

**STANDARD AGREEMENT-AMENDMENT**

STD 213A (Rev. 4/2020)

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 52 PAGES

AGREEMENT NUMBER

16-NDR-12731

AMENDMENT NUMBER

2

Purchasing Authority Number

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

CONTRACTING AGENCY NAME

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR NAME

Rural Community Assistance Corporation, and Sierra Nevada Conservancy

2 The term of this Agreement is:

START DATE

04/27/2020

THROUGH END DATE

08/30/2025

3 The maximum amount of this Agreement after this Amendment is:

\$20,016,911.00

4 The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

The Term of this agreement is hereby changed from April 27, 2020 through September 30,2024 to April 27, 2020 to August 30, 2025. Exhibit(s)A,B & D shall be replaced in their entirety by the new Exhibit(s) A, B & D- Amendment# 2

All other terms and conditions shall remain the same.

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

**CONTRACTOR**

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

See Attached

CONTRACTOR BUSINESS ADDRESS

See Attached

CITY

See Attached

STATE IZIP  
See Att See Att

PRINTED NAME OF PERSON SIGNING

See Att

TITLE

See Att

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

See Att

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

DEPARTMENT OF HOSUING AND COMMUNITY DEVELOPMENT

CONTRACTING AGENCY ADDRESS

2020 W El Camino Ave

CITY

Sacramento

STATE

CA

ZIP

95833

PRINTED NAME OF PERSON SIGNING

Edona Evans

TITLE

Contracts Services Manager, Contracts Services Section

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

8/22/2023

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Exempt per; SCM Vol.I 4.04.A3 ( DGS memo dated 6/12/1981)

**CONTRACTOR**

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**Rural Community Assistance Corporation**  
a California nonprofit Corporation

By: \_\_\_\_\_

Date: 08/15/2023  
\_\_\_\_\_

**Suzanne Anarde**  
Chief Executive Officer

*Suzanne Anarde-Devenport*  
\_\_\_\_\_

Address:

3120 Freeboard Drive, Suite 201  
West Sacramento, CA 95691

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**Sierra Nevada Conservancy**  
a California State Agency

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Angela Avery**  
Executive Officer, Sierra Nevada Conservancy (SNC)

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Address:

11521 Blocker Drive, Suite 205  
Auburn, CA 95603

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STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
STD 213A (REV 04/2020)

Rural Community Assistance Corporation  
Sierra Nevada Conservancy  
16-NDR-12731 Am. 2

**CONTRACTOR**

Page 2 of 2

**Rural Community Assistance Corporation**  
a California nonprofit Corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Suzanne Anarde**  
Chief Executive Officer

Address:

3120 Freeboard Drive, Suite 201  
West Sacramento, CA 95691

**Sierra Nevada Conservancy**  
a California State Agency

By: \_\_\_\_\_

Date: 8/17/2023  
\_\_\_\_\_

**Angela Avery**  
Executive Officer, Sierra Nevada Conservancy (SNC)

DocuSigned by:  
  
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Address:

11521 Blocker Drive, Suite 205  
Auburn, CA 95603

## EXHIBIT A

### RECITALS, AUTHORITY, PURPOSE AND SCOPE OF WORK

#### RECITALS

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

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

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

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

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

HUD has awarded NDRC funds for innovative approaches that address unmet recovery needs from past disasters while also addressing the vulnerabilities that could put Americans in harm’s way during future disasters. The competition encourages communities to consider how they can recover from a past disaster and how to avoid and mitigate future disaster losses. Applicants (i.e., the State of California) had to link or “tie-back” their proposals to the disaster from which they were recovering, as

## EXHIBIT A

well as demonstrate how they were reducing future risks and advancing broader community development goals within their target geographic area(s).

### 1. NDRC Competition Objectives

The Competition sought to meet the following six objectives:

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

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

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

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

## EXHIBIT A

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

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

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

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

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

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

The CWRP is made up of three **(3)** different but interrelated activities. The Program is designed to create partnerships and practices needed to support resilience in the communities and natural systems in California's upper watersheds, which provide sixty (60) percent of the State's developed water resources.

## EXHIBIT A

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

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

#### A. **Community Resilience Center (CRC)**

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

#### B. **Biomass Utilization Facility (BUF)**

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

#### C. **Forest & Watershed Health Project (FWHP)**

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

**The foregoing Recitals are a part of this Agreement.**

## EXHIBIT A

### 1. **Authority and Purpose**

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

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

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

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

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

### 2. **Three Party Structure**

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



## EXHIBIT A

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

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

### **3. Eligible Activities and Costs**

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

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

### **4. Meeting CDBG National Objective**

Activity delivery costs under this Agreement are assumed to meet a National Objective, once a BUF project is approved for CDBG-NDR funding. For some economic development activities, final documentation of meeting a national objective is completed after project is completed and public benefit jobs are primarily provided to low moderate income county residents. Costs incurred by RCAC, their subcontractors and subrecipients, as part of planning activities

## EXHIBIT A

delivery/project funding origination will require RCAC/HCD approval of one project prior to HCD reimbursement of said costs. RCAC project approval must document applicable CDBG-NDR project compliance, including but not limited to, applicable public benefit and national objective standards compliance, prior to release of activity delivery funding in Section 7.

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

### 5. **Public Benefit Standards for Economic Development (ED)**

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

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

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

### 6. **Scope of Work**

## EXHIBIT A

- A. RCAC shall perform the funded activities described in the Scope of Work described below (“WORK”). These activities were included in the State of California’s NDR Application to HUD, which is on file with the Department of Housing and Community Development, Division of Financial Assistance, 2020 West El Camino Avenue, Suite 500, Sacramento, California, 95833, and which is incorporated herein by reference. All NDR Application activities are formalized in the current NDR Action Plan, as approved by HUD. The current Action Plan or future amended Action Plan, as submitted and approved in writing by HUD, is hereby incorporated as part of the Agreement.

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

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

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

### 1) BUF Planning and Administration

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

## **EXHIBIT A**

RCAC will administer and manage the CDBG-NDR BUF economic development and public facility financial assistance projects (Projects) in consultation with SNC. For ED implementation, RCAC will use planning funds to create a Program Tool Kit (Tool Kit) which will contain a manual with associated support documents required for BUF ED Program (ED Program). It will also contain an overview of implementation process with roles and responsibilities of staff and agencies involved in its operation. The Tool Kit will also contain a marketing plan, program guidelines with financing origination policies and procedures, standard application forms and disclosures. The Tool Kit's documents may include financial underwriting tools to document cash flow analysis and federal/state regulatory requirements. The completed Tool Kit will be provided to HCD as a final product of the ED planning activity. HCD and SNC will use the Tool Kit to assist in future replication of BUF ED activities throughout the state. HCD may direct RCAC to use planning funds under this Agreement to conduct other planning activities as needed.

### **2) BUF Activity Delivery**

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

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

### **3) BUF Project Funding**

RCAC will have the BUF Tool Kit for economic development activity implementation approved by SNC and HCD program staff. RCAC will update the Tool Kit as needed from time to time to meet all state and federal standards. Any other supporting program documents, disclosures, loan agreements, etc. required for BUF Program administration will be developed by RCAC and approved by SNC and HCD staff for CDBG-NDR compliance.

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

## EXHIBIT A

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

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

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

RCAC will comply with CDBG-NDR reporting requirements by:

- 1) preparing monthly NDR grant reports which will be reviewed and approved by SNC prior to submittal to HCD;
- 2) preparing Funds Request forms for all consultants and businesses receiving CDBG-NDR funding;

## EXHIBIT A

- 3) preparing and submitting the Monthly Activity Reports;
- 4) preparing and submitting semi-annual prevailing wage reports for any project that includes construction that must comply with state and federal prevailing wage compliance;
- 5) collecting required supporting documentation, which may include payroll and income information, to demonstrate public benefit and nation objective compliance for each assisted business.

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

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

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

### **4) Program Financial Assistance Activities**

#### Responsibilities for BUF Project Application Process

- i. RCAC will be responsible for creating or modifying financial assistance security documents, including loan agreements or deeds of trust that allow RCAC to enforce CDBG-NDR regulatory requirements on BUF project developers. These documents will require repayment of CDBG-NDR funding if default violations of federal requirements take place. Recapture funds will be returned to HCD for repayment to federal treasury.
- ii. RCAC will be responsible for the marketing of the CDBG-NDR financial assistance program. SNC will assist the marketing efforts by arranging for seminars and marketing meetings within the community. RCAC will coordinate with local economic development agencies in the region.
- iii. RCAC will report monthly to SNC and HCD on the status of projects in the application process.

## EXHIBIT A

- iv. RCAC and SNC will work with the BUF project applicants to find other funding to compliment CDBG-NDR gap funding.
- v. Projects will be financially underwritten by RCAC staff with assistance as needed from third party consultants. Projects will also be reviewed for CDBG-NDR federal compliance standards.
- vi. Upon completion of underwriting and CDBG-NDR compliance reviews, RCAC staff will provide a project approval document to Core Team for approval.
- vii. Upon Core Team project approval, RCAC loan committee will meet to review and approve the project per the Tool Kit standards.
- viii. Once approved by RCAC and Core Team, RCAC staff will formally notify the recipient of NDR BUF funding commitment and provide General Conditions Checklist and loan condition items for them to start completing.
- ix. RCAC will work with borrowers to clear General Conditions Checklist and loan conditions items.
- x. After release of project funding, project applicant will execute financial assistance agreements, RCAC will monitor the project's implementation with SNC and ensure that all CDBG-NDR funds are provided in accordance with NDR requirements.
- xi. HCD will reimburse RCAC for activity delivery services rendered pursuant to this Agreement in accordance with Section 7 below.
- xii. For purposes of CDBG-NDR compliance, including without limitation compliance with applicable CDBG-NDR requirements, after loan closing, RCAC will track all CDBG-assisted businesses and obtain documentation of public benefit and national objective compliance.

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

- xiii. HCD shall require RCAC to retain all application loan packages for a minimum of five-years. The five-year CDBG-NDR file retention period starts upon HUD grant close-out with HCD (see record-keeping

**EXHIBIT A**

requirements below). Original loan security instruments and documents shall be kept until the loan is repaid.

**7. Budget**

**RCAC budget:**

<b>Activity</b>	<b>National Objective</b>	<b>Grant Funds</b>
Planning costs for Tool Kit and other Eligible Planning Activities	None	<b>\$250,000</b>
Activity Delivery costs for Project Application Processing	Low Mod Benefit	<b>\$1,050,000</b>
Project Implementation Funding	Low Mod Benefit	<b>\$18,716,911</b>
<b>TOTAL</b>		<b>\$20,016,911</b>

**8. SNC Budget**

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

**9. Budget Line Item Adjustments**

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

**10. Other Funding Sources**

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



## EXHIBIT A

Set-up/Completion Report is also used to convey any changes to the project-specific accounts and report the final project-specific information into DRGR.

### 11. Payment Process

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

### 12. Administrative Requirements

#### A. Documentation and Record-Keeping

##### 1) Records to be Maintained

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

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

#### B. Closeouts

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

### C. Use and Reversion of Assets

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

- 1) RCAC shall transfer to HCD any CDBG-NDR funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination of this agreement.
- 2) Immovable property under RCAC control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives set forth in 24 CFR 570.208 until five (5) years after expiration of this Agreement (or such longer period as HCD deems appropriate). If RCAC fails to use such immovable property in a manner that meets a CDBG National Objective for the prescribed period of time, RCAC shall pay to HCD an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. Such payment shall constitute program income to HCD. RCAC may retain real property acquired or improved under this Agreement after the expiration of the five-year period.
- 3) In all cases in which RCAC acquires equipment, in whole or in part, with NDR Funds is sold, the proceeds received shall be placed into the Program for continuation of activities. Equipment not needed by RCAC for activities under this Agreement shall be: (a) transferred to HCD for the CDBG program; or, (b) retained by RCAC after compensating HCD an amount equal to the current fair market or depreciated value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

## 13. General Conditions

### A. Independent Contractor

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

### B. HCD Recognition

## EXHIBIT A

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

### C. Amendments

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

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

#### 14. No Assignment

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

#### 15. Severability

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

#### 16. Counterparts

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

#### 17. Entire Agreement

This Agreement constitutes the entire understanding and reflects the entirety of the undertakings between the parties with respect to the subject matter hereof, superseding all negotiations, prior

## EXHIBIT A

discussions and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement.

### 18. **No Authorship Presumptions**

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

### 19. **Applicable Law, Controversies and Venue**

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

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

### 20. **No Personal Liability of Individual Representatives**

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

### 21. **Delay or Omission**

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

### 22. **Prohibited Activity**

RCAC is prohibited from using and shall be responsible for its contractors and sub-contractors being prohibited from using, the funds provided herein, or personnel employed in the administration of the program for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government.

## EXHIBIT A

RCAC will comply with the provision of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

### 23. **Safety**

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

### 24. **Fund Use**

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

RCAC, SNC, and all of RCAC's contractors and sub-contractors shall certify that they have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. RCAC and each of its contractors and subcontractors shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

### 25. **Subcontractors and Subrecipients**

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

### 26. **Copyright**

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

## EXHIBIT A

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

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

### 27. **Public Communication**

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

### 28. **No Third-Party Beneficiaries**

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

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

The term of this Agreement will begin upon date of execution by HCD and end on August 30, 2025. With the exception of the Grant Closing Requirements set forth in Exhibit B, Section 7, RCAC shall complete the project activities within the timeframe set forth below.

#### **Biomass Utilization Facility (BUF):**

- A. General Conditions cleared for one (1) BUF Project by : 12/31/2022.
  - B. All project implementation and planning funds under this Agreement shall be expended by: 03/30/2025.
  - C. All activity delivery funds under this Agreement shall be expended by: 06/30/2025
- This Agreement will expire on: 08/30/2025

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

### 30. **State Grant Manager**

**EXHIBIT A**

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

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

**31. RCAC Program Administrator**

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

CBDO:	Rural Community Assistance Corporation
Program Administrator:	Cyndi Spencer, COO 3120 Freeboard Drive Suite 201 West Sacramento CA 95691
Phone:	(916) 708-1896
Email:	<a href="mailto:CSpencer@rcac.org">CSpencer@rcac.org</a>

**32. SNC Program Coordinator**

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

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

## EXHIBIT B

### **SET-UP/COMPLETION AND PAYMENT PROVISIONS**

#### **1. Definitions**

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

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

#### **2. General Conditions Clearance and Set-Up Requirements**

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

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



## EXHIBIT B

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

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

RCAC shall submit the following documentation to the Department:

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

### 4. **Expenditure of Funds**

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

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

- B. Grant Administration

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

### 5. **Method of Payment**

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

All funds requests will first be submitted to SNC, via the grant management software or other

## EXHIBIT B

HCD process for review and approval. SNC shall then forward all approved funds requests to the HCD Contract Manager specified in Exhibit A, Section 30, or to any other address of which RCAC has been notified in writing. Neither SNC nor the Department shall authorize payments unless it has determined the activity costs have been incurred, the represented Work has been performed and completed, and the costs are eligible and in compliance with the terms of this Agreement.

### A. Reimbursements

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

### B. Timing Final Payment Requests

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

## EXHIBIT B

the approved CDBG-NDR funding, then the balance of the project funds must be returned to HCD. HCD will return those funds to the federal treasury. Those funds will not be considered financial assistance repayments from the borrower.

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

### 6. Agreement Reporting Requirements

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

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

### 7. Agreement Close Out Requirements

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

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

## EXHIBIT B

- A. Per Federal Register Notice FR-5936-N-01, all agreements that are paid for with NDR funding must have performance measures and penalties. See Exhibit D, Section 24 for the requirement that performance milestones and penalty language to be used by RCAC in every NDR contract and subrecipient agreement in which NDR funds are used.

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

- 1) No later than three (3) months after execution of this Agreement, RCAC shall release a Request for Qualifications (RFQ) to develop a list of qualified consultants that will assist with project environmental review work.
- 2) No later than two (2) months after execution of this Agreement, RCAC shall develop, with input from SNC and HCD, Fund Tool Kit which will contain a manual with associated support documents required for the BUF Economic Development and Public Fund Programs. This Biomass Utilization Fund Tool Kit will be submitted to the Department for review and approval.
- 3) No later than one (1) month after completing the BUF Tool Kit, RCAC shall begin marketing, accepting, and screening financial assistance applications from potential BUF developer(s).
- 4) No later than June 30, 2023, RCAC shall have one (1) BUF project with General Conditions Clearance and loan conditions completed and be prepared to close on the NDR financial assistance.
- 5) No later than June 30, 2023, RCAC shall enter into an agreement with SNC to administer the Healthy California Forest program. These program funds shall be used for investments in biomass or wood processing infrastructure or enterprises to increase forest resilience, primarily in the Sierra Nevada Region of California.
- 6) No later than April 30, 2025, RCAC shall have provided Completion Reports for all CDBG-NDR funded projects, which documents each BUF project's eligible activity, costs and national objective.
- 7) Per Exhibit A, Section 29, all proposed CDBG-NDR work on BUF projects must be completed by June 30, 2025, including meeting public benefit and national objective standards, unless a project-specific waiver has been granted by HCD to extend the completion deadline.

B. Penalties

## **EXHIBIT B**

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

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

## EXHIBIT D

### **CDBG-NDR TERMS AND CONDITIONS**

#### **1. Effective Date and Commencement of Work**

This Agreement is effective upon approval by the Department.

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

#### **2. Sufficiency of Funds**

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

#### **3. Litigation**

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

## EXHIBIT D

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

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

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

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

RCAC acknowledges the existence of existing litigation filed against the NDR partners and the project in the matter of Earth Island Institute, et al., v. HUD, HCD, et al. case ("Earth Island"). The plaintiffs in Earth Island are challenging among other things, the validity of the HUD NDR award to the Department and various environmental studies and

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reports pursuant to which portions of the NDR work are being performed. RCAC acknowledges that this litigation could potentially affect the ongoing viability of the NDR work and the subject matter of this Agreement, and an adverse ruling potentially could result in the inability of RCAC to perform the Work and achieve a required national objective. In the event RCAC is prevented from achieving a required National Objective as a direct result of the Earth Island litigation and as a result, HUD requires repayment of NDR funds relating thereto, the Department shall be solely responsible for making such repayment.

### 4. **National Objectives**

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

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

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

Pursuant to 24 CFR 570.482(f), (g) and 570.483(b)(4), RCAC is responsible for providing fulfillment of HUD required public benefit standards when activities under this Agreement qualify as special ED activities. The NDRC NOFA and Federal Register Notice FR-5936-N-01 waives the public benefit subsidy standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or



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retain jobs when assisting for profit businesses (including, but not limited to, long-term loans, short-term loans, and grants). However, recipients of CDBG-NDR funding shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. HUD is also waiving 570.482(9) and 570.209(c) and (d) to the extent these provisions are related to public benefit. Special ED activities must also comply with CDBG's six (6) underwriting standards, per 24 CFR Part 570.482(e).

### 6. **Waivers**

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

### 7. **Uniform Administrative Requirements**

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

### 8. **Non-Performance**

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

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

### 9. **Affirmatively Furthering Fair Housing**

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

### 10. **Equal Opportunity Requirements and Responsibilities**

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

- A. **Title VI of the Civil Rights Act of 1964**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial

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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. RCAC will meet all civil rights related requirements pursuant to 24 CFR 570.503(b)(5).
- C. Restoration Act of 1987: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- D. Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- E. The Fair Housing Amendment Act of 1988: This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- F. The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that the housing facilities must have one person who is 55 years of age or older living in at least 80% of its occupied units. The act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 or older.
- G. The Age Discrimination Act of 1975: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7.
- H. Section 504 of the Rehabilitation Act of 1973: It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains

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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

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the basis of race.

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

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

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

### 12. **Environmental Compliance**

RCAC shall assist HCD, HCD's technical assistance consultant, and any environmental compliance consultant/engineer, should one be procured, so that all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements are met.

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Under federal regulations, RCAC cannot act as lead agency for NEPA, as the Department is required to be lead agency for the CDBG-NDR funds. RCAC shall not assume the role of lead agency for any CEQA review process. The Department or one of its designees shall assume the lead agency role for CEQA. RCAC will assist the Department in the CDQA/NEPA processes as needed and obtaining Authority to Use Grant Funds from HUD staff prior to incurring any project implementation costs.

### 13. Clean Air and Water Acts

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

### 14. Relocation, Displacement, and Acquisition

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

### 15. Compliance with State and Federal Laws and Regulations

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

### 16. Federal Labor Standards Provisions

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

- A. Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- B. "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) The act prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The act also provides that the inclusion of

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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, RCAC shall ensure that the requirements of Section 1720-1743 of the California Labor Code ("LC"), pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations are met.
- B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between RCAC and a licensed building contractor, RCAC shall serve as the "awarding body" as that term is defined in the LC. Where RCAC will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

### 18. **Lead Based Paint Hazards**

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

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

Pursuant to 24 CFR 570.489(h), no member, officer, or employee of RCAC, or its designees or agents and if applicable, no member of the governing body of the locality in which

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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. RCAC shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

### 20. **Conflict of Interest of Certain Federal Officials**

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

### 21. **Anti-Job Pirating Certification**

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

### 22. **Anti-Lobbying Certification**

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

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

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of Congress in connection with this federal contract, grant, loan, or cooperative agreement, RCAC shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

### 23. **Bonus or Commission, Prohibition Against Payments of**

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

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

### 24. **Contractors and Subrecipients**

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



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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 RCAC that the HUD/HCD CDBG-NDR grant contract is closed.
- 2) Permit the State, federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to 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

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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

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

### 26. Reporting Requirements

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

- A. Project Set-Up / Completion Report: Submit Set-up report for review and approval by Department prior to incurring project costs. Submit amended reports as needed.
- B. Monthly Project Update Report: RCAC and other partners associated with CDBG-NDR project activity implementation must submit monthly activity reports to provide status

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update on each activity. RCAC shall provide written reports on the Monthly Project Update Report form which is reviewed by SNC first before being provided to HCD. Report information is used to update BUF project status in DRGR reporting system.

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

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

### 27. Monitoring Requirements

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

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

### 28. Inspections of Grant Activity

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

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

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and/or local requirements per this Agreement.

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

### 29. Access to Records

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

### 30. Audit/Retention and Inspection of Records

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

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- E. For the purposes of annual audits under OMB Uniform Guidance, RCAC shall use the Federal Catalog number 14.272 for the CDBG-NDR Program.
- F. Pursuant to OMB Uniform Guidance 2 CFR 200, RCAC shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. Audit costs for this Agreement are a general administration expense and are subject to the general administration expenditure limits associated with this Agreement. The costs of the CDBG-NDR-related portion of the audit may be charged to the program in accordance with Public Law 98-502, Uniform Guidance, and Section 7122 of Title 25 CCR.
- G. Notwithstanding the requirement of A-F above, the foregoing, the Department will not reimburse RCAC for any audit cost incurred after the expenditure deadline of this Agreement.
- 1) The audit shall be performed by a qualified State, department, local or independent auditor. The agreement/contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
  - 2) If there are audit findings, RCAC must submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends and the Department will notify RCAC in writing. If the Department is not in agreement, RCAC will be contacted in writing and informed what corrective actions must be taken. This action may include the repayment of disallowed costs or other remediation.
  - 3) The Department shall not approve reimbursement for any expenditures for the audit, prior to receiving an acceptable audit report.
  - 4) If so directed by the Department upon termination of this Agreement, RCAC shall cause all records, accounts, documentation and all other materials relevant to the grant activities to be delivered to the Department as depository.

### 31. **Signs**

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

### 32. **Citizen Participation**

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

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**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**

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

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

**35. Program Income**

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

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

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

### 37. **Energy Policy and Conservation Act**

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

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

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

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- C. Government Code (“GC”) § Section 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 Expenditure Dates**

In accordance with P.L. 113-2, all CDBG-NDR funds must be expended within two years of the date HUD obligates funds to HCD (funds are obligated to a HCD upon HUD’s signing of HCD’s CDBG-NDR grant agreement), unless a waiver is requested and granted by HUD. For purposes of this Agreement, on July 18, 2016, HUD granted the Department a waiver of this requirement and establishing a new expenditure date of September 30, 2022. Subsequently, Congress allowed HUD to extend the expenditure deadline to September 30, 2023, through the Consolidated Appropriations Act, 2021, enacted on December 27, 2020; and the Consolidated Appropriations Act, 2022, signed into law March 15, 2022, provides that funds previously made available in chapter 9 of P.L. 113-2 are to remain available through the federal fiscal year 2025 (September 30, 2025). Then, through the 2022 Omnibus Spending Bill, Congress has allowed all fund allocated under Public Law 113-2 to be available until expended.

### **40. Grant Reduction**

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

### **41. Withdrawal of Grant Amounts**

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

### **42. Financial Controls**

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

### **43. Administrative and National Policy Requirements**

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



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administrative and national policy requirements.

### 44. **Reporting**

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

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

### 45. **Use of Funds**

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

### 46. **Performance Measures and Related Remedies**

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

### 47. **Disputes**

Except as otherwise provided in this Agreement, any dispute arising under or relating to the performance of this Agreement, which is not disposed of, by mutual agreement of the parties shall be decided by a two-tier process. First, RCAC will present their dispute documentation to the

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CDBG-NDR Project Manager for review and resolution. If the dispute cannot be resolved by the Project Manager, then it will be presented to the Deputy Director of HCD's Housing Policy Division. The decision of the Deputy Director shall be final, conclusive and binding.

### 48. Award Date

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

As noted in item 1 above, on July 18, 2016, HUD approved HCD's request to extend the expenditure deadline to September 30, 2022. As noted in item 36 above, the Consolidated Appropriations Act, 2022, enacted on March 15, 2022, Congress allowed HUD to extend the expenditure deadline to September 30, 2025-, then the 2022 Omnibus Spending Bill passed by Congress has allowed all fund allocated under Public Law 113-2 to be available until expended.

### 49. Suspension or Termination

#### A. Suspension of Work

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

#### B. Termination at Option of Department

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

#### C. Termination for Default

The Director, Acting Director, or their designee may, upon three (3) day written notice to RCAC, and without any prejudice to its other remedies, terminate this Agreement in whole or in part for cause. Cause shall consist of violations of any terms and/or special conditions of this Agreement and for the HUD agreement, upon the request of HUD, or the withdrawal of, or any limitation on the Department's expenditure authority. Upon receipt of any notice terminating this Agreement in whole or in part, RCAC shall (1) immediately discontinue all services affected (unless the notice directs otherwise); and (2) deliver to the Department's Contract Manager all data, reports, summaries, and such other information and materials as may have been accumulated by RCAC in performing under this Agreement, whether completed or in progress. At the sole discretion of the Department, the Department may offer RCAC an opportunity to cure any breach(es) prior to terminating for a breach. If after notice of termination for failure to fulfill contract obligations, it is determined that RCAC had not so failed, the termination shall be deemed to have been effected for the convenience of the Department.

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### D. Termination at Option Upon Bankruptcy of RCAC

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

### E. Termination or Suspension in Cases of Litigation

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

### F. Effects of Suspension and Termination

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

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

### G. Non-Compliance

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

- 1) Temporarily withhold cash payments pending correction of the deficiency by the RCAC.
- 2) Disallow (that is, deny use of funds for) all or part of the cost of the activity or

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action not in compliance.

- 3) Wholly or partly suspend or terminate the current award for RCAC's program.
- 4) Exercise any other remedies or any other rights that may be legally available to the Department, including termination of this Agreement.

### H. Cumulative Remedies

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

### I. Completion

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

## **50. Force Majeure**

“Force Majeure” is an unforeseeable event outside of a party’s reasonable control which prevents or delays performance of that party’s obligations under this Agreement. Such event does not include the normal risks a party assume when it enters a contract. A Force Majeure event is a natural disaster such as an earthquake, flood, hurricane, pandemic, an Act of God, act of war, act of public enemies of this state or of the United States, or other similar event.

“Force Majeure” also includes actions or measures taken by any governmental authority, including executive orders, public health orders, or other governmental orders, laws, regulation, or other governmental action taken in response to a “Force Majeure” event, such as a quarantine or other restriction, which prevents or delays the performance of a parties’ obligations under this Agreement.

The party asserting “Force Majeure” must give notice to the other party(s) to this Agreement within ten calendar days of the occurrence of the Force Majeure event, notice to be given in accordance with the notice provisions of this Agreement. Such notice must include a description of the Force Majeure event, how the event has prevented or delayed the party’s ability to perform its obligations under this Agreement, a description of the reasonable measures the asserting party proposes to take to resume performance of its obligations under this Agreement, and a date by which the party anticipates it will resume performance of its obligations hereunder.

## **51. 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 HCD by HUD in any Federal Register Notice (“FRN”) relating to the

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

### **52. HCD National Disaster Resilience (DR) Grant Administration Manual (GAM)**

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

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

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

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

### **55. Policies on Excessive Use of Force**

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

### **56. Project Design/Feasibility**

RCAC will demonstrate that the engineering design and financial feasibility for each project activity under this Agreement is feasible prior to obligation of funds for construction or project development. This demonstration is satisfied if a registered professional engineer (or other design

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professional) certifies that the design meets the appropriate code or industry design and construction standards. RCAC will ensure project designs, to the greatest degree possible, use construction methods that are high quality, green construction, energy and water efficient, healthy indoor environments, resilient and mitigating the impact of future disasters.

### **57. Use of Web Based Grant Management Software**

RCAC staff shall utilize the current web-based software that HCD provides for CDBG-NDR grant administration. The HCD technical assistance consultant shall develop such software and shall provide training and technical assistance to RCAC's staff on accessing and using the software. The software license from the consultant is extended to HCD's employees as Authorized Users and is extended to RCAC's staff as Non-HCD Authorized Users.

RCAC, as Non-HCD Authorized User, acknowledges that its and its employee use of the CDBG-NDR software created for this Agreement by the technical assistance consultant is expressly subject to the terms and conditions of the software license granted to HCD in Section 1 of Exhibit F to that certain agreement between HCD and the consultant (the "License"), which License RCAC has reviewed and agrees to be fully bound by. These indemnity, defense and hold harmless obligations of RCAC shall indefinitely survive the completion or earlier termination of this Agreement.

### **58. Required Federal Language from 2 CFR Part 200 Appendix II**

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

### **59. Procurement of Recovered Materials**

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

### **60. 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

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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.

### **61. Ethical Standards/Code of Conduct**

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