, have you already approached them? If yes, are they supportive of this application? Do you have a formal agreement to cooperate? In what disciplines or areas? Can any other jurisdiction prevent you from addressing the risks from this vulnerability using your approach? Are there cross-jurisdictional mechanisms (plans, commitments, bodies with decision-making authority) that are already in place to support this activity?
- Characterize your community's overall approach to resilience now and in the foreseeable future. Characterize your community's approach to resilience incorporating risks associated with climate change. Does your most impacted and distressed target area(s) and region or state participate in the National Flood Insurance Program (NFIP) Community Rating System? Do you participate in any other state, regional, national, or international program that rates overall community commitment to resilience? If yes, briefly describe your commitment, rating, and results. Does your state or community have a climate change adaptation plan? If yes, briefly describe the actions it outlines.

Phase 1 Factor 4: Leverage and Outcomes **Maximum Points: 15**

commitments at the time of a Phase 1 submission to support planning and future implementation activities, applicants must demonstrate supporting commitments in accordance to the guidance provided under Factor 4: Phase 2 Leverage. Page 39 of 58

Committed Leverage Resources (up to 2 Points). You will receive 1 point if your application includes a total commitment of direct financial assistance (e.g. cash) in an amount not less than \$50,000 from either yourself or a unit of general government Partner or a philanthropic organization and 2 points if the amount is not less than \$250,000.

Note that grantees will be required to show evidence that committed leverage resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of leverage funds may be substituted after grant award, as long as the dollar commitment is met.

Phase 1 Factor 5: Regional Coordination and Long-term Commitment **Maximum Points: 5**

Describe any significant or major steps you have already taken or are seriously considering that commit you to increasing the resilience in your jurisdiction regardless of whether you receive a CDBG-NDR award. HUD will only award points for Phase 1 or invite an Applicant to Phase 2 if it has already taken (after the date of the Qualified Disaster) or firmly commits to take within one year of the announcement of Phase 2 results, one or more actions improving permanent resilience in a geography including at a minimum its most impacted and distressed target area(s). HUD will evaluate your response to this factor by assigning points for local, regional, and state commitments that may be reasonably expected to increase resilience. Up to 5 points are available and examples are provided in Phase 2: Factor 5 for categories and examples of changes that will be highly considered. In evaluating this factor, HUD will take into account the geographic scale of the area served by the resilience improvement or protection, and the degree to which the action as you describe it will clearly result in a significant improvement in resilience from the existing status or policy baseline for the area before the date of the Qualified Disaster. HUD will also take into account significant new actions taken after the date of NOFA publication. To receive points for this factor, you must provide a baseline and a goal outcome measure for at least one metric, (e.g., number of persons, households, businesses, acres of land, structures for XXX years) expected to be positively protected by each action or commitment. You must also provide the actual or planned effective date of any change. (See Factor 5: Phase 2 Long-Term Commitment for more detail.)

Phase 2 Factor 1: Capacity **Maximum Points: 20**

a. Past Experience of the Applicant (10 Points)

You will be rated on the extent to which you demonstrate recent experience in a wide range of areas related to understanding, planning for, and implementing disaster recovery and economic revitalization project(s) and program(s) in your community, together with experience working productively with team members and diverse stakeholders.

Provide examples of recent experience (within the last 3 years) managing resilient disaster recovery or other activities similar in scope, scale, and complexity to the ones you are proposing to undertake.

Examples must include a discussion of the specific tasks undertaken, actual results achieved, and the specific skills and resources applied to each task. Describe concisely and separately your experience and the experience of your Partner(s) in the specific activity categories proposed, including at a minimum experience with, as applicable to your project or program:

General Administrative Capacity

untimely. For any gap or vacancy, describe how and when you will fill the position or capacity gap. Do not include any individual's Social Security Number in your application.

For Phase 2, HUD will consider Partner capacity in scoring this factor if, for each Partner, your application submission

includes a letter of intent and AND a binding cooperation, subrecipient, or developer agreement, or a contract, as applicable, with the Applicant, contingent on grant award. See Appendices C and D for instructions on completing Partner documentation.

(2) References. You must include at least two references for recent work similar to, or of similar scope to, the programs covered under this NOFA and proposed to be undertaken by you. In addition, you may include one reference for each Partner. References should only include a contact name, address, phone number and email address so HUD may verify the information.

Alternatively, one reference may include one major news/feature or journal article, independent program evaluation, or a transcript from a reputable independent source other than you or a Partner. No video or audio recordings may be submitted. Such an article, evaluation, or transcript may be included in Attachment A Partner Documentation.

Note that under Public Law 113-2, applicants may have a contractor assist in administration of the grant but they cannot cede inherent governmental responsibilities to a contractor.

Under this Capacity factor, HUD will only consider Partners who have firm agreements to work with or for the Applicant if award is made (see Appendices C and D).

Phase 2 Factor 2: Need/Extent of the Problem

Maximum Points: 20

a. Unmet Recovery Need and Target Geography (5 Points; URN also a threshold factor) HUD is looking for thorough, evidence-based descriptions of Unmet Recovery Needs in the most impacted and distressed area and of resilience and recovery needs in a wider geography (region or state), with a clear, logical conclusion regarding the most appropriate approaches to address the identified needs.

You have completed Phase 1 and have a broad general framework that should extend beyond the CDBG-NDR MID-URN target area and beyond Unmet Recovery Needs and into the resilience needs of the larger region. Now you are proposing a specific project(s) for CDBG-NDR implementation funding, supported by leverage funding. In this narrative, you will focus on the MID-URN target geography and needs addressed by the specific project(s) for CDBG-NDR assistance, and you will also describe the use of the related funding described in the leverage factor (which may include supporting investments outside the most impacted and distressed target area).

You must identify the specific overall geography in which you will carry out your NDRC proposed program or project, by eligible county and relevant smaller geographic area, such as local jurisdiction, neighborhood, and Census tract(s) or Census block group(s).

Within the proposed overall NDRC geography, you must identify separately the CDBG-NDR MID-URN target area(s) that qualifies under the Unmet Recovery Need and most impacted and distressed threshold criteria (which should be substantially the same or inclusive of the geography that you discussed in your Phase 1 response to this Need Factor), if the overall NDRC proposal and the MID-URN area(s) are not identical. If a large number of Census tracts are involved, a list of the tracts may be submitted within Attachment F that will not count towards the page limit. You may apply for more than one project in more than one MID-URN target area; if you do, indicate, provide delineated data for, and name each area. Also, describe each Covered Project separately in

government e, insurance f, state government g, and the federal government Q. If these policies, alternatives, or features of my proposed project or larger idea of which your Phase 2 project is a stand-alone portion(s) had been implemented prior to the disaster(s), my MID-URN area and greater community would have been affected by the disaster in x, y, and z ways and cost individuals h, local government i, insurance j, state government k, and the federal government M." Describe the sources for your estimates.

(2) Considering the above, estimate the general amount of total investment in resilience necessary to appropriately benefit your community (not just the MID-URN area) cost-effectively now and in future. Put another way, how much could the resilience improvements you considered assist, protect, or support your long-term recovery and economic revitalization in your MID-URN target area? In the region or state? Describe how you arrived at your estimates.

(3) Past events have shown that vulnerable populations such as lower income households, persons with disabilities, homeless persons, the elderly, and minorities frequently are less resilient following a disaster. Describe the income characteristics of households in your MID-URN target area(s) and provide breakouts to the extent available for vulnerable population types. What are the specific unmet recovery and resilience needs of lower income households, and the businesses that employ persons from lower income households, in your target area? In the overall area affected by the Qualified Disaster? In the region or state? What are the key projected demographic and economic development trends for those regions, including, if data are available, the unmet needs of persons with disabilities or accessibility challenges? Will the effects of these trends affect recovery and resilience needs? Quantify and monetize to the extent feasible.

(4) Describe any relevant social, governmental, educational, environmental, or economic factors contributing to or hindering disaster recovery and resilience in MID-URN target geography and wider region.

c. Appropriate approaches. (7 Points) This is where you update the framing of your Phase I Idea or Concept. Based on the above responses and input from stakeholder consultation describe which CDBG-NDR activity or program type(s) (as waived) is the optimal choice to improve disaster recovery and resilience in your most impacted and distressed target area, and the greater region or state, as applicable. Also describe which CDBG-NDR ineligible action or approach is the optimal choice to improve and maintain resilience in your overall project area.

This is not the place to describe the specific projects you are proposing later in the Soundness of Approach factor. In this persuasive narrative, describe the more general logical conclusion(s) you have drawn from your consideration of the evidence you analyzed and the other information described above.

Given your analysis, what are the most appropriate recovery approaches or types of action to meet your unmet recovery and revitalization needs and address your community development objectives, including increasing resilience to current and future hazards and threats?

You must cross-reference or specifically update (iterate) your Phase I proposal in this response. For example, in a very low-lying area prone to repetitive flooding that the National Climate Assessment and other best-available information indicates will only worsen, the activity types most likely to improve both recovery and resilience might be voluntary flood buyouts inside the most impacted and distressed MID-URN target area using CDBG-NDR funds and in the larger NDRC proposal area using supporting leverage funds, with conversion of the buyout properties to absorb and contain floodwaters from future events as well as create areas that provide recreation and habitat. This could be paired with construction of new neighborhoods with affordable housing on higher ground for participating families and businesses. A coastal community subject to

your application for it to score highly in this complex, critical factor. In this section, the “must” items are not threshold factors that will automatically remove your entire application from further consideration, but failure to include responses to each of these items will reduce your score.

In this context, your response to this factor must:

- (1) Provide credible evidence that, once in service or underway, your proposed project(s) will decrease risk to vulnerable populations and improve community(ies) resilience.
- (2) Propose at least one metric per category to track for each proposed project. Whether or not you are proposing a Covered Project, you must review the BCA instructions found in Appendix H and select metrics related to the “Resiliency Value,” “Environmental Value,” “Social value,” and “Economic Revitalization” categories that best relate to your proposed activities. HUD is allowing you latitude to set the measures for the desired outcomes that will result from implementation of your proposed projects and programs, requiring only that the proposed metrics be clearly relevant to measuring the success of your proposed project(s) in the context of the objectives you set out in response to this NOFA. HUD encourages you to go further and incorporate periodic evaluation of project outcomes, including resilience outcomes, into the scope of your overall effort.
- (3) Describe your proposed CDBG-NDR-assisted projects or programs and the alternatives you considered, clearly and concisely establish how the proposed project responds to and addresses your Unmet Recovery Need and the framed recovery issues as updated from Phase I, and summarizes how your proposed project(s) or program(s) is eligible and meets a national objective (cross reference to your threshold response). (See Appendix E for instructions for waiver requests.)
- (4) Address the current and future risks from your identified vulnerabilities and other community development objectives. Specifically identify how and how much your overall proposal and your proposed CDBG-NDR-assisted project(s) will increase the resilience of your MID-URN target area, and region or state.
- (5) Describe how vulnerable populations benefit from your CDBG-NDR-assisted project and your overall proposal. Also, describe how you (or any partners) will train and employ Section 3 persons and will contract with Section 3 business concerns for economic opportunities per HUD’s rules at 24 CFR 135.9.
- (6) Describe how your proposal represents a model for other communities. Is your proposal scalable? Replicable? If yes, describe the mechanism. Does your proposal integrate existing required plans or strategies into a holistic vision?
- (7) Discuss feasibility. Your proposal, and especially each CDBG-NDR-assisted project(s), under this NOFA must be feasible, in the sense that you and your Partner(s) must be capable of implementing all of your proposed actions and activities sufficiently well to deliver the proposed benefits, including meeting the expected national objective. On another level, HUD will also consider whether your project has a feasible and effective design. For example, an infrastructure project must be designed in conformance with accepted design practices, established codes, standards, modeling techniques, or best practices. A project incorporating a financing assistance mechanism must respond to market conditions by identifying a market for the financial instrument and appropriately designing terms and conditions, and a project incorporating affordable housing must be designed to meet relevant building standards and be affordable to a particular market niche. For responses to this section, HUD will consider feasibility in the second sense, with a strong focus on how your project’s design will improve resilience. To this end:
 - i. Describe your overall proposal and each proposed CDBG-NDR project’s feasibility and effectiveness in providing protection from current and future threat(s) and hazard(s), including future risks associated with climate change. Indicate the level of protection and the expected useful life of your project(s) after implementation or completion.

HUD will evaluate your proposed project cost estimate on the extent to which projected sources are sufficient for the scope of the proposed project as a whole (not just the CDBG-NDR-assisted portion, to the extent the scopes differ).

Also provide a detailed Sources and Uses statement for each project or program within the NDRC proposal that reflects all funding, including leverage and identifying any related supporting commitments. The Sources and Uses Statement is not subject to page limits and may be submitted as part of Attachment B Leverage Documentation. The proposed uses for the CDBG-NDR funds must be identified in a separate column from other funds. You may provide additional description of your cost estimate in the narrative as needed to provide further detail on costs and/or detail restrictions associated with other sources.

f. Consistency with Other Planning Documents. This rating factor evaluates whether each applicant can provide evidence of consistency with other planning documents.

(Up to 2 points)

(1) Consolidated Plan and/or Regional Sustainability Plan. You will receive 1 point if the proposed activities are consistent with the Consolidated Plan and/or with a regional sustainability plan for the jurisdiction in which the most impacted and distressed target area is located. All applications must include the Certification of Consistency with the Consolidated Plan (form HUD-2991) in your attachments or the Applicant must commit to updating the Consolidated Plan within 6 months of grant award. You must provide a copy of the relevant section from the regional sustainability plan or letter from the appropriate regional planning official in your attachments. Zero points will be awarded if the required documentation is not provided.

(2) Mitigation Plan and/or Transportation Plan (for example, SIPs, TIPs, long-range transportation plan). You will receive 1 point if consistent with FEMA approved Local Mitigation Plan and/or DOT-approved Transportation Plan covering the most impacted and distressed target area. Provide relevant section from the plan/letter from the appropriate planning official in the comments (not covered by page limits). Zero points will be awarded if the documentation is not provided.

Phase 2 Factor 4: Leverage

Maximum Points: 10

HUD views leveraged commitments as an indicator of support in the community for this CDBG-NDR effort (Phase 1) or project (Phase 2). These additional resources will also increase the effectiveness of the proposed grant activities. These rating factors evaluate the extent to which you demonstrate that you have secured from other sources either direct financial commitments to implement the CDBG-NDR-assisted project or program proposed in this application or supporting commitments to support the overall proposal, in accordance with the criteria below.

Direct Financial Commitments. A direct financial commitment (direct leverage) is cash committed by an Applicant or a Partner to the CDBG-NDR-assisted eligible activity, project, or program itself, and the funding is available to you to directly carry out your CDBG-NDR proposal. All direct leverage must be included in the budget for the project together with the CDBG-NDR assistance, as described below and in Factor 3 - Phase 2. HUD will accept as direct leverage a pledge of planning and administrative costs incurred by the Applicant (including costs incurred under a contract for planning or administrative

services), but HUD will not accept a pledge of in-kind costs incurred by Partners, subrecipients, or other entities as direct leverage.

Supporting Commitments. A supporting commitment (or supporting leverage) is funding that you or your Partners have available to carry out activities that directly support the overall proposal, but are not

- (b) State and local housing finance agencies;
- (c) Local governments;
- (d) Foundations;
- (e) Government Sponsored Enterprises such as the Federal Home Loan Bank, Fannie Mae, and Freddie Mac;
- (f) Colleges and universities;
- (g) HUD and other federal agencies, provided the statutory language of the funding source allows the funds to be used for these purposes. (HUD will not make a determination regarding whether other agencies will permit the pledge of a federal award as leverage). Public Housing funds and other funding provided under the U.S. Housing Act of 1937, as amended may be not used as match or leverage. Funds awarded under P.L. 113-2 may not be considered as leverage. Annual Community Development Block Grant (CDBG) awards under the HCD Act may be considered, however, to be considered as leverage, the proposed activity must be included in the CDBG recipient's annual action plan. Such plans may be amended to include the CDBG-NDR funded activity(ies) eligible under those grants;
- (h) Financial institutions, banks, insurers;
- (i) Other private funders; or
- (j) Tax credits will be considered as leverage in the amount of the face value of the tax credit, but the amount of the investment necessary to generate the tax credit will not be considered as leverage unless firm commitment documentation is provided from the investors in addition to the documentation of the pledge of tax credits.

(8) Although direct and supporting commitments must generally be pledged after the initial publication of the original NDRC NOFA on September 17, 2014, HUD will accept as leverage a general award that was made to the Applicant prior to the initial publication of the NOFA if the Applicant can show that the Applicant made a determination about the use of the award for an activity and geography after September 17, 2014. For example, FEMA public assistance awards are generally made immediately after the disaster (before NOFA publication) and therefore would not be acceptable as leverage. However, HUD may accept the pledge of these funds as supporting leverage if the applicant can show that the CDBG-NDR funds enabled the grantee to redirect, expand, or complete the FEMA public assistance project in the overall target area.

(9) Leverage Source May Not Consider CDBG-NDR or CDBG-DR Funds as Match or Cost Share. No funds may be counted as direct commitments or supporting commitments to the extent that CDBG-DR or CDBG-NDR funds are considered match or cost share by the source of those funds.

(10) Direct commitments that are leverage must be included in the overall project(s) Budget(s) required in the Soundness of Approach Factor (Factor 3 – Phase 2, item (e)).

(11) Note that grantees will be required to show evidence that committed leverage resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of leverage funds may be substituted after grant award, as long as the dollar commitment is met.

(12) The Applicant cannot charge to the grant any administrative and planning costs pledged as leverage.

You will receive up to 10 points as described below based on the amount of leveraged commitments relative to the amount of CDBG-NDR funds requested. In calculating the ratio, HUD will only include supporting commitments in an amount up to 1.5 times the amount of cash leverage that has been firmly committed. For example, if \$200,000 of cash leverage is committed and \$400,000 of supporting commitments is acceptable, HUD will only include \$300,000 of the supporting commitments. If you propose both metro and non-metro projects in one application, HUD will score leverage commitments for each project in the appropriate column and award points

and implementing the action to complete the changes by a date certain, subject to loss of some or all awarded funds to you if the entity fails to complete the change(s). (Such attachments are not subject to the page limits.)

If you are proposing a Covered Project, you will only receive points for an action or commitment if you incorporate consideration of the effects of the action or commitment into your BCA by quantifying (or attempting to quantify) its value.

The categories of long-term commitments or actions are listed below. Your narrative response to this factor will indicate the appropriate category for each action or commitment you choose.

a. Lessons learned. Describe how the lessons learned in developing and implementing your proposal will be embedded in your community's and your region's overall approach to resilience and recovery. Focus on changes that you or your Partner(s) are committing to undertake and that are most likely to measurably improve resilience at least during the projected useful life of your proposal for Phase 2, if not permanently. This subfactor is the general or miscellaneous category. If your commitment or change fits better under one of the subfactors below, you should describe it there, not here.

b. Legislative action. If you or any governmental Partner(s) have taken or will take legislative action(s) after the September 2014 date of publication of the original NDRC NOFA to enhance the resilience of your community(ies), describe the specific action(s). Examples of such actions include implementing significant updates to state and local building codes or zoning that reduces an identified vulnerability, and other matters within the span of control of the Applicant and public sector Partners.

c. Raising standards. HUD is encouraging you to consider raising enforceable standards for construction and other real property significantly above the minimum, but will also provide points to those communities who have already adopted above-established-guidelines-or-minimums standards that are measurably increasing resilience now and will continue to do so into the foreseeable future. Your response must identify your existing standard, if any, and the change you have already undertaken or propose.

1. If your community is subject to flooding, do you or will you require freeboard above the minimum NFIP requirements? Describe the requirement, and how this is or will be required and enforced in your state, region, or most impacted and distressed target area. For example, a community(ies) in your target area may opt to use FEMA's latest maps plus at least 2 feet above base flood elevation.

2. Have you or will you raise standards for permeable surfaces and include green roof requirements for new construction or substantial reconstruction in the floodplain? Describe the requirement, and how this is or will be required and enforced in your most impacted and distressed target area, region or state.

3. Have you implemented or will you enhance state or local wetlands preservation mechanisms or requirements, including a compensatory mitigation plan, statute or ordinance, or have you or will you otherwise guarantee that wetlands within the 500 and 100 year floodplains will be preserved? Describe the mechanism or requirement, as well as how this is or will be required and enforced in your state, region, or most impacted and distressed area.

4. For non-flood hazards, describe the actions you have or will require beyond an established minimum standard to improve resilience. Within your response, if you are proposing a building code change, describe the current version of the model building codes you have adopted and enforced in the project area and provide a summary of or links to any relevant exceptions, un-adopted portions of the model, or adopted code supplements specific to non-flood hazard reduction.

d. Resilience actions related to plan updates or alignment. Communities have many tools to use to speed disaster recovery and to improve resilience. Ensuring that important plans align is a measure recommended by researchers and experienced funders. For example, according to the Georgetown Climate Center's April 2014 Summary Report – Workshop on Disaster Relief, FEMA's required hazard mitigation plans often do not relate to local land use plans and regulations, which may result in missed

funding expected after the date of the original NDRC NOFA) and the financing's primary and co-benefits in your most impacted and distressed area and in your region or state.

2. Low- and moderate-income persons are extremely vulnerable to income disruption following a disaster. Employers of low- and moderate-income persons, such as Section 3 employers, may have difficulties securing credit following a disaster, may not qualify for SBA assistance, and may be less likely to return to business at all. Do you have a financing source or mechanism available to improve the resilience of employers of low- and moderate-income persons (such as Section 3 residents) in your most impacted distressed area, region, or state? Describe the source or mechanism (including its expected start and end (if any) dates, and annualized funding expected after the date of the original NDRC NOFA) and the financing's primary and co-benefits in your most impacted and distressed area and in your region or state.

3. What actions will or have you take(n) to increase the percentage of appropriately and fully-insured private and public buildings, homes, and businesses in your most impacted and distressed area, region, or state? Describe these actions, expected outcomes and benefits, how vulnerable populations and the businesses serving them will be included, and how efforts to improve insurance coverage will necessarily continue over extended durations.

A.2. NOFA Priorities.

A.3. Bonus Points

This Program chooses not to award bonus points.

B. Reviews and Selection Process.

HUD's selection process is designed to ensure that grants are awarded to eligible applicants that submit the most meritorious applications. HUD will consider the information you submit by the application deadline date. After the application deadline date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you or any third party may want to provide. HUD may verify information provided in your application as needed by sending a written request for clarification. Responses to such inquiries will be required within 2 business days.

1. Application Screening

a. HUD will screen each application to determine if:

- (1) The key eligibility criteria in section III.A are met;
- (2) It is deficient, i.e., contains any Technical Deficiencies; and
- (3) It meets the threshold criteria expressly incorporated into this NOFA from section III.C.2. of the General Section (see section on Additional Overview Information for a list of incorporated General Section requirements).

b. Corrections to Deficient Applications — Cure Period. The subsection entitled, "Corrections to Deficient Applications," in section V.C.2 of the General Section applies to this NOFA (see section on Additional Overview Information for a list of incorporated General Section requirements). Examples of curable (correctable) technical deficiencies include, but are not limited to, inconsistencies in the funding request, the Key Eligibility Data Form is not filled out completely, failure to submit the standard forms, and failure to submit a signature and/or date of signature on a certification. Failure to submit a narrative exhibit or an attachment is not a technical deficiency that can be corrected. As detailed in the General Section, all

of them, HUD will select for funding the application(s) with the highest score for the overall Need Rating Factors. If a tie remains, HUD will select for funding the application(s) with the highest score for the overall Capacity Rating Factors, then Soundness of Approach, Leverage, and Long-Term Commitment.

5. Remaining Funds. HUD reserves the right to reallocate remaining funds from this NOFA to other eligible entities under P.L. 113-2.

(a) If the total amount of funds requested by all applications found eligible for funding under this NOFA is less than the amount of funds available from this NOFA, all eligible applications will be funded in rank order and those funds in excess of the total requested amount will be considered remaining funds.

(b) If the total amount of funds requested by all applications found eligible for funding under this NOFA is greater than the amount of funds available from this NOFA, eligible applications will be funded until the amount of non-awarded funds is less than the amount required to feasibly fund the next eligible application. In this case, the funds that have not been awarded will be considered remaining funds.

6. Review and Selection Process References from the General Section.

The section on Additional Overview Information in this NOFA incorporates the relevant General Section requirements applicable to this NOFA, including the sub-sections of section V.C of the General Section that address the selection process.

C. Anticipated Announcement and Award Dates.

HUD anticipates announcing winners of Phase 2 under this NOFA approximately 4 months after the application due date.

VI. Award Administration Information.

A. Award Notices.

1. Negotiation. HUD will follow the instructions in the General Section regarding negotiation with selected applications to determine the specific terms of the funding agreement and budget (see section on Additional Overview Information in this NOFA, which incorporates the section of the General Section requirements).

2. Adjustments to Funding. HUD will follow the instructions in the General Section regarding Adjustments to funding (see section on Additional Overview Information in this NOFA, which incorporates section VI.A.2 of the General Section requirements). Note that in addition to the non-duplication provisions of the General Section, HUD will not award CDBG-NDR funds that would duplicate benefits as prohibited in Section 312 of the Stafford Act and Public Law 113-2. More guidance related to prevention of duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011) and in Appendix A to this NOFA.

3. Funding Errors. The section on Additional Overview Information in this NOFA incorporates section VI.A.3 of the General Section regarding funding errors.

4. Performance and Compliance Actions of Funding Recipients. The section on Additional Overview Information in this NOFA incorporates section VI.A.4 of the General Section regarding performance and compliance of funding recipients.

5. Debriefing. HUD will provide an applicant a copy of the total score received by its application and the score received for each rating factor.

6. Initial Announcement. The HUD Reform Act prohibits HUD from notifying you as to whether or not

Appendix A.

- (1) HUD will provide training and technical assistance on the submitting of quarterly reports.
 - (2) Completion of quarterly reports is mandatory for all grantees, and failure to do so within the required timeframe will result in corrective actions up to and including suspension of grant funds until the report is submitted and approved by HUD.
 - (3) Grantees will be held to the milestones in the program schedule, as approved by HUD. Adjustments to the schedule may be made by the grantee only with prior HUD approval. All obligations of funds by the Applicant or a partner must be recorded as obligations in DRGR on at least a quarterly basis.
- 2. Race and Ethnic Data Reporting.** The race and ethnic data reporting requirements of VI.C.3 of the General Section are not applicable. The CDBG regulatory requirements regarding recordkeeping and reporting at 24 CFR 570.506 for UGLGs, and 570.490 for states are applicable. Grantees will maintain the required records and submit summary racial and ethnic data by activity into DRGR each quarter; as such information becomes available as projects progress.

VII. Agency Contact(s).

HUD staff will be available to provide clarification on the content of this NOFA. Please note that HUD staff cannot assist applicants in preparing their applications.

Questions regarding specific program requirements should be directed to the point of contact listed below.

Before the application deadline date, HUD staff will be available to provide you with general guidance and technical assistance. However, HUD staff are not permitted to assist in preparing your application. If you have a question or need a clarification, you may send an e-mail message to ResilientRecovery@hud.gov. Before the application deadline date, frequently asked questions (FAQs) on the NOFA will be posted to the National Resilient Disaster Competition webpage at <https://www.hudexchange.info/cdbg-dr/resilientrecovery>. You may obtain general information about HUD's CDBG-NDR program from HUD's website at <https://www.hudexchange.info/cdbg-dr/resilient-recovery>.

Questions concerning the General Section should be directed to the Office of Strategic Planning and Management, Grants Management and Oversight Division at 202-708-0667 (this is not a toll-free number).

Persons with hearing or speech impairments may access these numbers via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

VIII. Other Information.

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for the original NOFA published in September 2014, in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and remains in applicable to this revised NOFA. The FONSI is available for inspection at HUD's Funds Available web page at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail/nofa14/ndrc.

Paperwork Reduction Act Statement. The information collection requirements contained in this document were approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number [Paperwork Reduction Act Number 2506-0203]. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The public reporting burden for the collection of information is estimated to average 35.59 hours for Planning Grant applications per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application,

Exhibit F

National Disaster Resiliency Competition (NDRC)

HCD NDRC Application
Certifications

Partnership Documentation:
Sierra Nevada Conservancy

The undersigned, The Department of Housing and Community Development, as grantee, does hereby certify and agree to the following:

- a. The grantee certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within its jurisdiction and take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard (see 24 CFR 570.487(b)(2) and 570.601(a)(2)). In addition, the grantee certifies that agreements with subrecipients will meet all civil rights related requirements pursuant to 24 CFR 570.503(b)(5).
- b. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.
- c. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.
- d. The grantee certifies that the Community Development Block Grant National Disaster Resilience application is authorized under State and local law (as applicable) and that the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG-NDR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this NOFA.
- e. The grantee certifies that activities to be administered with funds under this NOFA are consistent with its Application.
- f. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for in this NOFA.
- g. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.
- h. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105 or 91.115, as applicable (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each UGLG receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).
- i. Each State receiving a direct award under this Notice certifies that it has consulted with affected UGLGs in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including method of distribution of funding, or activities carried out directly by the State.

j. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas for which the President declared a major disaster in the aftermath of an event occurring in 2011, 2012, or 2013, pursuant to the Stafford Act.

(2) With respect to activities expected to be assisted with CDBG-NDR funds, the

Application has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG-NDR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent of the grant amount is expended for activities that benefit such persons, unless waived by HUD based on a finding of compelling need.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG-NDR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

k. The grantee certifies that it (and any subrecipient or recipient) will conduct and carry out the grant in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

l. The grantee certifies that it has adopted and is enforcing the following policies. In addition, a State receiving a direct award must certify that it will require any UGLG that receives grant funds to certify that it has adopted and is enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

m. Each State or UGLG receiving a direct award under this Notice certifies that it (and any subrecipient or recipient) has the capacity to carry out the activities proposed in its Application in a timely manner; or the State or UGLG will develop a plan to increase capacity where such capacity is lacking.

n. The grantee will not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent in FEMA's most recent and current data source unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

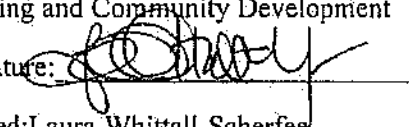
o. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

p. The grantee certifies that it will comply with applicable laws.

q. The grantee certifies that it has reviewed the requirements of this NOFA and requirements of Public Law 113-2 applicable to funds allocated by this Notice, and that it has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, to ensure timely expenditure of funds, to maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

Dated this 20th day of October 2015.

California Department of
Housing and Community Development

Signature: 

Printed: Laura Whittall-Scherfee

Title: Deputy Director

Division of Financial Assistance



AUBURN OFFICE
11521 Blocker Drive, Ste. 205
Auburn, CA 95603
p (530)823 4670 f (530)823 4665

Appendix D
PARTNERSHIP AGREEMENT
BETWEEN the State of California AND Sierra Nevada Conservancy
FOR
Community Development Block Grant National Disaster Resilience Competition
(CDBG-NDR)

THIS AGREEMENT, entered this 22 day of October, 2015 by and between the State of California (herein called the "Applicant") and Sierra Nevada Conservancy (herein called the "Partner").

WHEREAS, the Applicant has applied for funds from the United States Department of Housing and Urban Development under the Disaster Relief Appropriations Act, 2013, Public Law 113-2, for the Community Development Block Grant National Disaster Resilience (CDBG-NDR) competition; and

WHEREAS, the Applicant wishes to engage the Partner to assist the Applicant in using such funds if awarded;

NOW, THEREFORE, it is agreed between the parties hereto, contingent upon the award of CDBG-NDR funds to the Applicant, that;

I. SUBRECIPIENT AGREEMENT/DEVELOPER AGREEMENT/CONTRACT

If the Applicant is awarded a CDBG-NDR grant from HUD, the Applicant/Grantee shall execute a written subrecipient agreement, developer agreement, contract, or other agreement, as applicable, with the Partner, for the use of the CDBG-NDR funds before disbursing any CDBG-NDR funds to the Partner. The written agreement must conform with all CDBG-NDR requirements and shall require the Partner to comply with all applicable CDBG-NDR requirements, including those found in Disaster Relief Appropriations Act, 2013 (Public Law 113-2), title I of the Housing and Community Development Act of 1974 (42 USC 5302 et seq.), the CDBG program regulations at 24 CFR part 570, the Notice of Funding Availability for HUD's National Community Development Block Grant Resilient Disaster Recovery Allocation

and any subsequent published amendments (the CDBG-NDR NOFA), and the Applicant's CDBG-NDR NOFA application.

II. SCOPE OF SERVICE

A. Activities

The Partner will be responsible for using CDBG-NDR funds to carry out activities in a manner satisfactory to the Applicant and consistent with any standards required as a condition of providing these funds. Such use will be in compliance with the CDBG-NDR NOFA, the Applicant/Grantee's application for CDBG-NDR assistance and the Applicant/Grantee's Grant Agreement for CDBG-NDR. Such use will include the following activities:

Program/Project Delivery

The Sierra Nevada Conservancy is well-positioned to administer, coordinate and manage the Forest and Watershed Health activities and Biomass Facility and Wood Products Campus planning and implementation activities awarded under this CDBG-NDR Phase II application. In addition to being experienced in managing complex projects with multiple funding sources and developing innovative green infrastructure projects, the SNC is the lead state agency responsible for implementing the Sierra Nevada Watershed Improvement Program - a coordinated, integrated, collaborative program to restore the health of California's primary watershed - and is an active partner in restoration and forest management projects throughout the Sierra Nevada Region.

The SNC has a long history of successfully developing, funding and managing forest and watershed health projects throughout the Sierra Nevada Region. The SNC has received and distributed over \$50 million in Proposition 84 grant funding and is currently working to distribute \$25 million in Proposition 1 funding in the Region.

Additionally, the SNC has worked with a broad range of community, agency and industry stakeholders to find economic uses for the excess biomass removed in forest restoration activities. Their involvement has included developing, awarding and managing biomass utilization planning and implementation grants including feasibility and engineering studies to establish biomass utilization facilities. Furthermore, the SNC is identified in the California 2012 Bioenergy Action Plan as the state agency responsible for pursuing funding for forest bioenergy research and implementation and assisting communities with the development of community scale projects.



As a partner in the CDBG-NDR competition, the SNC will provide our Regional and programmatic implementation expertise as well as our technical and project management experience to successfully carry out the following activities should they be awarded through the CDBG-NDR application.

SNC will work with partners to complete CDBG-based green, public infrastructure work on forest and watershed lands; and develop sustainable, resilient energy and economic-development opportunities by way of planning and implementing a biomass facility and wood products campus in Tuolumne County.

Activity 1: The Sierra Nevada Conservancy (SNC) will administer and coordinate the Forest and Watershed Health activities identified under Phase II of the NDRC:

- Restoration and Reforestation
- Biomass Removal and Thinning
- Strategic Fuel Breaks
- Rangeland Improvements
- Noxious Weed Treatments

Activity 2: SNC will manage the Biomass and Wood Products Facility planning and implementation activities awarded under the NDRC in coordination with CalEPA and CalFIRE. SNC will establish interagency agreements with partners and contractors to develop a feasibility study and a state-level Bioenergy Working group to identify opportunities for replicating the process across the State of California.

- Biomass Facility and Wood Products Campus Planning Phase 1 - Pre-development, Site Selection, Architectural Design & Engineering, Procurement, Permitting, Environmental Review
- Biomass Facility and Wood Products Campus Phase 2 – Build-out and Implementation

SNC agrees to implement contracts/agreements with USFS, CalFIRE, CalEPA, the CCC, and others, as needed, to carry out and complete the projects and programmatic/reporting requirements and obligations identified in Phase II of the NDRC.

B. Project Schedule

CDBG-NDR funding is subject to strict statutory deadlines for expenditure. In accordance with section 904(c) of title IX of the Disaster Relief Appropriations Act, 2013, a Grantee is required to expend all CDBG-NDR funds within two years of the date that HUD signs the grant agreement.

Consistent with this duty, the Partner is required to complete all CDBG-NDR assisted activities identified in section II.A above within 24 months.



The Partner agrees to implement the following:

Assuming commencement of the project as soon as funds awarded

Forest and Watershed Health Program:

- Reforestation Site Prep and tree planting will occur when the ground and climate are suitable for activities after receipt of the funds (estimated March 2016 – September 2019.)
- Fuel Breaks planning will start as soon as the funds are received. Implementation will begin after the fire season (estimated October 2016 – September 2019).
- Biomass Removal will commence as soon as the funds are received and the ground and climate allow.
- Rangeland Infrastructure will begin in May 2016, the beginning of field season.
- Noxious Weed Removal (estimated May 2016 – September 2019)

Biomass Facility and Wood Products Campus:

- Phase 1 – Pre-development, Site Selection, Architectural Design & Engineering, Procurement, Permitting, Environmental Review (estimated January 2016 – August 2017)
- Phase 2 – Build-out and Implementation (estimated August 2017 – September 2019)

C. Staffing

Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Applicant/Grantee.

III. BUDGET

The Applicant/Grantee may require a more detailed budget breakdown than the one contained herein, and the Partner shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Applicant/Grantee. Any amendments to the budget must be approved in writing by both the Applicant/Grantee and the Partner.

In order to adequately manage the Forest and Watershed Health program and the planning and implementation activities associated with developing a Biomass and Wood Processing Campus, the Sierra Nevada Conservancy will need the following:



Current projected budget for Forest and Watershed Health is \$40,000,000.
Current projected budget for Biomass and Wood Processing facility is \$22,000,000.

Activity	Budget
Forest & Watershed Health	Sub-Total: \$40M
Biomass removal & thinning; green infrastructure restoration and reforestation; noxious weed removal; rangeland improvements; strategic fuel breaks	\$40,000,000
Biomass Facility and Wood Products Campus	Sub-Total: \$22M
Phase 1 - Pre-development, Site Selection, Architectural Design & Engineering, Procurement, Permitting, Environmental Review	\$6,000,000
Phase 2 - Implementation and Build-Out	\$16,000,000

IV. SPECIAL CONDITIONS

None

V. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

VI. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

VII. WAIVER

The Applicant's failure to act with respect to a breach by the Partner does not waive its right to act with respect to subsequent or similar breaches. The failure of the Applicant to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

VIII. ENTIRE AGREEMENT

This Agreement between the Partner and the Applicant for the use of CDBG-NDR funds, supersedes all prior or contemporaneous communications and proposals, whether electronic,



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oral, or written between the Partner and the Applicant/Grantee with respect to this Agreement. By way of signing this agreement, the Partner is bound to perform the agreements within this agreement or any HUD approved amendment thereof. Any amendment to this agreement must receive prior approval by HUD.

Date October 22, 2015

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

[Applicant]

By: [Signature]
Title: Deputy Director

[Partner]

By: [Signature]
JIM BRANHAM
Executive Officer

