STANDARD AGREEMENT FOR
PROFESSIONAL SERVICES
NDRC Consulting Services- Phase II

This Agreement ("Agreement") is made this 21 day of January 2020, by and between the County of TUOLUMNE ("County") and Terry Cox dba. Cox Consulting, ("Consultant"). This Agreement is in supplement to the Agreement for NDRC Consulting Services- Phase I made on September 5, 2017 by and between the County and Consultant. The Phase I and Phase II scope of services were established by the Request for Proposals released on July 28, 2017 and the County subsequent award to the Consultant on September 5, 2017.

1. **Scope of Services:** Consultant shall perform the services as described in Exhibit A, "Scope of Work" Phase II and comply with Performance Measures. Consultant shall provide all staffing and materials necessary to perform the work as outlined in the Scope of Work, Phase II.

2. **Time of Performance**: The services of Consultant are to commence upon execution of this Agreement and shall be continue until September 30, 2022. This agreement may be extended for one (1) six (6) month period.

3. **Compensation and Reimbursement:** For Consultant's performance of Scope of Work, Phase II services, Consultant shall be paid in accordance with the rates listed in Exhibit B, for a total not to exceed $140,000. If services in addition to those required by Scope of Work, Phase II, are required, the rates listed in Exhibit B will be utilized for compensation calculation. Any request for additional compensation or expenses requiring County payment to exceed the "not-to-exceed" maximum amount payable in Exhibit B shall not be approved or allowed unless consultant obtains County's written approval prior to incurring the additional expenses or performance of additional work. In the event payments equal the "not to exceed" amount, Consultant shall complete all services required under this Agreement without further compensation or cost reimbursement. Payment by County under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the County at the time of payment.

4. **Method of Payment:** Consultant shall submit monthly billings to County with back up timesheets and narratives to document hours worked. Notwithstanding any provisions of this Agreement, payment to the Consultant shall not relieve the Consultant of liability to the County for damages sustained by the County because of any breach of this Agreement by the Consultant, and County may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the County from Consultant is determined.

5. **Ownership and Confidentiality of Documents:** All plans, reports, drawings, electronic files, designs, data, graphics, studies, documents and other writings or incidental work product prepared by and for Consultant, and by and for subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall be the property of the County, and the County shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such materials to County in orderly fashion upon request, or if not previously provided, upon completion of the scope of services or termination of this Agreement and prior to release of the retention. Without the prior written consent of County, Consultant shall keep confidential and not disclose to any person, other than Consultant's subcontractors, all data and information generated by Consultant in the performance of services, or furnished to Consultant by County and marked confidential; provided, however, this provision shall not apply to data or information which are in the public domain, or previously known to

Consultant, or required to be disclosed by an order issued by a court, administrative agency or other authority with proper jurisdiction.

County waives any and all claims against Consultant based upon reuse of these documents or materials for any other project not the subject of this Agreement or any unauthorized changes by the County or any third party under County's direction.

6. **Independent Contractor:** It is understood that Consultant, in the performance of the services pursuant to this Agreement shall act as and be an independent contractor and shall not act as an agent or employee of the County. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to County's employees, and Consultant hereby expressly waives any claim it may have to any such rights. All employees, agents, contractors, subcontractors hired or retained by the Consultant are performing in that capacity for and on behalf of the Consultant and not the County. The County shall not be obligated in any way to pay any wage claims or other claims made against the Consultant by any such employee, agent, contractor or subcontractor, or any other person resulting from the performance of this Agreement.

7. **Conflict of Interest:** No member, officer, or employee of the County of Tuolumne or its designees or agents, and no other public official of such locality or localities who exercise any functions or responsibilities within respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for grant activities to be performed in connection with the program assisted under this Agreement. No congressional representative and no resident commissioner shall receive any benefit from this project.

8. **Professional Ability of Consultant:** Consultant warrants that it has all of the necessary professional capabilities and experience, as well as all tools, instruments, facilities, and other resources necessary to provide the County with the services contemplated by this Agreement.

9. **Hold Harmless/Indemnification:** Contractor shall indemnify, defend, save, protect and hold harmless County, its elected and appointed officials, officers, employees, agents and volunteers (collectively, "County") from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, consultants, or any person under its direction or control and shall make good to and reimburse County for any expenditures, including reasonable attorney's fees, the County may make by reason of such matters and, if requested by County, shall defend any such suits at the sole cost and expense of Contractor. Contractor's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor shall not be required to indemnify or defend County for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of the County.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. This indemnification clause shall survive the termination or expiration of this Agreement.

10. **Insurance:** Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the Agreement, the following insurance policies with insurers licensed in the State of California and possessing a Best's rating of no less than A:VII. The policies or certificates thereof shall provide that thirty (30) days prior to cancellation or material change in the policy, notices of the same shall be given to the County by certified mail, return receipt requested, for all of the following stated insurance policies:

a. **Workers' Compensation Coverage:** Workers' Compensation Insurance for its employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance in accordance with the laws of the State of California for all of the subcontractor's employees.

b. **General Liability Coverage:** Commercial general liability insurance in an amount not less than one million dollars ($1,000,000) per occurrence for bodily injury and $100,000 per occurrence for property damage.

c. **Automobile Liability Coverage:** Automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars ($1,000,000) for each occurrence of bodily injury and $100,000 per occurrence for property damage.

d. **General Requirement:** If a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

e. **Policy Endorsements:** Each insurance policy, except Workers' Compensation and Professional Liability, shall be endorsed with the following specific language:

1) The County of TUOLUMNE, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

2) This policy shall be considered primary insurance as respects the County, its elected or appointed officers, officials, employees, agents and volunteers (to the extent of the Consultant's negligence in the performance of its services under this Agreement), and shall include no special limitations to coverage provided to additional insured. Any insurance maintained by the County, including any self-insured retention the County may have, shall be considered excess insurance only and shall not contribute with it.

3) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

4) The insurer waives all rights of subrogation against the County, its elected or appointed officers, officials, employees, agents and volunteers.

5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its elected or appointed officers, officials, employees, agents or volunteers.

6) The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' written notice has been received by the County.

f. **Deductibles and Self-insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the County. At the County's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

g. **Evidence of Insurance and Endorsements:** Consultant shall provide evidence of required insurance with original endorsements to County as may be required by the Risk Manager. Evidence of such insurance shall be filed with the County on or before commencement of performance of this Agreement. Current proof of insurance shall be kept on file with the County at all times during the term of this Agreement.

h. **Unsatisfactory Policies:** If at any time any of the said policies or endorsements shall be reasonably unsatisfactory to the County Risk Manager, as to form or substance, or if a company issuing such policy shall be reasonably unsatisfactory to the County Risk Manager, the Consultant shall promptly obtain a new policy, submit the same to the County Risk Manager for approval and submit a certificate thereof as herein provided.

i. **Failure to Comply**: Upon failure of the Consultant to furnish, deliver or maintain such insurance and evidence of the same as above provided, this Agreement, at the election of the County, may be forthwith declared suspended, or terminated. Failure of the Consultant to obtain and/or maintain any required insurance shall not relieve the Consultant from any liability under this Agreement.

11. **Compliance with Laws:** Consultant shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Consultant's performance under this Agreement. Specifically, Consultant shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

12. **Licenses:** Consultant represents and warrants to County that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession.

13. **Controlling Law Venue:** This Agreement and all matters relating to it shall be governed by the laws of the State of California and in any action brought relating to this Agreement, this Agreement shall be deemed to have been made and is to be performed in the County of Tuolumne.

14. **Written Notification:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either delivered personally, transmitted by facsimile machine or sent prepaid, first class United States mail. Any such writing shall be addressed or transmitted to the other party at the address, location or facsimile number set forth below. Either party may change its address, location or facsimile number by notifying the other party of the change. Notice shall be deemed received when (1) delivered personally, (2) transmitted by facsimile, or (3) 48 hours from the time of deposit in a United States mail box if mailed as provided in this paragraph.

	County:	**Consultant:**
Primary Contact:	Maureen Frank	Terry Cox
Organization:	County of Tuolumne	Cox Consulting
Address:	2 South Green Street Sonora, CA 95370	P.O. Box 3093 Sonora, CA
FAX:	(209) 533-5510	(209) 533-8810

15. **Consultant's Books and Records:**

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to County for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Consultant.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall, be made available for inspection or audit, at any time during regular business hours, upon written request by the County Administrator, County Counsel, County Auditor, the State Office of Housing and Community Development or a designated representative of any of these officers. Copies of such documents shall be provided to the County for inspection at County Administration Center when it is practical to do so. Otherwise unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where County has reason to believe that such records or documents may be lost or discarded due to

dissolution, disbandment or termination of Consultant's business, County may, by written request by any of the above-named officers, require that custody of the records by given to the County and that the records and documents be maintained in County Administration Center. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

16. **Entire Agreement:** This Agreement constitutes the complete and exclusive statement of agreement between the County and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement. The Consultant has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and material needed, and its making of this Agreement is based on such independent investigation and research.

17. **Amendments:** This Agreement may be modified or amended only in writing executed by both Consultant and County and approved as to legal form by the County Counsel.

18. **Waiver:** No failure on the part of County to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. A waiver by County of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

19. **Litigation Expenses and Attorney's Fees:** Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees, discovery expenses, court costs and expert witness fees.

    It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Tuolumne, State of California.

20. **Execution in Counterparts:** This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In enforcing this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Assignment & Subcontracting: The parties recognize that a substantial inducement to County for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the prior written consent of the County. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the County. If County consents to such subcontract, Consultant shall be fully responsible to County for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between County and subcontractor nor shall it create any obligation on the part of the County to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

21. **Termination:** This agreement may be terminated as follows by County at County's option upon Consultant's' failure, refusal or neglect to perform the duties hereunder or for any reason satisfactory to County provided, however, Consultant shall be given thirty (30) days written notice of such termination. This agreement may terminate by the Consultant upon County failure, neglect or refusal to make any payment as required hereunder. This agreement may be terminated by either party with a thirty (30) day intention notice. Consultant shall be entitled to compensation for services performed acceptably up to the effective date of termination

22. **Delegation:** The County Administrator, or their designee, is authorized to take any action permitted or required by the County in implementing the provisions of this Agreement.

23. **Paragraph headings:** Paragraph headings shall not affect the scope, meaning, intent, or applicability of the provisions of the paragraph.

24. **Partial Invalidity**: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

25. **Funding Availability:**

    a. It is mutually agreed that if the County budget of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Consultant or to furnish any other considerations under this Agreement and Consultant shall not be obligated to perform any provisions of this Agreement.

    b. If funding for this project is reduced or deleted by the County budget for purposes of this program, the County shall have the option to either cancel this Agreement with no liability occurring to the County or offer an Agreement amendment to Consultant to reflect the reduced amount.

    c. If funding for this project is reduced or deleted by the State of California Housing and Community Development (HCD), the County shall have the option to either cancel this Agreement with no liability occurring to the County or offer an Agreement amendment to the Consultant to reflect this reduced amount.

26. **Community Development Block Grant (CDBG) Provisions:**

    a. The Consultant agrees to:

        i. Perform the work in accordance with the Grant Agreement #16-NDR-11291, which includes both, CDBG National Disaster Resilience (NDR) funding and CDBG Neighborhood Stabilization Program (NSP) 1 funding. All applicable CDBG-NDR and CDBG-NSP federal, state and local requirements must be followed including but not

limited to housing and building codes, such as environmental, building, planning, zoning, health and safety, relocation labor, fair employment, and historic preservation;

ii. Comply with the federal and State CDBG-NDR and CDBG-NSP requirements included in Exhibit "D";

iii. Where applicable, maintain at least the minimum State required worker's compensation insurance for those employees who will perform all or any part of the CDBG-funded work;

iv. Maintain, if legally required, unemployment insurance, disability insurance and liability insurance reasonable to compensate for inquiries or damages related to the activities of this contract;

v. Keep all program records for at least five years after the contract and any and all amendments expire and have been closed out by the funding agency or three years after the completion and resolution of any audits or lawsuits, whichever is later,

vi. Allow the State of California HCD, HUD or other State or federal agencies to access all relevant records for grant monitoring or auditing purposes.

vii. If applicable, comply with all CDBG requirements regarding copyrights, patents and rights in data.

viii. Comply with the Child Support Compliance Act (Chapter 8 commencing with Section 5200 of Part 5 of division 9 of the Family Code).

7) Include the Anti-Lobbying certificate as Exhibit "C".

b. COUNTY agrees to monitor Contractor for compliance with State Grant Agreement #16-NDR-11291.

27. Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, County's remedies shall include, but not be limited to, the following:

a. Immediately terminate the Agreement;

b Retain any other work product prepared by Consultant pursuant to this Agreement;

c. Retain a different Consultant to complete the work described in Exhibit A not finished by Consultant.

IN WITNESS WHEREOF, the parties have caused this Agreement, consisting of____pages, including this page, to be executed on the date first written above.

County of Tuolumne

Sherri Brennan 1/21/20

Sherri Brennan, Chairperson

Date

Consultant

Terry Cox 1/10/20

Terry Cox

Date

Approved as to Legal Form:

1/14/20

Christopher J. Schmidt **Date**

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

ALICIA L. JAMAR
Clerk of the Board

By: Alicia Jamar

Attachments:
Exhibit A– Scope of Work
Exhibit B– Budget
Exhibit C- Anti-Lobbying Certification
Exhibit D- CDBG Terms and Condition

EXHIBIT A

SCOPE OF WORK

Phase Two
The second phase of the project will involve typical administrative and labor standard compliance work.

Administrative Work
Administrative work will include the following types of activities: assist with cash receipts and performance reports as needed; attend meetings related to this project; assist with land acquisition and procurement of other needed subcontractors; review RFP's and contracts related to the project; assist with communication with HCD staff; maintain project files and participate in all monitorings related to this project.

Labor Standards
Labor standards work will include the following types of activities: revise specifications for inclusion of required NDR language and forms. Request federal wage decision; present labor standard/Section 3/WBE requirements at pre-bid meeting; review construction bids for inclusion of required labor standards and equal opportunity certifications; check contractors for debarred status and current licenses; present labor standards/EO requirements at pre-construction meeting; collect and review weekly contractor certifications, certificates of insurance, etc.; review weekly certified payrolls; conduct labor standards interviews; certify contractor compliance prior to release of pay applications; and prepare labor standards compliance reports and Section 3 reports.

PERFORMANCE MEASUREMENTS

The Scope of Work required in this agreement are divided into the following two categories:

- Administrative Work
  - Administrative work commences upon execution of this agreement and last through the close out of the NDRC grant.

- Labor Standards
  - Labor Standard work commences upon the time the County starts on the development of the plans and specifications of the two CRC facilities and last through the close out of the NDRC grant.

Consultant will assist County staff on a as needed bases with the activities outlined in this agreement. As result, this agreement is based on Consultants time on this project. There are however certain tasks that have required deadlines. The County requires the Consultant to meet the following performance measures:

- NDR overlay requirements related to equal opportunities and labor standard will be incorporated into the specifications no later than 30 days prior to the completion of the project plans and specifications.

- Consultant will notify Architect within 48 hours as to whether contactor has adequately submitted payroll and certifications sufficient to meet labor standard requirements for that pay application.

- Monthly reports will be prepared and submitted the County within 14 days of the end of the preceding month.

- Annual reports will be submitted to the County no later than July 20 of each year.

- Simi-Annual labor reports will be submitted to the County no later than October 10 and April 10 of each year.

- Section 3 Reports will be submitted to the County no later than July 20 of each year.

PERFORMANCE PENALTY PROVISIONS

If any of the above referenced performance measures are not met then the County, as a penalty (within 14 days of being missed), will withhold payment until tasks have been completed. Also, to avoid a late report in the future, Consultant will submit a plan to the County as to the actions that will be taken to complete required reports on time.

COX CONSULTING
PROPOSAL
NDR Consulting Services- Phase II
12/16/19

Administration

Scope:

Cash Requests, performance reports, attendance at meetings as requested (HCD, Board of Supervisors, community meetings), assist with land acquisition, assist with procurement of subcontractors (review RFP's, contracts), assist with communication with HCD, maintain project files, participate in HCD monitorings

Time frame- 1/20-6/22- 30 months

Average hours per month- 25

Hourly rate- $100/hour

Total cost- not to exceed $75,000

This estimate reflects the amount of time required to respond to HCD in 2019.

Labor Standards

Scope:

Revise specifications for inclusion of required NDR language and forms. Request federal wage decision. Present labor standards/EO requirements at pre-bid. Review bids for inclusion of required labor standards and equal opportunity certifications. Check contractors for debarred status and current licenses. Present labor standards/EO requirements at pre-construction conference. Collect and review contractor certifications, certificates of insurance, etc. Review certified payrolls, conduct labor standards on site interviews. Certify

contractor compliance prior to release of pay applications. Prepare labor standards compliance reports and Section 3 reports.

Time frame- 15 month construction period

Average hours per month-20 hours per project
plus 50 hours total travel time to Groveland for labor standards interviews

Hourly rate- $100

Total not to exceed cost-

Tuolumne-$30,000
Groveland-$35,000

This assumes that 15-20 contractors will be included in each project and a separate set of payrolls will be required for each project.

EXHIBIT B

BUDGET

Phase II Work

• Administrative Work		$ 75,000
• Labor Standards		$ 65,000
	Total	$140,000

Key Staff

- Terry Cox Rate: $100/hr.

Consultant agrees to meet all administrative milestones set forth in any State CDBG contracts made part of this agreement.

EXHIBIT C

ANTI-LOBBYING CERTIFICATION

The undersigned certifies, to the best of his or her knowledge or belief, that:

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 making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, " Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

1/10/20
Date

EXHIBIT D

CDBG-NDR TERMS AND CONDITIONS

1. Effective Date and Commencement of Work

This Agreement is effective upon approval by the Department.

A. Consultant cannot incur any costs until the execution of this Agreement, unless prior written approval has been given by County.

B. For certain project activities, County must receive the Authority to Use Grant Funds from HUD prior to the commitment and/or commencement of project work.

C. A Consultant cannot be reimbursed for any project costs until the Department has issued written clearance of all general conditions and any special conditions required.

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 Consultant. 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. Consultant 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.

C. In the event that any legal or administrative claim or action ("Claim") is taken, filed, or asserted by or against any party to this Agreement, or any contractor or subcontractor thereof, or with respect to the NDR project(s), the Department may, in its sole and absolute discretion, and in addition to any other rights or remedies it may have hereunder, elect to either suspend or terminate this Agreement, in whole or in part, or to proceed forward under this Agreement. The Department shall have a period of ninety (90) days from its receipt of notice of a Claim to

notify Consultant in writing of its decision to either suspend, terminate, or proceed forward. In the event the Department elects to terminate this Agreement, Consultant shall promptly submit its final Funds Request, together with those of its contractors and subcontractors, to the Department for processing, and upon payment thereof, the parties shall have no further rights or obligations under this Agreement, except for those rights and obligations which are expressly stated as surviving such a termination. Consultant shall ensure that all contracts or agreements with its contractors or subcontractors shall contain a provision similar to this section 4(C).

4. National Objectives

All grant project 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 the Application authorized by HUD. For the CRC project activities under this Agreement, HUD must provide a waiver before it will be considered eligible as a low-moderate income area benefit project. 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.

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.

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 CDBG-NDR 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.

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

Per 24 CFR 570.482(f), (g) and 570.483(b)(4), the Consultant 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 for infrastructure projects). However, Consultant s 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; 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.

These 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 the Consultant 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**

The Consultant, 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.

8. **Non-Performance**

In the event that the National Objective requirements are not met due to any action or inaction of Consultant, the Department may, in its sole discretion, require reimbursement of part or all project funding disbursed to Consultant 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 the project activities with Consultant.

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**

Consultant 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. This law also requires actions which affirmatively promote fair housing. Consultant 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 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"):

The Consultant 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 the Consultant 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 County 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 Consultant 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

The Consultant shall work with County, County technical assistance consultant and any environmental compliance consultant/engineer, should one be procured, to ensure that all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements are met.

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 the Consultant and assisted in whole or in part by funds allocated by CDBG. For projects where there will be temporary or permanent displacement, the Consultant 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. The Consultant, 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. Consultant 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 agreement with HUD.

16. Federal Labor Standards Provisions

Consultant 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 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, the Consultant shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [California Labor Code Section 1720-1743] (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Consultant and a licensed building contractor, the Consultant shall serve as the "awarding body" as that term is defined in the LC. Where the Consultant 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 the Consultant with assistance provided under this Agreement shall be made subject to the provisions for the elimination or mitigation of lead-based paint hazards under these regulations. The Consultant 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 the Consultant, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG-NDR activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-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 Consultant 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. Consultant shall report all perceived, potential or actual conflicts of interest to County 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 Consultant must request permission to use the waiver in writing from the Department.

22. Anti-Lobbying Certification

The Consultant 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, Consultant shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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. County has adopted procurement standards under 2 CFR 200.318-326. The Consultant shall follow these same standards. In addition, Consultant 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 the Consultant 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.

3) Maintenance, if so, required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.

4) Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 11 of this Agreement.

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 the Consultant that the 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 the 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.

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

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

26. Reporting Requirements

During the term of this Agreement, the Consultant must work with County, County's technical assistance consultant 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 must current CDBG-NDR GMM Appendixes. Grant closeout reports are listed in Exhibit B, Section 6. The Consultant 's performance under this Agreement will be based in part on whether it has submitted reports on a timely basis. Consultant and partners must use County 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. Weekly Project Update Report: Consultant and other partners associated with CDBG-NDR project activity implementation must participate on a Weekly Conference Call to provide status update on each activity. Consultant shall provide notes on Weekly Project Update Report prior to each call. Report information for updating project status in DRGR reporting system.

C. Quarterly Performance and Expenditure Report (QPER): Submit by the end of the last month of the quarter, December 31, March 31, June 30 and September 30.

D. Annual Performance Report (APR): Submit APR by July 31, starting from the contract effective date to subsequent June 30.

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 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. The Consultant shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. Consultant will work with County technical assistance consultant to conduct ongoing monitoring compliance of partners under three party agreements who are implementing CDBG-NDR project activities. Consultant shall assist County and County 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. Consultant shall inspect any grant activity performed by contractors and subrecipients hereunder to ensure past and current grant activities meet the applicable federal, state and/or local requirements per this Agreement.

B. Consultant 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, respectively, until it is so corrected.

29. Access to Records

Consultant 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. Consultant must have intact, auditable fiscal and program records at all times. If the Consultant is found to have missing audit reports from the California State Controller's Office ("SCO") during the term of this Agreement, the Consultant will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Consultant will be subject to termination of this Agreement and disencumberence of the funds awarded. Consultant 's audit completion plan is subject to prior review and approval by the Department.

B. Consultant agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Consultant agrees to provide the Department or its designee with any relevant information requested. Consultant shall permit the Department or its designee access to its premises, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. Consultant further agrees to maintain such records for a minimum period of five (5) years after the Department notifies Consultant that the CDBG-NDR grant contract has been closed. Consultant 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. A non-authorized expenditure under this Agreement shall be disallowed if not adequately documented. If this determination is made after reimbursement was made to Consultant, then expenditure must be reimbursed to the Department or its designee by the Consultant. 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, Consultant shall use the Federal Catalog number 14.272 for the CDBG-NDR Program.

F. Pursuant to OMB Uniform Guidance 2 CFR 200, the Consultant 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 foregoing, the Department will not reimburse the Consultant for any audit cost incurred after the expenditure deadline of this Agreement.

1) The audit shall be performed by a qualified State, department, local or independent auditor. The agreement/contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.

2) If there are audit findings, the Consultant must submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends, and the Department will notify the Consultant in writing. If the Department is not in agreement, the Consultant will be contacted in writing and informed what corrective actions must be taken. This action may include the repayment of disallowed costs or other remediation.

3) The Department shall not approve reimbursement for any expenditures for the audit, prior to receiving an acceptable audit report.

4) If so, directed by the Department upon termination of this Agreement, the Consultant 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 the Consultant 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

The Consultant 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. Consultant must follow a detailed citizen participation plan that satisfies 24 CFR, Part 70.486.

33. Flood Disaster Protection

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

B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified

areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said act.

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

The Consultant 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

Pursuant to Federal Register Notice FR-5936-N-01 Section 3, V. A. 17 - HUD has waived applicable program income rules at 42 U.S.C 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) to the extent necessary to provide additional flexibility for the use of CDBG-NDR Program Income. The alternative requirements provide guidance regarding the use of program income received before and after grant closeout and address revolving loan funds. Some of the CDBG-NDR program income (CDBG-NDR PI) rules vary slightly from standard CDBG requirements.

For purposes of the NDR project, the Consultant may retain all CDBG-NDR PI generated during the term of this Agreement. Upon the closeout of the entire CDBG-NDR grant, the Consultant must transfer all program income received from completed project activities to the regular CDBG program as normal CDBG funding. At that time, CDBG-NDR exemptions and waivers no longer apply. Any CDBG PI funding generated from CRC facility after project completion/grant close out shall fall under the Consultant 's current Program Income Reuse Agreement executed with the Department. The Department and its technical assistance contractor will provide guidance as needed to ensure that the expenditure of all program income is within the regulations noted above.

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

The Consultant 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 the Consultant. The Consultant 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 Consultant , 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. GC § 8546.4(e) provides that State agencies receiving Federal funds shall be primarily responsible for arranging for Federally required financial and compliance audits, and shall immediately notify the Director of Finance, the State Auditor, and the State Controller when they are required to obtain Federally required financial and compliance audits.

39. Required Federal 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 Consultant (funds are obligated to a Consultant upon HUD's signing of the Consultant 's CDBG-NDR grant agreement), unless a waiver is requested and granted by HUD. On July 18, 2016, HUD granted California a waiver of the two-year federal expenditure date, effectively setting the federal expenditure date at September 30, 2022. To meet this federal expenditure date, Consultant must submit final RFF to County by the dates set forth in Exhibit A, Section 9 of this Agreement. Any remaining funds under this Agreement, not included in a final RFF and processed by County before the federal expenditure date, will be cancelled and recaptured by the federal Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

40. Grant Reduction

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

41. Withdrawal of Grant Amounts

If Consultant does not proceed within a reasonable timeframe, County reserves the right to withdraw any funds County has not obligated under the award.

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 County 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. County has developed a Grant Management Manual ("GMM") for CDBG-NDR funding and by executing this Agreement, Consultant 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. Any party involved in a CDBG-NDR project, whether directly or indirectly, must agree to provide any information County requires in order to meet the aforementioned administrative and national policy requirements.

44. Reporting

HUD requires Consultant s 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. Any party involved in CDBG-NDR 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 County 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 7.

47. Disputes

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 the County Contract Manager, who shall reduce decisions to writing in regard to the dispute and shall transmit a copy thereof to the Consultant and parties involved. The decision of the Contract Manager shall be final, conclusive and binding.

48. Suspension or Termination

A. Suspension of Work

The Director of County, the Acting Director, or any designee of either, by written notice may suspend the work of the Consultant, 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 sole and absolute 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 Consultant, terminate this Agreement in whole or in part. Upon receipt of a termination notice, Consultant 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 the Consultant, 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, the Consultant 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 the Consultant in performing under this Agreement, whether completed or in progress. At the sole discretion of the Department, the Department may offer the Consultant an opportunity to cure any breach(es) prior to terminating for a breach. If after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been affected for the convenience of the Department.

D. Termination at Option Upon Bankruptcy of Consultant

In the event proceedings in bankruptcy are commenced against the Consultant, or the Consultant is adjudged bankrupt or a receiver is appointed, the Consultant 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 Consultant in the manner specified herein.

E. Effects of Suspension and Termination

Costs incurred by or paid by Consultant relating to obligations incurred by the Consultant 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 Consultant 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 the Consultant 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 Debarment and Suspension. The enforcement remedies identified in this Section, including suspension and termination, do not preclude a Consultant 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).

F. Non-Compliance

Enforcement for noncompliance may include, but is not limited to, the following remedies if Consultant 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 Consultant.

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 the Consultant 's program.

4) Exercise any other remedies or any other rights that may be legally available to the Department, including termination of this Agreement.

G. 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.

H. 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; Consultant will fully cooperate with the Department and provide all information needed for a smooth transition. In such case, Consultant is liable to Department for any additional costs incurred by the Department to complete the work.

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.

49. Federal Register Notice(s)

The parties agree that in addition to complying with all other terms and conditions set forth in the Standard Agreement and the various Exhibits thereto, to the extent additional requirements or conditions are imposed upon County 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 subconsultants, subrecipients, contractors, subcontractors, and partners. 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.

50. HCD Disaster Recovery (DR) Grant Management Manual (GMM)

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

51. Duplication of Benefit

Duplication of benefits (DOB) requirements in section 312 of the Stafford Act and in the Appropriations Act applies to the use of CDBG-NDR funds. County has developed a process for documenting any DOB for project activities. This process is based on HUD Federal Register notice published on November 16, 2011 and other HUD published guidance. Prior to release of any project activity funding, Consultant must follow County process for documentation of DOB. The DOB calculations must be completed and approved in writing by County as part of clearing general conditions for each project activity under this Agreement upon clearance of general conditions, project funding will be released.

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

Consultant 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).

53. Policies on Excessive Use of Force

Consultant 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.

54. Project Design/Feasibility

Consultant will demonstrate that the engineering design for each project activity under this Agreement is feasible prior to obligation of funds for construction. 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. Consultant will design projects that 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.

55. Use of Web Based Grant Management Software

Consultant staff shall utilize the web-based software that HCD is having developed for CDBG-NDR grant administration. The HCD technical assistance consultant shall develop such software and shall provide training and technical assistance to Consultant '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 Consultant 's staff as **Non-HCD Authorized Users.** Consultant , as Non-HCD Authorized User, acknowledges that its and its employee use of the CDBG-NDR software created for this project 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 Standard Agreement between HCD and the consultant (the "License"), which License Consultant has reviewed and agrees to be fully bound by. Consultant agrees, at its sole cost and expense, to indemnify, defend, and hold HCD harmless from any and all claims, actions, costs, losses, and damages sought by the technical assistance consultant against HCD resulting from any claimed or actual violation of the License terms by Consultant and/or any of its employees or representatives. These indemnities, defense and hold harmless obligation of Consultant shall indefinitely survive the completion or earlier termination of this Agreement.

56. 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. Consultant acknowledges having reviewed such provisions and agrees to the terms thereof.

57. 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, as amended by the Resource Conservation and Recovery Act. 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.

58. 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.

59. Ethical Standards/Code of Conduct

Consultant must develop and maintain written standards of conduct as required by 2 CFR 200.318.

STANDARD AGREEMENT FOR
PROFESSIONAL SERVICES
NDRC Consulting Services- Phase II

This Agreement ("Agreement") is made this 21 day of January 2020, by and between the County of TUOLUMNE ("County") and Terry Cox dba. Cox Consulting, ("Consultant"). This Agreement is in supplement to the Agreement for NDRC Consulting Services- Phase I made on September 5, 2017 by and between the County and Consultant. The Phase I and Phase II scope of services were established by the Request for Proposals released on July 28, 2017 and the County subsequent award to the Consultant on September 5, 2017.

1. **Scope of Services:** Consultant shall perform the services as described in Exhibit A, "Scope of Work" Phase II and comply with Performance Measures. Consultant shall provide all staffing and materials necessary to perform the work as outlined in the Scope of Work, Phase II.

2. **Time of Performance**: The services of Consultant are to commence upon execution of this Agreement and shall be continue until September 30, 2022. This agreement may be extended for one (1) six (6) month period.

3. **Compensation and Reimbursement:** For Consultant's performance of Scope of Work, Phase II services, Consultant shall be paid in accordance with the rates listed in Exhibit B, for a total not to exceed $140,000. If services in addition to those required by Scope of Work, Phase II, are required, the rates listed in Exhibit B will be utilized for compensation calculation. Any request for additional compensation or expenses requiring County payment to exceed the "not-to-exceed" maximum amount payable in Exhibit B shall not be approved or allowed unless consultant obtains County's written approval prior to incurring the additional expenses or performance of additional work. In the event payments equal the "not to exceed" amount, Consultant shall complete all services required under this Agreement without further compensation or cost reimbursement. Payment by County under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the County at the time of payment.

4. **Method of Payment:** Consultant shall submit monthly billings to County with back up timesheets and narratives to document hours worked. Notwithstanding any provisions of this Agreement, payment to the Consultant shall not relieve the Consultant of liability to the County for damages sustained by the County because of any breach of this Agreement by the Consultant, and County may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the County from Consultant is determined.

5. **Ownership and Confidentiality of Documents:** All plans, reports, drawings, electronic files, designs, data, graphics, studies, documents and other writings or incidental work product prepared by and for Consultant, and by and for subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall be the property of the County, and the County shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such materials to County in orderly fashion upon request, or if not previously provided, upon completion of the scope of services or termination of this Agreement and prior to release of the retention. Without the prior written consent of County, Consultant shall keep confidential and not disclose to any person, other than Consultant's subcontractors, all data and information generated by Consultant in the performance of services, or furnished to Consultant by County and marked confidential; provided, however, this provision shall not apply to data or information which are in the public domain, or previously known to

Consultant, or required to be disclosed by an order issued by a court, administrative agency or other authority with proper jurisdiction.

County waives any and all claims against Consultant based upon reuse of these documents or materials for any other project not the subject of this Agreement or any unauthorized changes by the County or any third party under County's direction.

6. **Independent Contractor:** It is understood that Consultant, in the performance of the services pursuant to this Agreement shall act as and be an independent contractor and shall not act as an agent or employee of the County. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to County's employees, and Consultant hereby expressly waives any claim it may have to any such rights. All employees, agents, contractors, subcontractors hired or retained by the Consultant are performing in that capacity for and on behalf of the Consultant and not the County. The County shall not be obligated in any way to pay any wage claims or other claims made against the Consultant by any such employee, agent, contractor or subcontractor, or any other person resulting from the performance of this Agreement.

7. **Conflict of Interest:** No member, officer, or employee of the County of Tuolumne or its designees or agents, and no other public official of such locality or localities who exercise any functions or responsibilities within respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for grant activities to be performed in connection with the program assisted under this Agreement. No congressional representative and no resident commissioner shall receive any benefit from this project.

8. **Professional Ability of Consultant:** Consultant warrants that it has all of the necessary professional capabilities and experience, as well as all tools, instruments, facilities, and other resources necessary to provide the County with the services contemplated by this Agreement.

9. **Hold Harmless/Indemnification:** Contractor shall indemnify, defend, save, protect and hold harmless County, its elected and appointed officials, officers, employees, agents and volunteers (collectively, "County") from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, consultants, or any person under its direction or control and shall make good to and reimburse County for any expenditures, including reasonable attorney's fees, the County may make by reason of such matters and, if requested by County, shall defend any such suits at the sole cost and expense of Contractor. Contractor's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor shall not be required to indemnify or defend County for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of the County.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. This indemnification clause shall survive the termination or expiration of this Agreement.

10. **Insurance:** Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the Agreement, the following insurance policies with insurers licensed in the State of California and possessing a Best's rating of no less than A:VII. The policies or certificates thereof shall provide that thirty (30) days prior to cancellation or material change in the policy, notices of the same shall be given to the County by certified mail, return receipt requested, for all of the following stated insurance policies:

a. **Workers' Compensation Coverage:** Workers' Compensation Insurance for its employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance in accordance with the laws of the State of California for all of the subcontractor's employees.

b. **General Liability Coverage:** Commercial general liability insurance in an amount not less than one million dollars ($1,000,000) per occurrence for bodily injury and $100,000 per occurrence for property damage.

c. **Automobile Liability Coverage:** Automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars ($1,000,000) for each occurrence of bodily injury and $100,000 per occurrence for property damage.

d. **General Requirement:** If a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

e. **Policy Endorsements:** Each insurance policy, except Workers' Compensation and Professional Liability, shall be endorsed with the following specific language:

1) The County of TUOLUMNE, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

2) This policy shall be considered primary insurance as respects the County, its elected or appointed officers, officials, employees, agents and volunteers (to the extent of the Consultant's negligence in the performance of its services under this Agreement), and shall include no special limitations to coverage provided to additional insured. Any insurance maintained by the County, including any self-insured retention the County may have, shall be considered excess insurance only and shall not contribute with it.

3) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

4) The insurer waives all rights of subrogation against the County, its elected or appointed officers, officials, employees, agents and volunteers.

5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its elected or appointed officers, officials, employees, agents or volunteers.

6) The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' written notice has been received by the County.

f. **Deductibles and Self-insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the County. At the County's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

g. **Evidence of Insurance and Endorsements:** Consultant shall provide evidence of required insurance with original endorsements to County as may be required by the Risk Manager. Evidence of such insurance shall be filed with the County on or before commencement of performance of this Agreement. Current proof of insurance shall be kept on file with the County at all times during the term of this Agreement.

h. **Unsatisfactory Policies:** If at any time any of the said policies or endorsements shall be reasonably unsatisfactory to the County Risk Manager, as to form or substance, or if a company issuing such policy shall be reasonably unsatisfactory to the County Risk Manager, the Consultant shall promptly obtain a new policy, submit the same to the County Risk Manager for approval and submit a certificate thereof as herein provided.

i. **Failure to Comply**: Upon failure of the Consultant to furnish, deliver or maintain such insurance and evidence of the same as above provided, this Agreement, at the election of the County, may be forthwith declared suspended, or terminated. Failure of the Consultant to obtain and/or maintain any required insurance shall not relieve the Consultant from any liability under this Agreement.

11. **Compliance with Laws:** Consultant shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Consultant's performance under this Agreement. Specifically, Consultant shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

12. **Licenses:** Consultant represents and warrants to County that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession.

13. **Controlling Law Venue:** This Agreement and all matters relating to it shall be governed by the laws of the State of California and in any action brought relating to this Agreement, this Agreement shall be deemed to have been made and is to be performed in the County of Tuolumne.

14. **Written Notification:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either delivered personally, transmitted by facsimile machine or sent prepaid, first class United States mail. Any such writing shall be addressed or transmitted to the other party at the address, location or facsimile number set forth below. Either party may change its address, location or facsimile number by notifying the other party of the change. Notice shall be deemed received when (1) delivered personally, (2) transmitted by facsimile, or (3) 48 hours from the time of deposit in a United States mail box if mailed as provided in this paragraph.

	County:	**Consultant:**
Primary Contact:	Maureen Frank	Terry Cox
Organization:	County of Tuolumne	Cox Consulting
Address:	2 South Green Street Sonora, CA 95370	P.O. Box 3093 Sonora, CA
FAX:	(209) 533-5510	(209) 533-8810

15. **Consultant's Books and Records:**

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to County for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Consultant.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall, be made available for inspection or audit, at any time during regular business hours, upon written request by the County Administrator, County Counsel, County Auditor, the State Office of Housing and Community Development or a designated representative of any of these officers. Copies of such documents shall be provided to the County for inspection at County Administration Center when it is practical to do so. Otherwise unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where County has reason to believe that such records or documents may be lost or discarded due to

dissolution, disbandment or termination of Consultant's business, County may, by written request by any of the above-named officers, require that custody of the records by given to the County and that the records and documents be maintained in County Administration Center. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

16. **Entire Agreement:** This Agreement constitutes the complete and exclusive statement of agreement between the County and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement. The Consultant has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and material needed, and its making of this Agreement is based on such independent investigation and research.

17. **Amendments:** This Agreement may be modified or amended only in writing executed by both Consultant and County and approved as to legal form by the County Counsel.

18. **Waiver:** No failure on the part of County to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. A waiver by County of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

19. **Litigation Expenses and Attorney's Fees:** Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees, discovery expenses, court costs and expert witness fees.

    It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Tuolumne, State of California.

20. **Execution in Counterparts:** This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In enforcing this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Assignment & Subcontracting: The parties recognize that a substantial inducement to County for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the prior written consent of the County. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the County. If County consents to such subcontract, Consultant shall be fully responsible to County for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between County and subcontractor nor shall it create any obligation on the part of the County to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

21. **Termination:** This agreement may be terminated as follows by County at County's option upon Consultant's' failure, refusal or neglect to perform the duties hereunder or for any reason satisfactory to County provided, however, Consultant shall be given thirty (30) days written notice of such termination. This agreement may terminate by the Consultant upon County failure, neglect or refusal to make any payment as required hereunder. This agreement may be terminated by either party with a thirty (30) day intention notice. Consultant shall be entitled to compensation for services performed acceptably up to the effective date of termination

22. **Delegation:** The County Administrator, or their designee, is authorized to take any action permitted or required by the County in implementing the provisions of this Agreement.

23. **Paragraph headings:** Paragraph headings shall not affect the scope, meaning, intent, or applicability of the provisions of the paragraph.

24. **Partial Invalidity**: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

25. **Funding Availability:**

    a. It is mutually agreed that if the County budget of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Consultant or to furnish any other considerations under this Agreement and Consultant shall not be obligated to perform any provisions of this Agreement.

    b. If funding for this project is reduced or deleted by the County budget for purposes of this program, the County shall have the option to either cancel this Agreement with no liability occurring to the County or offer an Agreement amendment to Consultant to reflect the reduced amount.

    c. If funding for this project is reduced or deleted by the State of California Housing and Community Development (HCD), the County shall have the option to either cancel this Agreement with no liability occurring to the County or offer an Agreement amendment to the Consultant to reflect this reduced amount.

26. **Community Development Block Grant (CDBG) Provisions:**

    a. The Consultant agrees to:

        i. Perform the work in accordance with the Grant Agreement #16-NDR-11291, which includes both, CDBG National Disaster Resilience (NDR) funding and CDBG Neighborhood Stabilization Program (NSP) 1 funding. All applicable CDBG-NDR and CDBG-NSP federal, state and local requirements must be followed including but not

limited to housing and building codes, such as environmental, building, planning, zoning, health and safety, relocation labor, fair employment, and historic preservation;

ii. Comply with the federal and State CDBG-NDR and CDBG-NSP requirements included in Exhibit "D";

iii. Where applicable, maintain at least the minimum State required worker's compensation insurance for those employees who will perform all or any part of the CDBG-funded work;

iv. Maintain, if legally required, unemployment insurance, disability insurance and liability insurance reasonable to compensate for inquiries or damages related to the activities of this contract;

v. Keep all program records for at least five years after the contract and any and all amendments expire and have been closed out by the funding agency or three years after the completion and resolution of any audits or lawsuits, whichever is later,

vi. Allow the State of California HCD, HUD or other State or federal agencies to access all relevant records for grant monitoring or auditing purposes.

vii. If applicable, comply with all CDBG requirements regarding copyrights, patents and rights in data.

viii. Comply with the Child Support Compliance Act (Chapter 8 commencing with Section 5200 of Part 5 of division 9 of the Family Code).

7) Include the Anti-Lobbying certificate as Exhibit "C".

b. COUNTY agrees to monitor Contractor for compliance with State Grant Agreement #16-NDR-11291.

27. Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, County's remedies shall include, but not be limited to, the following:

a. Immediately terminate the Agreement;

b Retain any other work product prepared by Consultant pursuant to this Agreement;

c. Retain a different Consultant to complete the work described in Exhibit A not finished by Consultant.

IN WITNESS WHEREOF, the parties have caused this Agreement, consisting of____pages, including this page, to be executed on the date first written above.

County of Tuolumne

Sherri Brennan 1/21/20

Sherri Brennan, Chairperson

Date

Consultant

Terry Cox 1/10/20

Terry Cox

Date

Approved as to Legal Form:

1/14/20

Christopher J. Schmidt **Date**

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

ALICIA L. JAMAR
Clerk of the Board

By: Alicia Jamar

Attachments:
Exhibit A– Scope of Work
Exhibit B– Budget
Exhibit C- Anti-Lobbying Certification
Exhibit D- CDBG Terms and Condition

EXHIBIT A

SCOPE OF WORK

Phase Two
The second phase of the project will involve typical administrative and labor standard compliance work.

Administrative Work
Administrative work will include the following types of activities: assist with cash receipts and performance reports as needed; attend meetings related to this project; assist with land acquisition and procurement of other needed subcontractors; review RFP's and contracts related to the project; assist with communication with HCD staff; maintain project files and participate in all monitorings related to this project.

Labor Standards
Labor standards work will include the following types of activities: revise specifications for inclusion of required NDR language and forms. Request federal wage decision; present labor standard/Section 3/WBE requirements at pre-bid meeting; review construction bids for inclusion of required labor standards and equal opportunity certifications; check contractors for debarred status and current licenses; present labor standards/EO requirements at pre-construction meeting; collect and review weekly contractor certifications, certificates of insurance, etc.; review weekly certified payrolls; conduct labor standards interviews; certify contractor compliance prior to release of pay applications; and prepare labor standards compliance reports and Section 3 reports.

PERFORMANCE MEASUREMENTS

The Scope of Work required in this agreement are divided into the following two categories:

- Administrative Work
  - Administrative work commences upon execution of this agreement and last through the close out of the NDRC grant.

- Labor Standards
  - Labor Standard work commences upon the time the County starts on the development of the plans and specifications of the two CRC facilities and last through the close out of the NDRC grant.

Consultant will assist County staff on a as needed bases with the activities outlined in this agreement. As result, this agreement is based on Consultants time on this project. There are however certain tasks that have required deadlines. The County requires the Consultant to meet the following performance measures:

- NDR overlay requirements related to equal opportunities and labor standard will be incorporated into the specifications no later than 30 days prior to the completion of the project plans and specifications.

- Consultant will notify Architect within 48 hours as to whether contactor has adequately submitted payroll and certifications sufficient to meet labor standard requirements for that pay application.

- Monthly reports will be prepared and submitted the County within 14 days of the end of the preceding month.

- Annual reports will be submitted to the County no later than July 20 of each year.

- Simi-Annual labor reports will be submitted to the County no later than October 10 and April 10 of each year.

- Section 3 Reports will be submitted to the County no later than July 20 of each year.

PERFORMANCE PENALTY PROVISIONS

If any of the above referenced performance measures are not met then the County, as a penalty (within 14 days of being missed), will withhold payment until tasks have been completed. Also, to avoid a late report in the future, Consultant will submit a plan to the County as to the actions that will be taken to complete required reports on time.

COX CONSULTING
PROPOSAL
NDR Consulting Services- Phase II
12/16/19

Administration

Scope:

Cash Requests, performance reports, attendance at meetings as requested (HCD, Board of Supervisors, community meetings), assist with land acquisition, assist with procurement of subcontractors (review RFP's, contracts), assist with communication with HCD, maintain project files, participate in HCD monitorings

Time frame- 1/20-6/22- 30 months

Average hours per month- 25

Hourly rate- $100/hour

Total cost- not to exceed $75,000

This estimate reflects the amount of time required to respond to HCD in 2019.

Labor Standards

Scope:

Revise specifications for inclusion of required NDR language and forms. Request federal wage decision. Present labor standards/EO requirements at pre-bid. Review bids for inclusion of required labor standards and equal opportunity certifications. Check contractors for debarred status and current licenses. Present labor standards/EO requirements at pre-construction conference. Collect and review contractor certifications, certificates of insurance, etc. Review certified payrolls, conduct labor standards on site interviews. Certify

contractor compliance prior to release of pay applications. Prepare labor standards compliance reports and Section 3 reports.

Time frame- 15 month construction period

Average hours per month-20 hours per project
plus 50 hours total travel time to Groveland for labor standards interviews

Hourly rate- $100

Total not to exceed cost-

Tuolumne-$30,000
Groveland-$35,000

This assumes that 15-20 contractors will be included in each project and a separate set of payrolls will be required for each project.

EXHIBIT B

BUDGET

Phase II Work

• Administrative Work		$ 75,000
• Labor Standards		$ 65,000
	Total	$140,000

Key Staff

- Terry Cox Rate: $100/hr.

Consultant agrees to meet all administrative milestones set forth in any State CDBG contracts made part of this agreement.

EXHIBIT C

ANTI-LOBBYING CERTIFICATION

The undersigned certifies, to the best of his or her knowledge or belief, that:

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 making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, " Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

1/10/20
Date

EXHIBIT D

CDBG-NDR TERMS AND CONDITIONS

1. Effective Date and Commencement of Work

This Agreement is effective upon approval by the Department.

A. Consultant cannot incur any costs until the execution of this Agreement, unless prior written approval has been given by County.

B. For certain project activities, County must receive the Authority to Use Grant Funds from HUD prior to the commitment and/or commencement of project work.

C. A Consultant cannot be reimbursed for any project costs until the Department has issued written clearance of all general conditions and any special conditions required.

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 Consultant. 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. Consultant 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.

C. In the event that any legal or administrative claim or action ("Claim") is taken, filed, or asserted by or against any party to this Agreement, or any contractor or subcontractor thereof, or with respect to the NDR project(s), the Department may, in its sole and absolute discretion, and in addition to any other rights or remedies it may have hereunder, elect to either suspend or terminate this Agreement, in whole or in part, or to proceed forward under this Agreement. The Department shall have a period of ninety (90) days from its receipt of notice of a Claim to

notify Consultant in writing of its decision to either suspend, terminate, or proceed forward. In the event the Department elects to terminate this Agreement, Consultant shall promptly submit its final Funds Request, together with those of its contractors and subcontractors, to the Department for processing, and upon payment thereof, the parties shall have no further rights or obligations under this Agreement, except for those rights and obligations which are expressly stated as surviving such a termination. Consultant shall ensure that all contracts or agreements with its contractors or subcontractors shall contain a provision similar to this section 4(C).

4. National Objectives

All grant project 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 the Application authorized by HUD. For the CRC project activities under this Agreement, HUD must provide a waiver before it will be considered eligible as a low-moderate income area benefit project. 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.

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.

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 CDBG-NDR 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.

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

Per 24 CFR 570.482(f), (g) and 570.483(b)(4), the Consultant 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 for infrastructure projects). However, Consultant s 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; 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.

These 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 the Consultant 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**

The Consultant, 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.

8. **Non-Performance**

In the event that the National Objective requirements are not met due to any action or inaction of Consultant, the Department may, in its sole discretion, require reimbursement of part or all project funding disbursed to Consultant 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 the project activities with Consultant.

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**

Consultant 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. This law also requires actions which affirmatively promote fair housing. Consultant 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 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"):

The Consultant 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 the Consultant 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 County 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 Consultant 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

The Consultant shall work with County, County technical assistance consultant and any environmental compliance consultant/engineer, should one be procured, to ensure that all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements are met.

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 the Consultant and assisted in whole or in part by funds allocated by CDBG. For projects where there will be temporary or permanent displacement, the Consultant 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. The Consultant, 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. Consultant 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 agreement with HUD.

16. Federal Labor Standards Provisions

Consultant 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 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, the Consultant shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [California Labor Code Section 1720-1743] (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Consultant and a licensed building contractor, the Consultant shall serve as the "awarding body" as that term is defined in the LC. Where the Consultant 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 the Consultant with assistance provided under this Agreement shall be made subject to the provisions for the elimination or mitigation of lead-based paint hazards under these regulations. The Consultant 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 the Consultant, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG-NDR activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-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 Consultant 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. Consultant shall report all perceived, potential or actual conflicts of interest to County 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 Consultant must request permission to use the waiver in writing from the Department.

22. Anti-Lobbying Certification

The Consultant 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, Consultant shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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. County has adopted procurement standards under 2 CFR 200.318-326. The Consultant shall follow these same standards. In addition, Consultant 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 the Consultant 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.

3) Maintenance, if so, required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.

4) Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 11 of this Agreement.

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 the Consultant that the 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 the 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.

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

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

26. Reporting Requirements

During the term of this Agreement, the Consultant must work with County, County's technical assistance consultant 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 must current CDBG-NDR GMM Appendixes. Grant closeout reports are listed in Exhibit B, Section 6. The Consultant 's performance under this Agreement will be based in part on whether it has submitted reports on a timely basis. Consultant and partners must use County 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. Weekly Project Update Report: Consultant and other partners associated with CDBG-NDR project activity implementation must participate on a Weekly Conference Call to provide status update on each activity. Consultant shall provide notes on Weekly Project Update Report prior to each call. Report information for updating project status in DRGR reporting system.

C. Quarterly Performance and Expenditure Report (QPER): Submit by the end of the last month of the quarter, December 31, March 31, June 30 and September 30.

D. Annual Performance Report (APR): Submit APR by July 31, starting from the contract effective date to subsequent June 30.

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 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. The Consultant shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. Consultant will work with County technical assistance consultant to conduct ongoing monitoring compliance of partners under three party agreements who are implementing CDBG-NDR project activities. Consultant shall assist County and County 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. Consultant shall inspect any grant activity performed by contractors and subrecipients hereunder to ensure past and current grant activities meet the applicable federal, state and/or local requirements per this Agreement.

B. Consultant 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, respectively, until it is so corrected.

29. Access to Records

Consultant 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. Consultant must have intact, auditable fiscal and program records at all times. If the Consultant is found to have missing audit reports from the California State Controller's Office ("SCO") during the term of this Agreement, the Consultant will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Consultant will be subject to termination of this Agreement and disencumberence of the funds awarded. Consultant 's audit completion plan is subject to prior review and approval by the Department.

B. Consultant agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Consultant agrees to provide the Department or its designee with any relevant information requested. Consultant shall permit the Department or its designee access to its premises, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. Consultant further agrees to maintain such records for a minimum period of five (5) years after the Department notifies Consultant that the CDBG-NDR grant contract has been closed. Consultant 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. A non-authorized expenditure under this Agreement shall be disallowed if not adequately documented. If this determination is made after reimbursement was made to Consultant, then expenditure must be reimbursed to the Department or its designee by the Consultant. 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, Consultant shall use the Federal Catalog number 14.272 for the CDBG-NDR Program.

F. Pursuant to OMB Uniform Guidance 2 CFR 200, the Consultant 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 foregoing, the Department will not reimburse the Consultant for any audit cost incurred after the expenditure deadline of this Agreement.

1) The audit shall be performed by a qualified State, department, local or independent auditor. The agreement/contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.

2) If there are audit findings, the Consultant must submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends, and the Department will notify the Consultant in writing. If the Department is not in agreement, the Consultant will be contacted in writing and informed what corrective actions must be taken. This action may include the repayment of disallowed costs or other remediation.

3) The Department shall not approve reimbursement for any expenditures for the audit, prior to receiving an acceptable audit report.

4) If so, directed by the Department upon termination of this Agreement, the Consultant 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 the Consultant 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

The Consultant 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. Consultant must follow a detailed citizen participation plan that satisfies 24 CFR, Part 70.486.

33. Flood Disaster Protection

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

B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified

areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said act.

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

The Consultant 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

Pursuant to Federal Register Notice FR-5936-N-01 Section 3, V. A. 17 - HUD has waived applicable program income rules at 42 U.S.C 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) to the extent necessary to provide additional flexibility for the use of CDBG-NDR Program Income. The alternative requirements provide guidance regarding the use of program income received before and after grant closeout and address revolving loan funds. Some of the CDBG-NDR program income (CDBG-NDR PI) rules vary slightly from standard CDBG requirements.

For purposes of the NDR project, the Consultant may retain all CDBG-NDR PI generated during the term of this Agreement. Upon the closeout of the entire CDBG-NDR grant, the Consultant must transfer all program income received from completed project activities to the regular CDBG program as normal CDBG funding. At that time, CDBG-NDR exemptions and waivers no longer apply. Any CDBG PI funding generated from CRC facility after project completion/grant close out shall fall under the Consultant 's current Program Income Reuse Agreement executed with the Department. The Department and its technical assistance contractor will provide guidance as needed to ensure that the expenditure of all program income is within the regulations noted above.

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

The Consultant 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 the Consultant. The Consultant 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 Consultant , 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. GC § 8546.4(e) provides that State agencies receiving Federal funds shall be primarily responsible for arranging for Federally required financial and compliance audits, and shall immediately notify the Director of Finance, the State Auditor, and the State Controller when they are required to obtain Federally required financial and compliance audits.

39. Required Federal 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 Consultant (funds are obligated to a Consultant upon HUD's signing of the Consultant 's CDBG-NDR grant agreement), unless a waiver is requested and granted by HUD. On July 18, 2016, HUD granted California a waiver of the two-year federal expenditure date, effectively setting the federal expenditure date at September 30, 2022. To meet this federal expenditure date, Consultant must submit final RFF to County by the dates set forth in Exhibit A, Section 9 of this Agreement. Any remaining funds under this Agreement, not included in a final RFF and processed by County before the federal expenditure date, will be cancelled and recaptured by the federal Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

40. **Grant Reduction**

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

41. **Withdrawal of Grant Amounts**

If Consultant does not proceed within a reasonable timeframe, County reserves the right to withdraw any funds County has not obligated under the award.

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 County 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. County has developed a Grant Management Manual ("GMM") for CDBG-NDR funding and by executing this Agreement, Consultant 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. Any party involved in a CDBG-NDR project, whether directly or indirectly, must agree to provide any information County requires in order to meet the aforementioned administrative and national policy requirements.

44. **Reporting**

HUD requires Consultant s 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. Any party involved in CDBG-NDR 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 County 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 7.

47. Disputes

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 the County Contract Manager, who shall reduce decisions to writing in regard to the dispute and shall transmit a copy thereof to the Consultant and parties involved. The decision of the Contract Manager shall be final, conclusive and binding.

48. Suspension or Termination

A. Suspension of Work

The Director of County, the Acting Director, or any designee of either, by written notice may suspend the work of the Consultant, 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 sole and absolute 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 Consultant, terminate this Agreement in whole or in part. Upon receipt of a termination notice, Consultant 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 the Consultant, 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, the Consultant 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 the Consultant in performing under this Agreement, whether completed or in progress. At the sole discretion of the Department, the Department may offer the Consultant an opportunity to cure any breach(es) prior to terminating for a breach. If after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been affected for the convenience of the Department.

D. Termination at Option Upon Bankruptcy of Consultant

In the event proceedings in bankruptcy are commenced against the Consultant, or the Consultant is adjudged bankrupt or a receiver is appointed, the Consultant 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 Consultant in the manner specified herein.

E. Effects of Suspension and Termination

Costs incurred by or paid by Consultant relating to obligations incurred by the Consultant 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 Consultant 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 the Consultant 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 Debarment and Suspension. The enforcement remedies identified in this Section, including suspension and termination, do not preclude a Consultant 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).

F. Non-Compliance

Enforcement for noncompliance may include, but is not limited to, the following remedies if Consultant 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 Consultant.

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 the Consultant 's program.

4) Exercise any other remedies or any other rights that may be legally available to the Department, including termination of this Agreement.

G. 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.

H. 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; Consultant will fully cooperate with the Department and provide all information needed for a smooth transition. In such case, Consultant is liable to Department for any additional costs incurred by the Department to complete the work.

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.

49. Federal Register Notice(s)

The parties agree that in addition to complying with all other terms and conditions set forth in the Standard Agreement and the various Exhibits thereto, to the extent additional requirements or conditions are imposed upon County 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 subconsultants, subrecipients, contractors, subcontractors, and partners. 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.

50. HCD Disaster Recovery (DR) Grant Management Manual (GMM)

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

51. Duplication of Benefit

Duplication of benefits (DOB) requirements in section 312 of the Stafford Act and in the Appropriations Act applies to the use of CDBG-NDR funds. County has developed a process for documenting any DOB for project activities. This process is based on HUD Federal Register notice published on November 16, 2011 and other HUD published guidance. Prior to release of any project activity funding, Consultant must follow County process for documentation of DOB. The DOB calculations must be completed and approved in writing by County as part of clearing general conditions for each project activity under this Agreement upon clearance of general conditions, project funding will be released.

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

Consultant 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).

53. Policies on Excessive Use of Force

Consultant 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.

54. Project Design/Feasibility

Consultant will demonstrate that the engineering design for each project activity under this Agreement is feasible prior to obligation of funds for construction. 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. Consultant will design projects that 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.

55. Use of Web Based Grant Management Software

Consultant staff shall utilize the web-based software that HCD is having developed for CDBG-NDR grant administration. The HCD technical assistance consultant shall develop such software and shall provide training and technical assistance to Consultant '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 Consultant 's staff as **Non-HCD Authorized Users.** Consultant , as Non-HCD Authorized User, acknowledges that its and its employee use of the CDBG-NDR software created for this project 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 Standard Agreement between HCD and the consultant (the "License"), which License Consultant has reviewed and agrees to be fully bound by. Consultant agrees, at its sole cost and expense, to indemnify, defend, and hold HCD harmless from any and all claims, actions, costs, losses, and damages sought by the technical assistance consultant against HCD resulting from any claimed or actual violation of the License terms by Consultant and/or any of its employees or representatives. These indemnities, defense and hold harmless obligation of Consultant shall indefinitely survive the completion or earlier termination of this Agreement.

56. 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. Consultant acknowledges having reviewed such provisions and agrees to the terms thereof.

57. 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, as amended by the Resource Conservation and Recovery Act. 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.

58. 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.

59. Ethical Standards/Code of Conduct

Consultant must develop and maintain written standards of conduct as required by 2 CFR 200.318.