

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE COUNTY OF HUMBOLDT AND THE CITY OF RIO DELL  
TO PROVIDE ASSISTANCE ADMINISTERING  
CALIFORNIA HOUSING AND COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS**

This Agreement is made and entered into this 15th day of March 2023 by and between the County of Humboldt, a political subdivision of the State of California, herein referred to as "COUNTY" and the City of Rio Dell, an incorporated city, herein referred to as "CITY" and collectively referred to as the "PARTIES."

WHEREAS, the PARTIES desire to allow the COUNTY to assist in administering CITY's State of California Housing and Community Development (HCD) projects and programs; and

WHEREAS, the CITY has HCD funding to pay the COUNTY to assist in administration of the CITY's HCD programs and projects; and

WHEREAS, the PARTIES now desire to enter into this Agreement to have the CITY pay the COUNTY to act as a resource and assist in managing the HCD Housing Programs and other HCD programs.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. COUNTY agrees to answer general questions and assist CITY with HCD programs and projects as outlined in the Scope of Services in Attachment A, which is incorporated herein by reference.
2. CITY shall compensate COUNTY for all services performed pursuant to this Agreement.
  - a. Compensation shall be billed at a burdened hourly rate. The burdened rate includes salaries and benefits. Burden rates are subject to change.
  - b. COUNTY will bill for travel expenses on a reimbursable basis at the government rate, based on GSA website, <https://www.gsa.gov/travel/plan-book/per-diem-rates>.
  - c. COUNTY will provide CITY with a detailed billing invoice no less than quarterly setting forth both the hours expended and the travel expenses incurred pursuant to this Agreement. CITY shall thereafter pay COUNTY the amount as stated in the billing statement within thirty (30) days of submission of such statement to the CITY.
3. CITY will allow COUNTY HCD funds to be used within the jurisdiction boundaries if approved by the State of California staff, and shall allow any loans repaid to accrue and be deposited in COUNTY restricted program income accounts.
4. Term of Agreement: This agreement shall commence upon the signatures of both parties and shall terminate December 31, 2026. Early termination of the Contract may be effectuated by written notice from the County, without the need for action or ratification by the Humboldt County Board of Supervisors, upon twenty (20) days written notice of such termination. Early termination of the Contract may also be effectuated by written notice from the City of Rio Dell, without need for action or ratification by the Rio Dell City Council, upon twenty (20) days written notice of such termination.
5. Any notice required to be given pursuant to the terms and provisions herein shall be sent

by First Class Mail, return receipt requested to the following addresses and shall be deemed received when placed in the stream of mail:

County of Humboldt  
Director of Planning and Building  
3015 H Street  
Eureka, CA 95501

City of Rio Dell  
City Manager  
621 11<sup>th</sup> Street  
Rio Dell, CA 95540

6. The COUNTY and the CITY are separate political agencies, COUNTY being a subdivision of the State of California and CITY being a municipal corporation, and as such, they are independent contractors with respect to each other. This agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association. Nothing in this agreement shall be construed to create an employment relationship between CITY and any employee of COUNTY, or between COUNTY and any employee of CITY. Each party shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors. Neither party's employees shall be entitled to any employee benefits from the other party.
7. INDEMNIFICATION:
  - A. Mutual Indemnity. Each party shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.
  - B. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.
  - C. Effect of Insurance. Acceptance of the insurance required by this MOU shall not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to either party's performance hereunder, regardless of whether any insurance is applicable or not.
8. INSURANCE REQUIREMENTS:
  - A. General Insurance Requirements. Without limiting either party's indemnification obligations set forth herein, each party shall maintain in full force and effect, at its own expense, any and all appropriate comprehensive general liability, comprehensive automobile, workers' compensation and professional liability insurance policies.
  - B. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms and conditions of this MOU shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt  
Attention: Risk Management  
825 Fifth Street, Room 131  
Eureka, California 95501

CITY: City of Rio Dell  
City Manager  
621 11<sup>th</sup> Street  
Rio Dell, CA 95540

9. CITY certifies by its signature below that CITY is not a Nuclear Weapons Contractor, in that CITY is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. CITY agrees to notify COUNTY immediately if it becomes a nuclear weapons contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CITY becomes a nuclear weapons contractor.
10. This agreement shall constitute the entire agreement between the PARTIES relating to the subject matter of this agreement, and shall supersede any previous agreements, promises, representation, understanding and negotiation, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms which are embodied in this agreement are hereby ratified.
11. COUNTY is aware of and will comply with all federal overlays in the carrying out task that are undertaken while performing the tasks of this MOU. Such overarching requirements are attached to this Agreement.
12. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the PARTIES.
13. This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder or relating to this agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to Code of Civil Procedure Sections 394 and 395.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 23<sup>rd</sup> day of March, 2023:

COUNTY OF HUMBOLDT

CITY OF RIO DELL

By Steve Madrone  
Steve Madrone  
Chairman  
Humboldt County Board of Supervisors

By [Signature]  
Kyle Knopp  
City Manager  
City of Rio Dell

ATTACHMENT A  
**SCOPE OF SERVICES**

A. General Administrative Tasks

1. COUNTY shall answer general questions and assist the CITY with interpreting HCD regulations.
2. COUNTY shall assist CITY with HCD correspondence and Reports.
3. COUNTY shall assist CITY in keeping complete files for its permanent record.
4. COUNTY and CITY shall work together to ensure State and Federal requirements are met. If the COUNTY becomes aware of any compliance problems staff will summarize the issues and submit a recommended course of action to CITY.

B. HCD Grant Writing

1. COUNTY shall assist CITY in determining eligible projects.
2. COUNTY shall assist in preparing applications
3. CITY will be responsible for securing City Council approval.

C. Project Administration for City & County funds for HCD Projects and Programs.

1. COUNTY shall assist in basic set-up tasks, such as preparing Program Guidelines or clearing Special Conditions, and may act as the be primary contact with HCD staff.
2. COUNTY will conduct prevailing wage monitoring or assist the agency in finding a qualified entity to conduct the monitoring.
3. COUNTY shall assist in ongoing Program administration, as requested by CITY.
4. CITY shall assist in preparing bid, award, and manage contracts associated with projects.
5. CITY will be responsible for securing City Council approval.

## **Federal Overlays**

### **1. General Administration**

The County shall provide all required financial oversight and grant reporting for the stated goals for the City, including any monitoring and reporting requirements specified in the CDBG Grant Management Manual.

#### **1.1.National Objectives**

All activities must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The County certifies that the activity(ies) carried out under this Agreement will meet CDBG National Objectives by primarily benefiting the low-mod income individuals or households. As a public service provider, the primary mission shall be to serve low and moderate-income residents who have insufficient access to economic opportunity and community resources.

### **2. General Conditions**

#### **2.1.General Compliance**

The County agrees to comply with the requirements of Title 2 CFR 200-Uniform Administrative Requirements, Cost Principals, and Audit Requirements for Federal Awards and Title 24 CFR 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) including subpart K of these regulations, except that (1) the County does not assume the City's environmental responsibilities described in 24 CFR 570.604 and (2) the County does not assume the City's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The County also agrees to comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this contract. The County further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

#### **2.2.“Independent Contractor”**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating, or establishing the relationship of employer/employee between the parties. The County shall always remain an “independent contractor” with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the County is an independent contractor.

#### **2.3.Hold Harmless**

The County shall hold harmless, defend, and indemnify the City from all claims, actions, suits, charges, and judgments whatsoever that arise out of the County's performance or nonperformance of the services or subject matter called for in this Agreement.

#### **2.4.Workers' Compensation**

The County shall provide Workers' Compensation Insurance coverage for all its employees involved in the performance of this Agreement.

#### **2.5.Insurance & Bonding**

County, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects City and any insurance or self-insurance maintained by

City shall be considered more than County's insurance coverage and shall not contribute to it. If County normally carries insurance in an amount greater than the minimum amount required by the City for this Agreement, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. Therefore, County hereby acknowledges and agrees that all insurances carried by it shall be deemed liability coverage for all actions it performs in connection with this Agreement.

If County utilizes one or more subcontractors in the performance of this Agreement, County shall obtain and maintain Contractor's Protective Liability insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of County in this Agreement, unless County and City both initial here \_\_\_\_ / \_\_\_\_.

**2.5.1. Types of Insurance and Minimum Limits**

Workers' Compensation Insurance in the minimum statutorily required coverage amounts. This insurance coverage shall be required unless the County has no employees and certifies to this fact by initialing here \_\_\_\_.

**2.5.2. Automobile Liability Insurance**

For each of County's vehicles used in the performance of this Agreement, including owned, non-owned (e.g., owned by employees), leased, or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless the County does not drive a vehicle in conjunction with any part of the performance of this Agreement and County and City both certify to this fact by initialing here \_\_\_\_ / \_\_\_\_.

**2.5.3. Comprehensive or Commercial General Liability Insurance**

Coverage at least as broad as the most recent ISO Form CG 00 01 with a minimum limit of \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, including coverage for: (a) products and completed operations, (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

**2.5.4. Professional Liability Insurance**

Professional Liability Insurance in the minimum amount of \$X.XX combined single limit, if, and only if, this Subparagraph is initialed by County and City. Initial here initialing here \_\_\_\_ / \_\_\_\_.

Other Insurance Provisions

- If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, County agrees that the retroactive date thereof shall be no later than the date first written above (in the first paragraph on page 1), and that it shall maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post Agreement coverage") and any extensions thereof. County may maintain the required post Agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post Agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement to purchase prior acts or tail coverage for post Agreement coverage shall be deemed to be reasonable.
- All policies of Comprehensive or Commercial General Liability Insurance shall be

endorsed to cover the Rio Dell, its officials, employees, agents, and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of County, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01, covering both ongoing operations and products and completed operations.

- All required insurance policies shall be endorsed to contain the following clause:

“This insurance shall not be canceled until after thirty (30) days’ prior written notice (10 days for nonpayment of premium) has been given to:

County of Humboldt  
Director of Planning and Building  
3015 H Street  
Eureka, CA 95501

City of Rio Dell  
City Manager  
621 11<sup>th</sup> Street  
Rio Dell, CA 95540

- Should County fail to obtain such an endorsement to any policy required hereunder, County shall be responsible to provide at least thirty (30) days’ notice (10 days for nonpayment of premium) of cancellation of such policy to the City as a material term of this Agreement.
- County agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide City on or before the effective date of this Agreement with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the County’s obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

County of Humboldt  
John H. Ford  
Director of Planning and Building  
3015 H Street  
Eureka, CA 95501

City of Rio Dell  
Kyle Knopp  
City Manager  
621 11<sup>th</sup> Street  
Rio Dell, CA 95540

- County hereby grants to City a waiver of any right of subrogation which any insurer of said County may acquire against the City by virtue of the payment of any loss under such insurance. County agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.
- County shall comply with the bonding and insurance requirements of 2 CFR 200.325 (Bonding Requirements), 2 CFR 200.310 (Insurance Coverage), and 2 CFR 200.447 (Insurance Requirements).

## 2.6. City Recognition

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

## **2.7. Amendments**

The City or County 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 organization, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or County from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both City and County.

## **2.8. Suspension or Termination**

In accordance with 24 CFR 200.339 the City may suspend or terminate this Agreement if the County materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

- Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- Failure, for any reason, of the County to fulfill in a timely and proper manner its obligations under this Agreement;
- Ineffective or improper use of funds provided under this Agreement; or
- Submission by the County to the City reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR 200 Appendix II (B), this Agreement may also be terminated for convenience by either the City or the County, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

## **3. Administrative Requirements**

### **3.1. Financial Management**

#### **3.1.1. Accounting Standards**

The County agrees to comply with 2 CFR 200.302 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### **3.1.2. Cost Principles**

The County shall administer its program in conformance with 2 CFR 200 Subpart E, Cost Principles. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### **3.2. Documentation and Record Keeping**

#### **3.2.1. Records to be Maintained**

The County shall maintain all records required by the Federal regulations specified in 2 CFR 200.333 (Retention Requirements for Records) and 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- Records providing a full description of each activity undertaken;
- Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- Records required to determine the eligibility of activities;
- Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- Financial records as required by 24 CFR 570.502; and
- Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

**3.2.2. Retention**

The County shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the City's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

**3.2.3. Client Data**

The County shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.

**3.2.4. Disclosure**

The County understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the City's or County's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

**3.2.5. Closeouts**

The County's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain

in effect during any period that the County has control over CDBG funds, including program income.

### **3.2.6. Audits & Inspections**

All County records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the County within 30 days after receipt by the County. Failure of the County to comply with the above audit requirements will constitute a violation of this agreement and may result in the withholding of future payments. The County hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning County audits and 2 CFR Part 200 Subpart F Audit Requirements.

## **3.3. Payment Procedures**

### **3.3.1. Payment Procedures**

The City will pay to the County funds available under this Agreement based upon information submitted by the County and consistent with any approved budget and City policy concerning payments. Except for certain advances, payments will be made for eligible expenses actually incurred by the County, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund and program income balances available in County accounts. In addition, the City reserves the right to liquidate funds available under this contract for costs incurred by the City on behalf of the County.

## **3.4. Procurement**

### **3.4.1. Compliance**

The County shall comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

### **3.4.2. Methods and Standards**

Unless specified otherwise within this agreement, the County shall procure all materials, property, or professional services, in accordance with the requirements at 2 CFR 200.317 through 200.326.

## **4. Relocation, Real Property Acquisition and One-for-One Housing Replacement**

The County agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. The County shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project. The County also agrees to comply with applicable City ordinances, resolutions and policies concerning the displacement of persons from their residences.

## **5. Personnel & Participant Conditions**

## **5.1.Civil Rights**

### **5.1.1. Compliance**

The County agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

### **5.1.2. Nondiscrimination**

The County agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

### **5.1.3. Land Covenants**

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the County shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. The County, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

### **5.1.4. Section 504**

The County agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the County with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

## **5.2.Affirmative Action**

### **5.2.1. Approved Plan**

The County agrees that it shall be committed to carry out pursuant to the City's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The City shall provide Affirmative Action guidelines to the County to assist in the formulation of such program. The County shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

### **5.2.2. Women- and Minority-Owned Businesses (W/MBE)**

The County will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. To this definition, "minority group members" are African Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The County may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

#### **5.2.3. Access to Records**

The County shall furnish and cause each of its own Countys or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

#### **5.2.4. Notifications**

The County will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the County's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

#### **5.2.5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement**

The County will, in all solicitations or advertisements for employees placed by or on behalf of the County, state that it is an Equal Opportunity or Affirmative Action employer.

The State of California is an equal opportunity employer to all, regardless of age, ancestry, color, disability (mental and physical), exercising the right to family care and medical leave, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, political affiliation, race, religious creed, sex (includes pregnancy, childbirth, breastfeeding and related medical conditions), and sexual orientation.

All state agencies have an affirmative duty to take reasonable steps to prevent and promptly address discrimination and harassment in the workplace. Agencies are responsible for integrating equal employment opportunity into every aspect of human resource management policies and practices in the recruitment, examination, selection, training and advancement of employees.

#### **5.2.6. Subcontract Provisions**

The County will include the provisions of Section 12.1, Civil Rights, and Section 12.2, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Countys or subcontractors.

### 5.3. Employment Restrictions

#### 5.3.1. Prohibited Activity

The County is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, inherently religious activities; lobbying; political patronage; and nepotism activities.

#### 5.3.2. Labor Standards

The County agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The County agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The County shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The County agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the County of its obligation, if any, to require payment of the higher wage. The County shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

#### 5.3.3 Section 3

**Contract provisions.** (a) Recipients must include language applying Section 3 requirements in any County agreement or contract for a Section 3 project. (b) Recipients of Section 3 funding must require Countys, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or County agreements, program regulatory agreements, or contracts.

#### Requirements.

##### Employment and training.

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

- (i) Section 3 workers residing within the service area or the neighborhood of the project, and
- (ii) Participants in YouthBuild programs.

#### “Section 3” Clause

- Compliance: Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 75, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided

under this contract and binding upon the City, the County and any of the County's Countys and subcontractors. Failure to fulfill these requirements shall subject the City, the County and any of the County's Countys and subcontractors, their successors, and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The County certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The County further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The County further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The County certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

- Notifications: The County agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- Subcontracts: The County will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The County will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 75 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

#### 5.4. Conduct

#### **5.4.1. Assignability**

The County shall not assign or transfer any interest in this Agreement without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the County from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

#### **5.4.2. Subcontracts**

- Approvals: The County shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the City prior to the execution of such agreement.
- Monitoring: The County will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
- Content: The County shall cause all the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
- Selection Process: The County shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

#### **5.4.3 Debarment and Suspension [Executive Orders 12549 and 12689]**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

#### **5.4.4 Hatch Act**

The County agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

#### **5.4.5. Conflict of Interest**

The County agrees to abide by the provisions of 2 CFR 200.112- Conflict of Interest and 570.611, which include (but are not limited to) the following:

- The County shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- No employee, officer, or agent of the County shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, 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 in any contract, or have a financial

interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the County, or any designated public agency.

#### **5.5. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**

The County hereby certifies that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Countys shall certify and disclose accordingly:
- Lobbying Certification  
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 this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **5.6. Copyright**

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

#### **5.7. Religious Activities**

The County agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

#### **5.8 Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or County wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or County must comply with the 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 regulations issued by the awarding agency.

## **6. Environmental Conditions**

### **6.4. Air and Water**

The County agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, *et seq.*
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

### **6.5. Flood Disaster Protection**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the County shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

### **6.6. Lead-Based Paint**

The County agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

### **6.7. Historic Preservation**

The County agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

### **6.5 Energy Policy and Conservation Act**

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 (42 U.S.C. 6201).

#### **6.6 Procurement of Recovered Materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by 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.

#### **7. Severability**

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

#### **8. Section Headings and Subheadings**

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

#### **9. Waiver**

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